

RULES AND REGULATIONS

Title 4—ADMINISTRATION

OFFICE OF ADMINISTRATION

[4 PA. CODE CHS. 601a—607a]

Civil Service Reform; Temporary Regulations

On March 16, 2019, the Office of Administration (OA), under its statutory authority under 71 Pa.C.S. §§ 2101—3304 (relating to civil service reform), published temporary regulations, known as the “Merit System Employment Regulations,” which implemented the Civil Service Reform Act. Since promulgating the Merit System Employment Regulations, various substantive, administrative and procedural changes have been implemented by the OA, which are not encompassed in those temporary regulations. Therefore, to ensure the continued proper administration of the classified service, the OA hereby announces the rescission of the Merit System Employment Regulations and the adoption of new temporary regulations, which will be known as the Rules of Classified Service Employment.

Rescission of Temporary Rulemaking

The OA rescinds the temporary regulations published at 4 Pa. Code Chapters 601—607.

Adoption of Temporary Rulemaking

The OA adopts temporary regulations in 4 Pa. Code Chapters 601a—607a to read as set forth in Annex A.

Statutory Authority

The OA adopts these temporary regulations under section 2203(b) of the Civil Service Reform Act (71 Pa.C.S. § 2203(b)), which authorizes the OA to promulgate temporary regulations to facilitate prompt implementation of the Civil Service Reform Act. Temporary regulations adopted under this authority are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201—1205), referred to as the Commonwealth Documents Law; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); or the requirements of the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

Regulatory Review

These temporary regulations are statutorily exempt from the Regulatory Review Act.

Purpose of Temporary Rulemaking

This temporary rulemaking adopted in this section, known as the Rules of Classified Service Employment, establishes a comprehensive regulatory structure for administration by the OA of the Commonwealth’s merit system of employment, in accordance with the Civil Service Reform Act.

Summary of Temporary Rulemaking

Chapter 601a (relating to general provisions) sets forth the definitions of terms used throughout the temporary regulations. The chapter further addresses veterans’ preference for examination-based appointments, age preference for Classified Service positions within the Department of Aging and reasonable accommodations for individuals with disabilities seeking employment in the Classified Service. Finally, unlike the prior temporary rulemaking, the chapter reaffirms that, consistent with 71 Pa.C.S. § 2504 (relating to classification and compen-

sation), the OA will utilize the Commonwealth’s classification system, as established by the Executive Board, for positions within the classified service, unless otherwise set forth in a written contract or agreement authorized by § 601a.7(a)(3) (relating to service to departments, boards and commissions, agencies and political subdivisions; reimbursement for services). Similarly, the chapter authorizes the use of intern job classifications, in addition to trainee job classifications, and it further establishes a process by which appointing authorities may request that OA include a position or group of positions in the unclassified service where the position or group of positions meet the definition of “unclassified service,” as set forth by 71 Pa.C.S. § 2103 (relating to definitions). The OA adds these provisions to address questions regarding the classification system, specifically the use of intern job classifications in the classified service, as well as to set forth the criteria used by the OA when reviewing whether a position or group of positions properly belongs in the unclassified service.

Chapter 602a (relating to appointments and promotions in the classified service) sets forth the recruitment, application and examination processes. Notably, the chapter establishes new, comprehensive regulations on internal recruitment methods by setting forth the manner through which individuals already employed in classified service positions may seek transfers, reassignments, voluntary demotions and promotions. The OA adds these provisions to allow applicants a better understanding of the internal recruitment process, and to ensure that transfers, reassignments, voluntary demotions and promotions are processed in a uniform manner consistent with the Civil Service Reform Act. Finally, the chapter addresses reinstatement into Classified Service positions by former classified service employees.

Chapter 603a (relating to employees in the classified service) establishes the rules governing probationary periods after appointment or promotion to a classified service position. The OA adds provisions addressing the probationary period for intern job classifications, which were not included in the prior temporary rulemaking. Under this new temporary rulemaking, the probationary period for an intern job classification shall coincide with the duration of the internship, for a maximum duration of 18 months, defined as 545 calendar days (365 calendar days plus 6 months at 30 days per month) or 2,925 hours if the internship is completed over a noncontiguous period. These provisions are added to clarify the status of an employee working in an intern job classification. The chapter also establishes a performance review system for employees in the classified service. Finally, the chapter sets forth the manner through which an appointing authority may transfer, reassign or demote an employee in the Classified Service, as well as the process for reclassifying a position in the classified service. As explained previously, Chapter 602a of this temporary rulemaking sets forth the manner through which individuals already employed in classified service positions may seek transfers, reassignments, voluntary demotions and promotions. However, under 71 Pa.C.S. §§ 2502 and 2503 (relating to transfers and reassignments; and demotions), appointing authorities retain the ability to involuntarily transfer, reassign or demote an employee. Therefore, the OA adds provisions to Chapter 603a to effectuate these sections of the Civil Service Reform Act.

Chapter 604a (relating to separation of employees from the classified service) establishes the rules governing temporary and permanent separations of employees from classified service positions, including leaves of absence, suspensions, terminations, resignations and furloughs. Unlike the prior temporary rulemaking, Chapter 604a separates the provisions governing general leaves of absences, leaves of absences for military duty and leaves of absences for Senior Management Services employment to ensure clarity regarding the differing rules governing each leave of absence reason. Further, to permit flexibility, the OA deletes prior requirements regarding the content of a written notice of resignation.

Chapter 605a (relating to enforcement of act; prohibitions and penalties) affirms the OA's authority to review the legality of actions, including appointments and promotions. The chapter further explains the scope of 71 Pa.C.S. § 2705 (relating to political activity), which sets forth prohibitions against certain political activities by Classified Service employees. Notably, the OA adds a provision allowing employees who are elected to and assume public office while on furlough to complete their term of office upon return to classified service employment, provided there is not a conflict of interest between the duties of the elective public office and their classified service employment. Similarly, the OA adds a provision requiring employees who are elected to and assume public office while on a leave of absence or a leave covered under Chapter 53 of the State Employees' Retirement Code in 71 Pa.C.S. § 5302(b) (relating to credited State service) to, upon returning to employment in the classified service, resign from the elective public office and otherwise comply with the provisions of 71 Pa.C.S. § 2705. The OA adds this provision to ensure that the political activity prohibitions of the Civil Service Reform Act are not circumvented by seeking a leave of absence from classified service employment. Finally, Chapter 605a addresses the OA's authority to investigate alleged violations of the Civil Service Reform Act. To that end, the OA adds comprehensive regulations setting forth its investigation process.

Chapter 606a (relating to personnel actions) sets forth an exclusive and enumerated list of personnel actions under the Civil Service Reform Act. Unlike the counterpart provision in the prior temporary rulemaking, the OA made this list of personnel actions exclusive to ensure consistency and uniformity. The chapter also establishes requirements regarding notices of certain personnel actions.

Chapter 607a (relating to practice and proceedings before the Office of Administration) establishes the procedural rules governing hearings held before the Secretary of the Administration. These provisions differ from the counterpart provisions in the prior temporary rulemaking, in that under Chapter 607a, proceedings under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) are initiated by the OA through filing an order to show cause with the Docket Clerk. Thereafter, the respondent shall file with the Docket Clerk an answer to the order to show cause within 20 days of the date of service indicated on the certificate of service accompanying the order to show cause. Hearings under 71 Pa.C.S. § 2202(a)(10) will be held before a presiding officer who, upon close of the record, will issue a proposed decision and order. A party aggrieved by the proposed decision and order may, within 20 days after its issuance, appeal to the Secretary of Administration by filing with the Docket Clerk exceptions to the proposed decision and order, or part of it, in the form of a brief on exceptions. The

non-excepting party may file a brief opposing exceptions. Thereafter, the Secretary of the Administration will issue a final decision and order.

Fiscal Impact and Paperwork Requirements

This temporary rulemaking should have minimal adverse fiscal impact on the Commonwealth or its political subdivisions. These temporary regulations effectuate the transfer of duties from the State Civil Service Commission to the OA. The OA does not anticipate increased costs for appointing authorities, the State Civil Service Commission or the OA based upon these temporary regulations.

Effective Date

The rescission of the temporary regulations published at 4 Pa. Code Chapters 601—607 will become effective upon publication in the *Pennsylvania Bulletin*.

This temporary rulemaking will become effective upon publication in the *Pennsylvania Bulletin* and will expire 3 years from the date of publication, or upon rescission by the OA, whichever occurs first.

Contact Person

The contact person for this temporary rulemaking is Anthony R. Holbert, Assistant Counsel, at (717) 783-2590.

MICHAEL NEWSOME,
Secretary

Fiscal Note: 99-12. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 4. ADMINISTRATION
PART XV. OFFICE OF ADMINISTRATION
Subpart A. CIVIL SERVICE
REFORM—TEMPORARY REGULATIONS
CHAPTERS 601—607. (RESERVED)**

(Editor's Note: Chapter 601 appears at serial pages (395870) to (395884). Chapter 602 appears at serial pages (403905) to (403917). Chapter 603 appears at serial pages (395897) to (395903). Chapter 604 appears at serial pages (395905) to (395908). Chapter 605 appears at serial pages (395909) to (695914). Chapter 606 appears at serial pages (395915) to (395917). Chapter 607 appears at serial pages (403919) to (403924).)

**CHAPTER 601a. GENERAL PROVISIONS;
CLASSIFICATION SYSTEM**

Subchap.

A. GENERAL PROVISIONS

B. CLASSIFICATION SYSTEM

Subchapter A. GENERAL PROVISIONS

- Sec.
- 601a.1. Short title.
- 601a.2. Purpose.
- 601a.3. Definitions.
- 601a.4. Veterans' preference.
- 601a.5. Age preference.
- 601a.6. Reasonable accommodations.
- 601a.7. Service to departments, boards and commissions, agencies and political subdivisions; reimbursement for services.
- 601a.8. Electronic records and signatures.

§ 601a.1. Short title.

This subpart shall be known and cited as the "Rules of Classified Service Employment."

§ 601a.2. Purpose.

(a) This subpart is designed to effectuate civil service reform, as required by 71 Pa.C.S. Part III (relating to civil service reform).

(b) This subpart implements and supplements 71 Pa.C.S. Part III and is to be read together with the applicable provisions of the act.

§ 601a.3. Definitions.

(a) The words, terms and phrases, when used in this subpart, have the meaning as set forth in 71 Pa.C.S. Part III (relating to civil service reform), unless the context clearly indicates otherwise.

(b) The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—The act of June 28, 2018 (P.L. 460, No. 71) 71 Pa.C.S. Part III, commonly referred to as “the Civil Service Reform Act.”

Alternate rule—An alternative selection rule elected by an appointing authority for appointments and promotions made through the examination and certification process, which gives the appointing authority the ability to select from all eligibles on an appropriate eligible list or a specific alternate number of eligibles on an appropriate eligible list, greater than three, to fill a position.

Applicant—An individual who applies for an appointment or a promotion to a position in the classified service.

Application—A form, as prescribed by the Office of Administration, used by individuals to express interest in employment in a position or positions in the classified service.

Appointment—The hiring or movement of an individual into a position through entrance examination, reassignment, transfer, demotion or reinstatement. The term does not include the acceptance of an offer of employment, or the movement of an individual into a position through promotion.

Certification—The submission of the names of one or more eligibles by the Office of Administration to an appointing authority to fill one or more positions.

Disability—As defined by the Americans with Disabilities Act of 1990, as amended (42 U.S.C.A. §§ 12101–12213).

Emergency appointment—The temporary and limited appointment of an individual into a position to meet an appointing authority’s needs during an emergency.

Emergency employee—An individual temporarily appointed into a position through an emergency appointment.

Examination—A test, series of tests or assessments used to determine the degree to which individuals are qualified for appointment or promotion to a position or job classification in the classified service.

Intern—An individual appointed or promoted to an intern job classification.

Job classification—A “job,” “job title,” “class” or “class of positions,” as defined by the act.

Job specification—A written description of a job classification, which defines and describes representative duties and responsibilities and sets forth the minimum qualifications of the job classification.

Leave of absence—A temporary and limited separation from the classified service granted by an appointing authority to an employee for purposes such as, but not limited to, extended illness, school attendance, cyclical employment, Olympic participation, military duty or training, or employment in a non-civil service position,

including a position within the Senior Management Service. The term does not include paid absences, such as paid annual leave, paid sick leave, or paid compensatory leave, or unpaid absences that do not result in a separation from the classified service.

Mandatory reemployment list—A list of individuals who have been furloughed and who are eligible for a mandatory reemployment preference under § 604a.5(f) (relating to furlough).

Military duty—Active duty, including active duty for training or inactive duty training, in the Uniformed Services on dates ordered or authorized by the Uniformed Service.

Minimum qualifications—The minimum knowledge, skills, abilities, experience, training, education, licenses, certificates, special requirements and other requisites essential to the performance of the work of a job classification, as set forth in the relevant job specification.

Optional reemployment list—A list of individuals who have been furloughed and who are eligible for reemployment under § 604a.5(g).

Preferred reemployment list—A list of individuals who, upon the expiration or end of an approved leave of absence, could not be returned to a position in the same job classification under § 604a.1(e)(1) or (2) (relating to leaves of absence generally).

Probationary employee—An individual serving a probationary period prior to acquiring regular status in a position.

Probationary status—The standing in a position held by a probationary employee.

Provisional employee—An individual who was appointed to a position through an accelerated entrance examination program and who is serving a 6-month working test period prior to the required probationary period.

Reassignment—The movement of an employee, within the same appointing authority, from one position to another position in the same or similar job classification for which the employee qualifies at the same maximum salary.

Reclassification—The change of a classification of a position from one job classification and code to another job classification and code.

Regular status—The standing in a position conferred upon an employee who has successfully completed the corresponding probationary period.

Reinstatement—The reappointment of a former regular employee who resigned or otherwise voluntarily separated from employment in the classified service.

Resignation—The voluntary termination of employment by an employee, which is evidenced by the employee’s written or verbal notice.

Rule of three—The default selection rule for appointments and promotions made through the examination and certification process, which requires an appointing authority to choose from among the three highest-ranking available eligibles to fill a vacant position. The rule of three may include more than three eligibles when tied scores exist with the third highest-ranking eligible.

Senior Management Service—Positions in the Commonwealth’s unclassified service that have broad policy participation and management responsibility.

Seniority—The amount of time an employee has continuously served in a position in the classified service.

Separation—The voluntary or involuntary termination of employment in the classified service, including temporary and permanent terminations.

Special Advisor for Veterans' Programs—The individual appointed by the Secretary of Administration under 71 Pa.C.S. § 2202(a)(12) (relating to duties of Office of Administration).

Substitute appointment—The temporary appointment of an individual into a position that is vacant due to the granting of leave of absence for military duty to the incumbent of the position.

Substitute employee—An individual temporarily appointed or promoted to a position through a substitute appointment or a substitute promotion.

Substitute promotion—The temporary promotion of an individual into a position that is vacant due to the granting of military leave to the incumbent of the position.

Suspension—The temporary and involuntary separation of an employee from employment in the classified service.

Temporary employee—An individual appointed to a temporary position.

Trainee—An individual appointed or promoted to a training level job classification.

Training period—The period of time a trainee will remain in a training level job classification, during which the trainee receives general or specialized training, or both.

Transfer—The movement of an employee from one appointing authority to a different appointing authority in the same job classification.

Uniformed services—As defined by Title 10, Subtitle A of the United States Code, as amended (10 U.S.C. § 101(a)(5)).

Unskilled position—A position for which the principal job function is manual labor or work requiring limited or no prior education or training.

Vacancy posting—A posted announcement of a vacant, or soon to be vacant, position or group of positions within an appointing authority, which will be filled by examination or an internal recruitment method.

Veteran—An individual who, based on their service in the armed forces of the United States, is eligible to receive an employment preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference).

(c) Subsection (a) supersedes 1 Pa. Code § 31.3 (relating to definitions).

§ 601a.4. Veterans' preference.

(a) *Application of veterans' preference.*

(1) In determining standing on each certified eligible list, the Office of Administration will credit an additional 10 points to the final examination score obtained by a veteran, in accordance with the act and 51 Pa.C.S. Chapter 71 (relating to veterans' preference).

(2) An appointing authority shall give preference to veterans in accordance with the act and 51 Pa.C.S. Chapter 71.

(b) *Spouses.* The same employment preferences afforded to veterans under subsection (a) shall be afforded to surviving spouses and spouses of disabled veterans in accordance with the act and 51 Pa.C.S. Chapter 71.

(c) *Required documentation.*

(1) *Veterans.* To establish veteran status, an individual shall submit, to the Office of Administration, a copy of their DD 214 (member 4 copy), DD 215, NGB-22, statement of service or other military documentation acceptable to the Office of Administration showing the date of entry into the military, character of service, and, where applicable, completion of the initial contractual military service obligation.

(2) *Surviving spouses.* A surviving spouse shall submit, to the Office of Administration, a copy of the deceased veteran's documents, as set forth in subsection (c)(1), proof of marriage to the deceased veteran, and a certified copy of the deceased veteran's death certificate.

(3) *Spouses of disabled veterans.* A spouse of a disabled veteran shall submit, to the office of Administration, documentation as required by the Office of Administration, including a copy of the disabled veteran's documents, as set forth in subsection (c)(1), and a United States Department of Veterans Affairs letter verifying that the disabled veteran has a permanent total disability.

(d) *Certifications.* A certified eligible list will indicate an eligible's veteran status, as well as any additional examination points afforded to an eligible in accordance with 51 Pa.C.S. Chapter 71.

(e) *Special Advisor for Veterans' Programs.* The Secretary of Administration will appoint a Special Advisor for Veterans' Programs who shall be a veteran and will serve at the pleasure of the Secretary of Administration.

(f) *Powers and duties of the Special Advisor for Veterans' Programs.*

(1) The Office of Administration will provide the Special Advisor for Veterans' Programs a copy of the results of audits conducted by the Commission under 71 Pa.C.S. § 3304 (relating to audits of application of veterans' preference).

(2) The Special Advisor for Veterans' Programs may recommend investigations, as authorized under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration), of appointments or changes in employment in the classified service to ensure compliance with 51 Pa.C.S. Chapter 71.

§ 601a.5. Age preference.

(a) In accordance with the act, this subpart and section 2203-A of the Administrative Code of 1929 (71 P.S. § 581-3(b)), the Department of Aging shall give preference to eligibles who are 60 years of age or older and within the rule of three or applicable alternate rule.

(b) Notwithstanding eligibles qualifying for veterans' preference under 51 Pa.C.S. Chapter 71 (relating to veterans' preference) and this subpart, the Department of Aging may select an eligible qualifying for age preference in accordance with the act, this subpart and section 2203-A of the Administrative Code of 1929.

(c) Certified eligible lists issued to the Department of Aging will indicate those applicants with age preference status.

§ 601a.6. Reasonable accommodations.

(a) *Equal employment opportunity.* The Commonwealth is an equal opportunity employer. Accordingly, the Office of Administration will ensure that vacancy postings, applications and examinations are accessible to individuals with disabilities, thereby providing an opportunity to fairly compete for and pursue career opportunities.

(b) *Reasonable accommodations.* Reasonable accommodations in the application and examination process will be provided to an individual with a disability upon request to the Office of Administration, in accordance with Federal and State law. Information on submitting requests for accommodations in the application and examination process shall be available on the Office of Administration's web site.

§ 601a.7. Service to departments, boards and commissions, agencies and political subdivisions; reimbursement for services.

(a) *Acquisition of services.* The merit system employment services and facilities of the Office of Administration, and its staff, will be made available to departments, boards, commissions or agencies, and political subdivisions of the Commonwealth, under the following terms and conditions:

(1) A formal request for extension of the merit system employment services of the Office of Administration shall be made in writing and shall be signed by the executive head or chair of the requesting department, board, commission or agency, or the proper official of the political subdivision. If appropriate, the written request shall be accompanied by a resolution or similar document adopted by the board, commission or agency, or by the proper official of the political subdivision.

(2) A request for the extension of services may be granted at the discretion of the Office of Administration.

(3) Granting of the request shall be evidenced by a formal written contract or agreement, consistent with this section, between the department, board, commission, agency, or political subdivision and the Office of Administration. The written contract or agreement shall include a provision addressing the termination of the contract or agreement.

(b) *Reimbursement for services.* Reimbursement shall be as follows:

(1) An appointing authority shall reimburse the Office of Administration on a semiannual basis, as determined by the Office of Administration, for the actual cost of preparing, administering and rating examinations delivered at test centers.

(2) For all other services and facilities, an appointing authority shall reimburse the Office of Administration for the semiannual cost of services and facilities made available, in the proportion which the cost of the services and facilities bears to the total cost of these services and facilities of the Office of Administration, based on the ratio of the appointing authority's employees in the classified service to those of all the appointing authorities serviced by the Office of Administration.

(3) At the request of the Office of Administration, the number of employees in the classified service in each appointing authority serviced shall be reported to the Office of Administration.

(c) *Compliance with act, regulations and contract.* A personnel action taken by a department, board, commission, agency or political subdivision under contract with the Office of Administration shall conform to the act, this subpart, and the contract executed under subsection (a)(3).

§ 601a.8. Electronic records and signatures.

The Office of Administration or an appointing authority may, in its discretion, utilize and accept, in the form and manner prescribed by the entity, electronic records and electronic signatures, where written documents, forms,

signatures or other required submissions are required by this subpart, provided that such records and signatures comply with the Uniform Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312), and other laws governing electronic records and signatures.

Subchapter B. CLASSIFICATION SYSTEM

Sec.

- 601a.9. General.
- 601a.10. Trainee job classifications.
- 601a.11. Intern job classifications.
- 601a.12. Minimum classifications.
- 601a.13. Unclassified service.

§ 601a.9. General.

In accordance with 71 Pa.C.S. § 2504 (relating to classification and compensation), the Office of Administration will utilize the Commonwealth's classification system, as established by the Board, for those positions within the classified service unless otherwise set forth in a written contract or agreement under § 601a.7(a)(3) (relating to service to departments, boards and commissions, agencies and political subdivisions; reimbursement for services).

§ 601a.10. Trainee job classifications.

Subject to the approval of the Board, the Office of Administration, in cooperation with the appointing authorities, may designate specific jobs classifications for training purposes, provided the trainee classification corresponds to a working level job classification.

§ 601a.11. Intern job classifications.

Subject to the approval of the Board, the Office of Administration, in cooperation with the appointing authorities, may designate specific job classifications for internship purposes, provided the intern classification corresponds to one or more trainee job classification or working level job classification.

§ 601a.12. Minimum qualifications.

(a) *Applicants.* To ensure that all employees in the classified service are qualified for their respective positions, applicants must meet the minimum qualifications for employment in the job classification for which the applicant applied.

(b) *Employees.* Employees in the classified service must meet the minimum qualifications for employment in the job classification in which the employee is employed. When the Office of Administration determines that an employee does not meet the minimum qualifications of the job classification in which the employee is employed, the Office of Administration shall take appropriate action to ensure conformance with the act.

§ 601a.13. Unclassified service.

(a) *Requests for inclusion in the unclassified service.* If an appointing authority believes that a position or group of positions should be included in the unclassified service, as defined by 71 Pa.C.S. § 2103 (relating to definitions), the appointing authority shall submit to the Office of Administration a written request to include the position or group of positions in the unclassified service. The written request must include the basis for the request and all supporting documentation.

(b) *Requests based on participation in policy decisions.* When reviewing a request submitted under subsection (a), which is based on the position's participation in policy decisions, the Office of Administration may consider the following:

(1) The level of participation in policy decisions required of the position, including the level of independence and discretion exercised by the position in the formulation or implementation of agency policy.

(2) The degree of decision making exercised by the position.

(3) The position's organizational placement and pay assignment.

(c) *Requests based on limited term special study, project or internship.* When reviewing a request submitted under subsection (a), which is based on the position being used for a special study, project or internship that is scheduled to be completed after a fixed or limited period of time, the Office of Administration may consider the following:

(1) The type and nature of work performed by the position.

(2) The expected duration of the special study, project or internship.

(3) The reason the duties of the position should not be performed by a position in the classified service.

(4) Whether the position offers general work experience for a student enrolled in an educational program.

(5) Whether the position is an entry level employment opportunity for a student enrolled in an educational program.

CHAPTER 602a. APPOINTMENTS AND PROMOTIONS IN THE CLASSIFIED SERVICE

Subchap.

A. RESIDENCY REQUIREMENT

B. RECRUITMENT METHODS; SELECTIVE CRITERIA

C. VACANCY POSTINGS AND APPLICATION PROCESS

D. EXAMINATIONS

E. ESTABLISHMENT OF ELIGIBLE LISTS

F. CERTIFICATION OF ELIGIBLES

G. APPOINTMENT AND PROMOTION OF ELIGIBLES FROM CERTIFIED ELIGIBLE LISTS

H. APPOINTMENT AND PROMOTION THROUGH INTERNAL RECRUITMENT METHODS

I. EMERGENCY APPOINTMENTS

Subchapter A. RESIDENCY REQUIREMENT

Sec.

602a.1. Residency requirement.

§ 602a.1. Residency requirement.

(a) *Requirement.* An applicant seeking appointment or promotion to a position in the classified service shall be a resident or former resident of the Commonwealth. This subsection does not apply to an individual who was previously a regular employee and who is returned to employment from an approved leave of absence, through mandatory reemployment, or through contractual recall or placement rights.

(b) *Resident defined.* Except as otherwise provided in this subsection, a resident is an applicant whose current primary residence is within the Commonwealth.

(1) *College students.* Residents include:

(i) An applicant who is attending a college, university or technical school outside of this Commonwealth, was a resident of this Commonwealth immediately prior to current scholastic enrollment and maintains a current Pennsylvania mailing address.

(ii) An applicant who is attending a college, university or technical school located within this Commonwealth, is currently living in this Commonwealth and maintains a current Pennsylvania mailing address.

(2) *Members of the armed forces and their spouses.* An applicant who is a current active-duty member of the United States Armed Forces, or who is the spouse of a current active-duty member of the United States Armed Forces, is a resident if the applicant meets either of the following:

(i) The applicant was a resident of this Commonwealth immediately prior to their or their spouse's most recent enlistment, and they or their spouse are scheduled to be discharged within 90 days of submitting their application to the Office of Administration.

(ii) The applicant is currently living in this Commonwealth as part of their or their spouse's current enlistment, and they or their spouse are scheduled to be discharged within 90 days of submitting their application to the Office of Administration.

(c) *Former resident defined.* A former resident of this Commonwealth is an applicant who relocated out-of-State for academic or employment purposes, plans to establish residency in this Commonwealth within 6 months of beginning employment in the classified service and has done one of the following:

(1) Graduated from a public, private or nonpublic secondary school in this Commonwealth, or satisfied the requirements set forth in sections 1327 and 1327.1 of the Public School Code of 1949 (24 P.S. §§ 13-1327 and 13-1327.1), within 5 years of applying for a position in the classified service.

(2) Attended a public, private or nonpublic school in this Commonwealth at least 80% of the time while enrolled in grades 1 through 12 within 5 years of applying for a position in the classified service.

(3) Graduated or attended a public, private or nonpublic secondary school in this Commonwealth and graduated from a postsecondary institution in this Commonwealth within 5 years of applying for a position in the classified service.

(d) *Counties and administrative districts.*

(1) Upon the request and submission of justification by an appointing authority, the Office of Administration may limit certification for appointment or promotion to eligibles who are residents of a county or other administrative district within this Commonwealth, except that the limitations may not be imposed for a job classification for which the residency requirement has been waived in accordance with subsection (e).

(2) In the absence of eligibles who are residents of the county or other administrative district within this Commonwealth specified by the appointing authority, or upon exhaustion of a certified employment list or promotion list limited in accordance with paragraph (1), the Office of Administration may certify eligibles who are residents of contiguous counties or administrative districts or of this Commonwealth, as deemed appropriate by the Office of Administration.

(3) If an eligible changes residence from one county or administrative district to another county or administrative district of this Commonwealth, the Office of Administration may, upon request, transfer the eligible to the appropriate existing employment list or promotion list.

(e) *Waiver.* The Office of Administration, upon request by one or more appointing authorities, may waive the residency requirement for a vacancy, a job classification, or a group of similar job classifications when, notwithstanding sufficient recruitment methods, there is a demonstrated lack of qualified residents or former residents of this Commonwealth available for a particular occupation.

Subchapter B. RECRUITMENT METHODS; SELECTIVE CRITERIA

Sec.
602a.2. Recruitment methods.
602a.3. Selective criteria.

§ 602a.2. Recruitment methods.

(a) *Generally.* Except as otherwise authorized by this section, recruitment for a vacant position in the classified service will be through examination. Examinations may be for a single position or for employment in a job classification generally.

(b) *Internal recruitment methods.* In lieu of examination, an appointing authority may limit recruitment methods for a position to only those applicants qualified for a promotion, transfer, reassignment, demotion or reinstatement, or any combination of these internal recruitment methods.

(c) *Specific locations.* When an appointing authority limits the recruitment methods for a position as set forth in subsection (b), it may further limit recruitment to only those applicants who are currently employed by the appointing authority or to only those applicants who are currently employed within a specific bureau, division, office, program area or section of the appointing authority.

(d) *Reemployment lists.* In accordance with the act and § 604a.5(h) (relating to furlough), where a preferred reemployment list or a mandatory reemployment list exists for the job classification to which there is a vacant position, an appointing authority shall first attempt to fill the position using the applicable preferred reemployment list or mandatory reemployment list prior to using other recruitment methods.

§ 602a.3. Selective criteria.

(a) *Generally.* Upon the request of an appointing authority, the Office of Administration may restrict certification or referral for a position based on selective criteria.

(b) *Basis for selective criteria.* Selective criteria shall be based on merit-related factors deemed necessary to the operational needs of the appointing authority and in the interest of the service to the Commonwealth. Selective criteria may include a bona fide occupational qualification deemed necessary for employment in a specific position, or other factors necessary to comply with Federal and State laws and regulations.

(c) *Request.* A request to restrict application for a position based on selective criteria shall be submitted using the form prescribed by the Office of Administration.

Subchapter C. VACANCY POSTINGS AND APPLICATION PROCESS

Sec.
602a.4. Vacancy postings.
602a.5. Application requirements.
602a.6. Evaluation of applications.
602a.7. Audit of applications.

§ 602a.4. Vacancy postings.

(a) *Content of vacancy postings.* A vacancy posting shall be published using the form prescribed by the Office of Administration and, at a minimum, must include all of the following information:

- (1) The appointing authority.
- (2) The relevant bureau, division, office or program area.
- (3) The job classification.
- (4) The position number, if assigned.
- (5) The salary range or hourly rate of pay.
- (6) The position(s) type(s).
- (7) The location of the position(s).
- (8) A general description of the position(s) and work to be performed.
- (9) Contact information of the appointing authority.
- (10) Notice of the residency requirement, or notice of the waiver of the residency requirement.
- (11) The minimum qualifications for the job classification.
- (12) Selective criteria required for appointment or promotion to the position(s), if applicable.
- (13) The examination information or the internal recruitment methods, including, if applicable, the job classification(s) constituting the next lower classification and a requirement that applicants submit their most recent employee performance review.
- (14) The closing date and time of the vacancy posting.

(b) *Veterans' preference.* In addition to the requirements of subsection (a), where applicable, a vacancy posting must advertise that veterans' preference (51 Pa.C.S. Chapter 71 (relating to veterans' preference)) is the law of the Commonwealth.

(c) *Nonconformance.* When an appointing authority's vacancy posting does not conform with this section, the Office of Administration may, in its discretion, direct an appointing authority to do all of the following:

- (1) Remove the nonconforming vacancy posting.
- (2) Publish a vacancy posting that conforms with this section, which shall remain open for a period equal to or greater than the period provided for by the nonconforming vacancy posting and shall state that applicants who had applied using the nonconforming vacancy posting need not apply again and will be considered for the relevant position(s).

(d) *Publication.* Vacancy postings will be available through the Office of Administration's web site.

§ 602a.5. Application requirements.

(a) *Submission of applications.* An application shall be submitted using the form prescribed by the Office of Administration, which will be available through the Office of Administration's web site and shall contain a statement made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), verifying the truthfulness of all responses contained in the application.

(1) *Timeliness of applications.* An application shall be submitted by the date and time specified in the vacancy posting. An application submitted by 11:59 p.m. Eastern Time on the closing date indicated on the vacancy posting will be deemed submitted within the specified time limit.

(2) *Completeness of applications.* An applicant shall include on their application all information necessary for determining whether the applicant possesses the minimum qualifications for employment in the relevant job classification and, where applicable, the selective criteria required for appointment or promotion to the specific

position to which the applicant applied. An applicant's failure to comply with this provision may result in the applicant's application being deemed incomplete.

(3) *Rejection of applications.* The Office of Administration may reject an incomplete or untimely submitted application. Whenever an application has been rejected, notice, with the reasons for the rejection, shall be given to the applicant.

(4) *Discretionary acceptance of applications.* The Office of Administration may extend the deadline for the acceptance of applications if sufficient need exists for additional applicants and if the acceptance of additional applications is uniformly applied to all applications for the position(s) filed on the same date or on an earlier date. The Office of Administration, in its discretion, may accept applications filed after the date and time specified in the vacancy posting if it determines extraordinary circumstances warrant acceptance.

(b) *Limitation on inquiry.* Limitations on inquiry in applications shall be as follows:

(1) Except as provided in paragraphs (2) and (3), no question on an application will require an applicant to provide information concerning their age, race, color, religious creed, ancestry, national origin, gender, sexual orientation, gender identity or expression, political opinions or affiliations, union membership or affiliations, AIDS or HIV status, or disability; nor will the information be required in another manner by an official or employee of the Office of Administration or of an appointing authority in connection with the appointment or promotion to a position within the classified service, except as otherwise permitted by the act or this subpart.

(2) The Office of Administration may make inquiries of an applicant's age, race, national origin, gender or similar factors as is necessary to comply with Federal and State laws and regulations and this subpart.

(3) The Office of Administration may make inquiries of an applicant's age, race, national origin, gender or similar factors as is necessary to conduct research required to validate selection procedures or to otherwise comply with Federal and State laws and regulations on equal opportunity. Applicants shall be informed that responses to such questions are not mandatory.

§ 602a.6. Evaluation of applications.

(a) *Evaluations.* Consistent with §§ 601a.12 and 602a.3 (relating to minimum qualifications; and selective criteria), the Office of Administration shall evaluate an applicant's application to determine whether the applicant possesses the minimum qualifications for employment in the relevant job classification and, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied. The Office of Administration may require an applicant to supply certificates and other appropriate documents relevant to determining the applicant's qualifications.

(b) *Basis for evaluation.* The job specification shall be the primary basis and source of authority for evaluating whether an applicant possesses the minimum qualifications for employment in the job classification to which the applicant applied. The Office of Administration may develop aids for interpreting the minimum qualifications for employment in a job classification, as set forth in the relevant job specification. These interpretive aids shall be binding for purposes of evaluating an applicant's eligibility for employment in a job classification. If applicable, the approved selective criteria, as set forth in the vacancy

posting, shall be the primary basis and source of authority for evaluating whether an applicant possess the selective criteria required for appointment or promotion to the specific position to which the applicant applied.

(c) *Unqualified applicants.* The Office of Administration is not required to score the examination of, or otherwise certify or refer, an applicant who lacks the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied.

(d) *Notice.* When the Office of Administration determines that an applicant lacks the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied, or both, the applicant shall be notified of the reasons for the determination and the ability to request reconsideration under subsection (f).

(e) *Correction of errors in determination of qualifications.* The Office of Administration, upon finding an error in the determination of an applicant's qualifications shall correct the error and report the error to the affected applicant, regardless of whether the applicant requested reconsideration under subsection (f).

(f) *Reconsideration.* An applicant may request the Office of Administration reconsider a determination that the applicant lacks the minimum qualifications or selective criteria required for employment in a job classification or position by submitting a written request for reconsideration to the Office of Administration within 5 business days of the date that the notice of ineligibility determination was sent to the applicant by the Office of Administration. The written request for reconsideration shall state the grounds for the request, specifically explaining why the ineligibility determination was incorrect based on the information provided by the applicant on their application. The Office of Administration will re-review the applicant's application and provide the applicant with a further explanation or revised result.

(1) Appointing authorities may continue the hiring process while an applicant's request for reconsideration is pending review by the Office of Administration.

(2) If the Office of Administration determines that, due to an administrative error, an applicant was improperly determined to lack the minimum qualifications or selective criteria required for employment in a job classification or position, the Office of Administration will score the applicant's examination and, if the applicant obtains a passing examination score, certify the applicant's name to the appropriate eligible list or otherwise refer the applicant's name to the appointing authority with instructions that the appointing authority must consider the applicant for appointment or promotion to the vacancy in accordance with the act and this subpart.

§ 602a.7. Audit of applications.

Information included on an applicant's application may be subject to audit by the Office of Administration, including audit after the applicant's appointment or promotion. Audits performed under this section are separate and distinct from any verification or background check performed by the Office of Administration an appointing authority or human resources staff supporting an appointing authority. If the Office of Administration cannot confirm information included on an applicant's application, the applicant may be deemed ineligible for appointment or promotion to the relevant position or otherwise removed from the position.

Subchapter D. EXAMINATIONS

Sec.

- 602a.8. Selection of examination method.
- 602a.9. Development of examinations.
- 602a.10. Administration of examinations.
- 602a.11. Promotion examinations.
- 602a.12. Prohibited conduct in examinations.
- 602a.13. Scoring of examinations.
- 602a.14. Examination analysis and alternatives.

§ 602a.8. Selection of examination method.

The appointing authority shall select the method of examination to be used for the job classification or position(s) for which the employment list or promotion list is being established. Except as otherwise authorized in this subpart, or as authorized in writing by the Office of Administration, appointing authorities may not develop and administer their own examinations for appointment or promotion in the classified service.

§ 602a.9. Development of examinations.

(a) *Tests and assessments in examinations.* The Office of Administration may develop and administer written, oral and performance tests, as well as assessments of education, training and experience. The Office of Administration may further authorize medical tests, physical strength and agility tests, personality or interest inventories, biographical inventories, and other types of tests or assessments, singly or in combination, as the circumstances warrant. Additionally, for promotional examinations, the Office of Administration may authorize performance criteria, such as seniority and performance evaluations.

(b) *Basis for examinations.* Position descriptions shall be the primary basis and source of authority for the content and level of difficulty of examinations. Supplemental job information, obtained through job analysis and job specifications, may be used as a further basis for examination standards.

(c) *Limitations on examinations.* No examination will require an applicant to provide information concerning their age, race, color, religious creed, ancestry, national origin, gender, sexual orientation, gender identity or expression, political opinions or affiliations, union membership or affiliations, AIDS or HIV status, or disability; nor will the information be required in another manner by an official or employee of the Office of Administration or of an appointing authority in connection with the appointment or promotion to a position within the classified service, except as otherwise permitted by the act or this subpart.

(d) *Collaboration in examination content.* The Office of Administration may collaborate with representatives of appointing authorities, qualified testing organizations and other qualified individuals regarding the content of examinations. The interchange of information shall be made under circumstances and conditions designed to prevent premature disclosure of examination content to prospective applicants.

(e) *Cooperative testing.* The Office of Administration may authorize collaboration with another public testing or placement agency in a program of cooperative testing of applicants, provided competitive principles are observed.

(f) *Weighting of tests and evaluations.* If multiple tests or assessments constitute the entirety of an examination, the Office of Administration, after considering the relative value of the tests or assessments in measuring the relative capacity and fitness of applicants to perform the duties of the job classification or position(s) to which they

applied, and after consultation with the appointing authority, will fix the relative weights of the tests or assessments. Modifications to the relative weights will be announced to all applicants.

§ 602a.10. Administration of examinations.

(a) *Frequency of examinations.* The Office of Administration will administer examinations to establish employment and promotion lists when necessary to meet or anticipate the employment needs of appointing authorities.

(b) *Notice of examinations.* The Office of Administration shall publish notices of examinations, which announce the method of examination and, if applicable, the date, time and location that the examination will be held. Notices of examinations will be accessible through the Office of Administration's web site and shall be published for a minimum of 2 weeks. The Office of Administration may also publish notices of examinations using alternative methods of publication at its discretion.

(c) *Collaboration in administering examinations.* The Office of Administration may collaborate with representatives of appointing authorities, qualified testing organizations and other qualified individuals in administering examinations. The interchange of information shall be made under circumstances and conditions designed to prevent premature disclosure of examination content to prospective applicants.

(d) *Notice of admittance to examination.* An applicant will be notified of admittance or non-admittance to an examination.

(e) *Refusal to examine.* The Office of Administration is not required to examine an applicant who lacks the established requirements for admission to the examination, the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied. The Office of Administration may refuse to examine an applicant if any of the following occur:

(1) The applicant has been convicted of, or has pled guilty to, a crime, including a plea of *nolo contendere*, or has otherwise engaged in conduct that renders the applicant unfit or unsuitable for the position sought.

(2) The applicant has been terminated from employment for incompetency or misconduct that renders the applicant unfit or unsuitable for the position sought.

(3) The applicant has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in, deception or fraud in application, examination, securing eligibility, or seeking appointment or promotion.

(4) The applicant lacks professionalism, honesty, trustworthiness or dependability.

(5) The applicant does not meet qualifications required by Federal or State law or regulation.

(6) The applicant has voluntarily waived their right to apply for, or accept, employment in the classified service under a settlement agreement.

(f) *Failure to appear for in-person examination.* An applicant who fails to appear for an in-person examination due to an act or omission of the Office of Administration or another appropriate reason, as determined by the Office of Administration, shall be given a delayed in-person examination in place of the one for which the applicant failed to appear. If an applicant's failure to appear for an in-person examination was not caused by an act or omission of the Office of Administration or another appropriate reason, as determined by the Office

of Administration, the applicant shall be prohibited from taking any in-person examinations for a period of 6 months from the scheduled date of the in-person examination. Repeated failures to appear for an in-person examination on the part of the applicant may result in the applicant being prohibited from taking any in-person examinations for a period of time determined by the Office of Administration, but not to exceed 2 years.

(g) *Cancellation of examination.* Applicants taking an examination will be given equal opportunity to demonstrate relative merit and fitness. The Office of Administration may cancel, postpone or reschedule an examination, or parts of them if severable, whenever the conditions under which an examination is held have materially impaired its competitive nature or worth in assessing qualifications. The Office of Administration may also cancel, postpone or reschedule an examination whenever it finds holding the examination impracticable or unnecessary. The reasons for canceling, postponing or rescheduling an examination shall be made part of the examination record. If parts of a multipart examination are canceled, the Office of Administration shall reassign the weights, in an equitable manner, to the remaining part or parts.

(h) *Retaking examination.* The Office of Administration may designate in a notice of examination the time frame within which an applicant may retake an examination. Applicants who attempt to retake an examination outside of the designated time frame may have their examination rejected and may be prohibited from taking further examinations for a period of time to be determined by the Office of Administration.

§ 602a.11. Promotion examinations.

(a) Except as indicated in this section, a promotion examination will be open to probationary and regular employees who occupy a position with a lower maximum salary than the position relevant to the examination, possess the minimum qualifications for employment in the relevant job classification and, where applicable, possess the selective criteria required for promotion to the relevant position. As approved by the Office of Administration, a promotion examination may be limited to employees occupying positions in specified jobs classifications.

(b) Upon the request of an appointing authority, the Office of Administration may, in its discretion, limit entrance to a promotion examination to regular employees who occupy a position with a lower maximum salary than the position relevant to the examination, possess the minimum qualifications for employment in the relevant job classification and, where applicable, possess the selective criteria required for promotion to the relevant position.

(c) The Office of Administration may, after consultation with the appropriate appointing authorities, establish the length of service required of an employee in the qualifying job classification or classifications for eligibility to participate in a promotion examination.

§ 602a.12. Prohibited conduct in examinations.

(a) *Cheating or seeking undue advantage.* An individual may not impersonate an applicant or have another individual impersonate an applicant in connection with an examination; or use or attempt to use unauthorized aids or assistance, including copying or attempting to copy from or helping or attempting to help another individual

in any part of an examination; or otherwise seek to attain undue advantage for themselves or others in connection with the examination.

(b) *Improper use of examination materials.* An individual may not copy, record or transcribe an examination question or answer; or remove from the examination room a question sheet, answer sheet or booklet, scrap papers, notes or other papers, or any materials related to the content of the examination. An individual will be notified of these requirements prior to taking an examination, and no examiner, proctor, monitor, or other person charged with the supervision of an individual or group of individuals taking an examination will have authority to waive it.

(c) *Violations.* The Office of Administration may disqualify from examination or otherwise refuse to certify an applicant who violates this section.

§ 602a.13. Scoring of examinations.

(a) *Qualifying raw scores.* The Office of Administration shall set qualifying raw scores for each examination. When there is a multipart examination, the Office of Administration may require applicants to attain a qualifying raw score on each part of the examination. In determining qualifying raw scores, the Office of Administration may consider both the number and quality of prospective eligibles needed to serve the best interests of the classified service, as well as the validity and reliability of the examination.

(b) *Failure of part of examination.* An applicant who fails to earn a qualifying raw score on any part of an examination may be disqualified from participating in any other parts of the examination, and if so disqualified, shall be deemed to have failed the entire examination.

(c) *Use of examination scores.* Final examination scores may be used to rank applicants or to categorize or group similarly qualified applicants.

(1) *Ranking of applicants.* When examination scores are used to rank applicants, the final earned score of each applicant who attained a qualifying raw score on the examination shall be calculated as follows:

(i) Examination scores shall be calculated in whole numbers.

(ii) The minimum qualifying raw score shall be assigned an examination score of 60.

(iii) The estimated highest qualifying raw score, the score which the best qualified individual would be reasonably expected to attain, shall be assigned an examination score of 100.

(iv) The intermediate qualifying raw scores shall be assigned examination scores between 60 and 100 based on their relationship to the qualifying raw score, the estimated highest qualifying raw score, and the reliability and accuracy of the examination procedures. Scores above the estimated highest qualifying raw score shall exceed an examination score of 100 and shall be assigned an examination score based on their relationship to the qualifying raw score and the estimated highest qualifying raw score.

(v) Ties in examination scores may not be broken.

(2) *Categorization or grouping of applicants.* When test scores are used to categorize or group similarly qualified applicants, all applicants in a category shall be assigned the same final examination score.

(d) *Veterans preference.* An applicant's final examination score will be calculated prior to the application of

veterans' preference in accordance with the act, 51 Pa.C.S. Chapter 71 (relating to veterans' preference), and this subpart.

(e) *Correction of errors in scoring.* The Office of Administration, upon finding an error in the calculation of an applicant's examination score shall correct the error and report the error to the affected applicant, regardless of whether the applicant requested a reconsideration under subsection (f).

(f) *Reconsideration.* An applicant may request the Office of Administration reconsider the applicant's examination score by submitting a written request for reconsideration to the Office of Administration within 5 business days of the date that the notice of examination score was sent to the applicant by the Office of Administration. The written request for reconsideration shall state the grounds for the request, specifically explaining why the applicant's examination score is incorrect based on the examination answers provided by the applicant. The Office of Administration will re-review the applicant's examination and provide the applicant with a further explanation or revised result.

(1) Appointing authorities may continue the hiring process while an applicant's request for reconsideration is pending review by the Office of Administration.

(2) If the Office of Administration determines that, due to an administrative error, an applicant received an incorrect examination score, the Office of Administration will revise the applicant's examination score and instruct the appointing authority to consider the applicant for appointment or promotion to the vacancy in accordance with the act and this subpart.

(g) *Refusal to score examination.* The Office of Administration is not required to score the examination of an applicant who lacks the established requirements for admission to the examination, the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied. The Office of Administration may refuse to score the examination of an applicant if any of the following occur:

(1) The applicant has been convicted of, or has pled guilty to, a crime, including a plea of nolo contendere, or has otherwise engaged in conduct that renders the applicant unfit or unsuitable for the position sought.

(2) The applicant has been terminated from employment for incompetency or misconduct that renders the applicant unfit or unsuitable for the position sought.

(3) The applicant has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in, deception or fraud in application, examination, securing eligibility, or seeking appointment or promotion.

(4) The applicant lacks professionalism, honesty, trustworthiness and dependability.

(5) The applicant does not meet qualifications required by Federal or State law or regulation.

(6) The applicant has voluntarily waived their right to apply for, or accept, employment in the classified service under a settlement agreement.

§ 602a.14. Examination analysis and alternatives.

(a) *Analysis.* The Office of Administration will initiate analysis of examinations as necessary to ensure that examinations do not discriminate on the basis of nonmerit factors.

(b) *Invalidation and substitution.* The Office of Administration, after investigation, may invalidate all or part of the examination results and, in its discretion, substitute an alternative method of examination. The Office of Administration will notify applicants of the action and the reasons, therefore.

Subchapter E. ESTABLISHMENT OF ELIGIBLE LISTS

Sec.

602a.15. Creation of eligible lists.

602a.16. Duration of eligible lists.

602a.17. Amendment of eligible lists.

602a.18. Replacement and integration of eligible lists.

602a.19. Cancellation of eligible lists.

§ 602a.15. Creation of eligible lists.

Upon the scoring of an examination, the Office of Administration will create an eligible list, which shall contain the names of the applicants who qualified for and successfully passed the examination. Eligible lists shall be arranged in order of final examination scores and must include applicable veterans' preference points in accordance with the act, 51 Pa.C.S. Chapter 71 (relating to veterans' preference), and this subpart.

§ 602a.16. Duration of eligible lists.

The duration of an eligible list will be fixed by the Office of Administration based on the needs and interests of the Commonwealth.

§ 602a.17. Amendment of eligible lists.

(a) *Amendments permitted.* The Office of Administration may amend an eligible list to correct a clerical error; to correct an eligible's score; to indicate a change in veteran status; to add or remove a name; or to suspend or change an applicant's eligibility for certification, appointment or promotion.

(b) *Effect of amendment.* An amendment to an eligible list may not disadvantage an eligible lawfully appointed or promoted to the relevant position based on a valid certification previously issued.

§ 602a.18. Replacement and integration of eligible lists.

(a) *Replacement and integration permitted.* A newly established eligible list may replace an earlier eligible list appropriate for the same job classification. The Office of Administration may integrate an eligible list with an equivalent list established later based on final examination scores and veterans' preference points, when applicable.

(b) *Notice.* When an examination is announced that may result in the replacement of an eligible list, the eligibles whose names remain on the list being replaced shall be notified of their opportunity to participate in the examination.

§ 602a.19. Cancellation of eligible lists.

(a) *Cancellation permitted.* The Office of Administration may cancel an eligible list where it determines that illegality or fraud occurred in connection with the eligible list.

(b) *Public hearing.* Prior to cancelling an eligible list, the Office of Administration shall hold a public hearing, which shall be conducted in accordance with Chapter 607a (relating to practice and proceedings before the Office of Administration) of this subpart.

(c) *Notice.* When an eligible list is cancelled, the eligibles whose names remain on the list being cancelled shall be notified of the cancellation.

Subchapter F. CERTIFICATION OF ELIGIBLES

Sec.

- 602a.20. Request for certification.
- 602a.21. Content of certification.
- 602a.22. Duration of certification.
- 602a.23. Refusal to certify; removal from certification.

§ 602a.20. Request for certification.

(a) *Generally.* Upon the request of an appointing authority, the Office of Administration will certify from the appropriate eligible list(s) as many eligibles who have applied for the vacancy as necessary to satisfy the employment needs of the appointing authority.

(b) *Types of certified eligible lists.* The Office of Administration shall certify as many types of eligible lists as requested by the appointing authority, including, but not limited to, lists containing only the names of those eligibles currently employed by the appointing authority; lists containing only the names of those eligibles currently employed by the Commonwealth; lists containing only the names of those eligibles possessing selective criteria imposed in accordance with the act and this subpart; and lists containing only the names of those eligibles who are veterans.

§ 602a.21. Content of certification.

(a) *Generally.* A certified eligible list will contain the names of those eligibles who received a passing final examination score and will indicate each eligible's final examination score.

(b) *Veterans' preference.* In accordance with § 601a.4(d) (relating to veterans' preference), certified eligible lists will indicate an eligible's veteran status, as well as any additional examination points afforded to an eligible in accordance with 51 Pa.C.S. Chapter 71 (relating to veterans' preference).

(c) *Age preference.* In accordance with § 601a.5(c) (relating to age preference), certified eligible lists issued to the Department of Aging will indicate each eligible's age preference status.

§ 602a.22. Duration of certification.

A certified eligible list shall be valid for 90 business days after the date of certification, unless extended or limited by the Office of Administration to serve the best interests of the classified service.

§ 602a.23. Refusal to certify; removal from certification.

(a) *Generally.* The Office of Administration is not required to certify, and may otherwise remove from a certified eligible list, an eligible who lacks the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the eligible applied. The Office of Administration may refuse to certify, or may otherwise remove from a certified eligible list, for a period of time as determined by the Office of Administration, an eligible who has had any of the following occur:

- (1) The eligible has been convicted of, or has pled guilty to, a crime, including a plea of nolo contendere, or has otherwise engaged in conduct that renders the eligible unfit or unsuitable for the position sought.
- (2) The eligible has been terminated from employment for incompetency or misconduct that renders the eligible unfit or unsuitable for the position sought.
- (3) The eligible has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in,

deception or fraud in application, examination, securing eligibility, or seeking appointment or promotion.

(4) The eligible lacks professionalism, honesty, trustworthiness and dependability.

(5) The eligible does not meet qualifications required by Federal or State law or regulation.

(6) The eligible has been properly rejected three times by an appointing authority in favor of others on the same eligible list.

(7) The applicant has voluntarily waived their right to apply for, or accept, employment in the classified service under a settlement agreement.

Subchapter G. APPOINTMENT AND PROMOTION OF ELIGIBLES FROM CERTIFIED ELIGIBLE LISTS

Sec.

- 602a.24. Rule of three and alternate rule.
- 602a.25. Assessment of eligibles.
- 602a.26. Removal of eligible from eligible list.
- 602a.27. Prohibition against securing withdrawal from competition.

§ 602a.24. Rule of three and alternate rule.

(a) *Rule of three.* Unless an appointing authority elects to use an alternate rule, the rule of three shall apply when selecting an eligible for appointment or promotion from a certified eligible list.

(b) *Alternate rule.* An appointing authority may elect to use an alternate rule when selecting an eligible for appointment or promotion from a certified eligible list, in accordance with the act and this subpart.

(1) An appointing authority shall notify the Office of Administration of its election to use an alternate rule when requesting to post a vacancy.

(2) An appointing authority electing an alternate rule may not use an alternate rule unless notification has been received by the Office of Administration, as required in paragraph (1), and the Office of Administration has acknowledged the election of an alternate rule, in writing.

(3) The Office of Administration reserves the right to reject an appointing authority's election of an alternate rule if it appears the use of the rule is designed to circumvent merit system principles as set forth in the act and this subpart.

(c) *Multiple vacancies.* During the process of making multiple appointments or promotions from a single certified eligible list, the appointing authority shall follow the same procedure, as set forth in subsections (a) and (b), for each appointment or promotion made.

§ 602a.25. Assessment of eligibles.

An appointing authority may conduct an interview or otherwise assess relative suitability for appointment or promotion of a certified eligible, but the assessment must be based on merit-related criteria and be conducted in accordance with the act and this subpart.

§ 602a.26. Removal of eligible from eligible list.

(a) *Request for removal of eligible from eligible list.* A request for removal of an eligible's name from an established or certified eligible list is subject to the following:

(1) A request for removal of an eligible's name from an established or certified eligible list shall be promptly raised by the appointing authority.

(2) An appointing authority requesting removal of an eligible's name from an established or certified eligible list shall submit a written request for removal to the Office of Administration, which shall include the basis for the request and all supporting documents that were

relied upon by the appointing authority to determine that the eligible's name should be removed.

(3) A request for removal of an eligible's name from an established or certified eligible list must be based upon merit-related criteria.

(4) On the same date an appointing authority submits to the Office of Administration a request for removal of an eligible's name from an established or certified eligible list, the appointing authority shall send a copy of the request for removal, including all supporting documents provided to the Office of Administration, to the eligible. The copy of the request for removal sent to the eligible must include specific instructions on how to respond to the request for removal, as set forth in subsection (b).

(b) *Eligible's opportunity to respond.* An eligible may, within 10 calendar days from the mailing date of the appointing authority's request for removal of the eligible's name from an established or certified eligible list, submit a written response to the Office of Administration, including any supporting documents. The eligible shall send a copy of the response and supporting documents to the appointing authority on the same date the response is submitted to the Office of Administration.

(c) *Removal.* The Office of Administration will grant an appointing authority's request to remove an eligible's name from an established or certified eligible list only where removal is warranted by merit-related criteria and is consistent with the merit system principles set forth in the act and this subpart. If a request for removal of an eligible's name from an established or certified eligible list is granted by the Office of Administration, the eligible's name will be removed from the appropriate list or lists for a period of time as determined by the Office of Administration, and the appointing authority will not be required to consider the eligible for appointment or promotion.

§ 602a.27. Prohibition against securing withdrawal from competition.

An eligible may not influence another eligible to withdraw from competition for a position in the classified service, nor may a waiver of another eligible's rights or availability be solicited for the purpose of either improving or impairing an eligible's prospects for appointment or promotion. The Office of Administration may take appropriate action in accordance with the act whenever it finds that an eligible has violated this section.

Subchapter H. APPOINTMENT AND PROMOTION THROUGH INTERNAL RECRUITMENT METHODS

Sec.

602a.28. Referral of applicants.

602a.29. Reassignment.

602a.30. Transfer.

602a.31. Voluntary demotion.

602a.32. Reinstatement.

602a.33. Promotion.

602a.34. Assessment of referred applicants.

602a.35. Prohibition against securing withdrawal from competition.

§ 602a.28. Referral of applicants.

(a) *Generally.* Upon the closing of a vacancy posting limited to only internal recruitment methods, the Office of Administration will refer to the appointing authority the names of those applicants eligible for appointment or promotion by the applicable internal recruitment methods.

(b) *Refusal to refer.* The Office of Administration is not required to refer an applicant who lacks the minimum qualifications for employment in the relevant job classification or, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied. The Office of Administration may refuse to refer an applicant if any of the following occur:

(1) The applicant has been convicted of, or has pled guilty to, a crime, including a plea of *nolo contendere*, or has otherwise engaged in conduct that renders the eligible unfit or unsuitable for the position sought.

(2) The applicant has been terminated from employment for incompetency or misconduct that renders the eligible unfit or unsuitable for the position sought.

(3) The applicant has made a false statement, or omitted a material fact, or engaged in, or attempted to engage in, deception or fraud in application, examination, securing eligibility, or seeking appointment or promotion.

(4) The applicant lacks professionalism, honesty, trustworthiness or dependability.

(5) The applicant does not meet qualifications required by Federal or State law or regulation.

(6) The applicant has voluntarily waived their right to apply for, or accept, employment in the classified service under a settlement agreement.

§ 602a.29. Reassignment.

(a) *Generally.* An employee in the classified service may seek appointment to a vacant position through reassignment, provided the position is in the same or similar job classification to which the employee currently holds.

(b) *Similar job classification.* Whether a job classification constitutes a similar job classification for purposes of subsection (a) will be determined by the Office of Administration on a case by case basis. In determining whether job classifications are similar, the Office of Administration will consider whether the job classifications have the same maximum hourly salary rate in the compensation plan, and whether the job classifications require comparable minimum qualifications.

§ 602a.30. Transfer.

An employee in the classified service may seek appointment to a vacant position through a transfer, provided the position is in the same job classification that the employee currently holds.

§ 602a.31. Voluntary demotion.

An employee in the merit system may seek appointment to a vacant position through demotion, provided the position is in a job classification that the employee previously held regular status or which the employee is otherwise qualified to hold.

§ 602a.32. Reinstatement.

An applicant who previously held regular status employment in the classified service and who resigned or otherwise voluntarily separated from that employment may seek appointment to a vacant position through reinstatement, provided the position is in the same job classification from which the applicant resigned.

§ 602a.33. Promotion.

(a) *Method of promotion.* A vacancy may be filled by promotion in the following ways:

(1) By promotion of a probationary or regular employee from an appropriate employment list.

(2) By promotion of a probationary or regular employee from a promotion list.

(3) By promotion of a Commonwealth employee of an appointing authority who appears on an appropriate

employment list and who meets eligibility criteria as established by the Office of Administration.

(4) By promotion of a regular employee without examination, based upon meritorious service and seniority.

(b) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances, provided that the promotion does not circumvent merit system principles as set forth in the act and this subpart:

(1) *Trainee job classifications.* A trainee who has successfully completed the prescribed training period may be promoted, without further examination, to the higher-level job classification.

(2) *Intern job classifications.* An intern who has successfully completed the duration of the internship may be promoted without further examination to the higher-level job classification, provided the intern possesses the minimum qualifications for employment in the higher-level job classification.

(3) *Competitive promotion without examination.* An appointing authority seeking to fill a vacancy through the competitive promotion without examination process shall make the promotion decision based upon an objective review of each referred applicant's meritorious service and seniority.

(4) *Classification review.* When a classification review reveals that a position should be classified to a higher level, the incumbent of the position will be promoted without examination to the higher-level job classification, provided the incumbent possesses the minimum qualifications required for employment in the higher-level job classification.

(5) *Unskilled position.* When an unskilled position in the unclassified service exists immediately below a vacancy in a position in the classified service, the incumbent of the unskilled position shall be promoted into the classified service position, if all of the following occur:

(i) The promotion is into a classified service position immediately above the employee's position.

(ii) The promotion is based on seniority and meritorious service.

(iii) The employee meets all the established requirements for the higher-level position.

(iv) The employee satisfactorily completes a 6-month probationary period in the classified service position.

(c) *Meritorious service and seniority.* For purposes of subsection (b), the following definitions apply:

(1) *Meritorious service.* Meritorious service shall mean the absence of any discipline above the level of written reprimand during the 12 months preceding the closing date on the vacancy posting and an overall rating of satisfactory or higher on the employee's last performance evaluation. Appointing authorities shall not change the definition of meritorious service set forth in this paragraph and must consider all applicants who have a minimum overall rating of satisfactory on the employee's last performance evaluation and who otherwise meet all other requirements for promotion to the relevant position.

(2) *Seniority.* Unless otherwise approved by the Office of Administration, seniority shall mean a minimum of 1 year of employment in the next lower job classification, as determined by the appointing authority using objective standards, by the closing date of the vacancy posting. Subject to approval by the Office of Administration,

seniority may also mean a demonstration of a logical occupational, functional or career development relationship to the posted position and a job classification for which the employee holds, or has held, regular status; or a clear linkage between the required knowledge, skills and abilities of the posted position and a job classification for which the employee holds, or has held, regular status.

(d) *Eligibility for promotion.* To be eligible for a promotion, regardless of promotion method, an employee must have received an overall rating of satisfactory or higher on the employee's last performance evaluation and cannot have received any discipline above the level of written reprimand during the 12 months preceding the closing date on the vacancy posting. Appointing authorities shall not change the requirements set forth in this subsection and must consider all applicants who have a minimum overall rating of satisfactory on the employee's last performance evaluation and who otherwise meet all other requirements for promotion to the relevant position.

(e) *Collective bargaining agreements.* Notwithstanding the provisions of this section, when a collective bargaining agreement covering a job classification in the classified service sets forth promotion procedures, the terms of the agreement as to the promotion procedures shall be controlling, provided such terms are not otherwise contrary to the act or this subpart.

§ 602a.34. Assessment of referred applicants.

An appointing authority may conduct an interview or otherwise assess relative suitability for appointment or promotion of a referred applicant, but the assessment must be based on merit-related criteria and be conducted in accordance with the act and this subpart.

§ 602a.35. Prohibition against securing withdrawal from competition.

An applicant may not influence another applicant to withdraw from competition for a position in the classified service, nor may a waiver of another applicant's rights or availability be solicited for the purpose of either improving or impairing an applicant's prospects for appointment or promotion. The Office of Administration may take appropriate action in accordance with the act whenever it finds that an applicant has violated this section.

Subchapter I. EMERGENCY APPOINTMENTS

Sec.
602a.36. Emergency appointments.

§ 602a.36. Emergency appointments.

(a) *Generally.* Notwithstanding the provisions of this chapter related to examinations and the certification and appointment of eligibles, to prevent serious impairment of the public business during an emergency, and when time does not permit securing authorization from the Office of Administration for the appointment of a certified eligible, an appointing authority may appoint a qualified applicant during the emergency for an initial period not exceeding 30 business days.

(b) *Status of emergency employees.* An emergency employee shall hold the same status as a probationary employee for the duration of the emergency appointment. Conversion of an emergency appointment to a permanent appointment shall require regular certification and appointment procedures.

(c) *Report to Office of Administration.* An appointing authority shall report to the Office of Administration an emergency appointment within 5 business days of the emergency appointment and shall include an explanation

of the emergency circumstances necessitating the emergency appointment. If the Office of Administration determines that the emergency appointment does not conform with the act or this section, the Office of Administration may take appropriate corrective action, including requiring the appointing authority to separate the emergency employee.

(d) *Extension.* The Office of Administration, upon the request and submission of justification by an appointing authority, may permit the appointing authority to extend the emergency appointment for up to an additional 30 business days.

CHAPTER 603a. EMPLOYEES IN THE CLASSIFIED SERVICE

Subchap.

- A. PROBATIONARY PERIODS AFTER APPOINTMENT OR PROMOTION
- B. EMPLOYEE PERFORMANCE EVALUATIONS
- C. MOVEMENT OF EMPLOYEES BY APPOINTING AUTHORITIES
- D. RECLASSIFICATIONS BY THE OFFICE OF ADMINISTRATION
- E. COMPENSATION

Subchapter A. PROBATIONARY PERIODS AFTER APPOINTMENT OR PROMOTION

Sec.

- 603a.1. Probationary periods required.
- 603a.2. Duration and extension of probationary periods.
- 603a.3. Probationary period following reassignment or transfer.
- 603a.4. Probationary period following demotion.
- 603a.5. Probationary period following reinstatement.
- 603a.6. Probationary period following promotion.
- 603a.7. Probationary period of trainees.
- 603a.8. Probationary period of interns.
- 603a.9. Credit towards probationary period.
- 603a.10. Effect of leave of absence on probationary period.
- 603a.11. Effect of a leave of absence for military duty on probationary period.
- 603a.12. Conferment of regular status and removal of probationary employees.

§ 603a.1. Probationary periods required.

Except as otherwise provided by the act and this subpart, an employee in the classified service shall serve a probationary period after an appointment or promotion.

§ 603a.2. Duration and extension of probationary periods.

(a) *Duration of probationary period.* The length of the probationary period required for appointments and promotions for a full-time position is a minimum of 6 months, defined as 180 calendar days, and will be determined by the Office of Administration for each job classification. The probationary period for part-time positions shall be prorated according to the number of hours in the work week.

(b) *Extension of probationary period.* The probationary period, except for a trainee job classification, may be extended up to a maximum of 18 months (defined as 545 calendar days—365 calendar days plus 6 months at 30 days per month), at the discretion of the appointing authority. If the appointing authority extends an employee's probationary period, it must notify the employee in writing at least 1 workday prior to the effective date of the extension.

§ 603a.3. Probationary period following reassignment or transfer.

(a) *Regular employees.* An employee who has achieved regular status and who is appointed to a position through reassignment or transfer shall retain regular status.

(b) *Probationary employees.* The unexpired portion of the probationary period of an employee who never achieved regular status and who is appointed to a position through a reassignment or transfer shall continue to be served in the position, unless the employee accepted the appointment after being notified in writing that the appointing authority having jurisdiction over the position requires a full probationary period in the position as a condition of appointment.

§ 603a.4. Probationary period following demotion.

(a) *Regular employee.* An employee who has achieved regular status and who is demoted shall retain regular status.

(b) *Probationary employee.* The unexpired portion of the probationary period of an employee who never achieved regular status and who is demoted shall continue to be served in the position, unless the employee accepted the demotion after being notified in writing that the appointing authority having jurisdiction over the position requires a full probationary period in the position as a condition of appointment. An employee who held regular status in a lower-level job classification shall be assigned regular status in the job classification to which the employee is demoted, unless the employee had not previously held the job classification to which they are demoted.

(c) *Subsequent promotion.* When a regular employee has voluntarily demoted to a lower-level job classification and is subsequently promoted to the higher-level job classification held prior to demotion, the appointing authority may waive all or part of the probationary period for the higher-level job classification.

§ 603a.5. Probationary period following reinstatement.

An appointing authority may waive the probationary period for a position if the former employee is reinstated within 2 years after resignation. If more than 2 years have expired since the former employee's resignation, the former employee shall serve the probationary period prescribed for the job classification to which reinstated.

§ 603a.6. Probationary period following promotion.

(a) *Generally.* A regular status employee who is promoted shall serve the duration of the probationary period that is specified for the job classification to which promoted, subject to the following conditions:

(1) During the first 3 months of the probationary period, the employee has the option to return to the regular status position held immediately prior to the employee's promotion.

(2) At any time after the first 3 months of the probationary period, an employee in probationary status may return to the previous regular status position or job classification held immediately prior to the employee's promotion, with written consent of the appointing authorities.

(3) If the performance of the employee is found to be unsatisfactory by the appointing authority, the employee shall be returned to the previous regular status position or job classification held immediately prior to the employee's promotion.

(b) *Status after return.* Employees returned under subsection (a) shall be assigned regular status in the job classification to which the employee is returned, provided the employee achieved regular status in that classification.

(c) *Employees without regular status.* A promoted employee who has never held regular status in the classified service does not have a right to return to a probationary status position previously held.

§ 603a.7. Probationary period of trainees.

(a) *Status as trainee.* A trainee shall maintain the status of a probationary employee while employed in the trainee job classification.

(b) *Duration of probationary period.* The probationary period for the trainee job classification and working level job classification will be combined and may be set by the Office of Administration at a minimum of 6 months, defined as 180 calendar days, and a maximum of 24 months, defined as 730 calendar days, to coincide with the length of the designated training period.

(c) *Extension of probationary period.* The probationary period of a trainee may be extended up to a maximum of 24 months, defined as 730 calendar days, at the discretion of the appointing authority. If the appointing authority extends an employee's probationary period, it must notify the employee in writing at least 1 workday prior to the effective date of the extension.

(d) *Promotion to working level job classification.* A trainee shall be promoted to the working level job classification, with regular status, if the trainee successfully completes the designated probationary period. Notice of successful completion of the probationary period shall be given in accordance with § 603a.12 (relating to conferment of regular status and removal of probationary employees).

(e) *Removal of trainee.* An appointing authority must immediately remove, or, if appropriate, return a trainee who fails to successfully complete the designated probationary period in accordance with § 603a.12(d).

§ 603a.8. Probationary period of interns.

(a) *Status as intern.* An intern shall maintain the status of a probationary employee while employed in the intern job classification.

(b) *Duration of probationary period.* The probationary period for an intern job classification shall coincide with the duration of the internship.

(1) *Minimum duration.* The minimum duration of a probationary period for an intern job classification shall be 6 months, defined as 180 calendar days or 975 hours if the internship is completed over a noncontiguous period.

(2) *Maximum duration.* The maximum duration of a probationary period for an intern job classification shall be 18 months, defined as 545 calendar days (365 calendar days plus 6 months at 30 days per month) or 2,925 hours if the internship is completed over a noncontiguous period.

(c) *Promotion after internship.* An intern who has successfully completed the duration of the internship may be promoted in the manner set forth in § 602a.33(b)(2) (relating to promotion). Notice of successful completion of the probationary period shall be given in accordance with § 603a.12(a) (relating to conferment of regular status and removal of probationary employees).

(d) *Removal of intern.* An appointing authority must immediately remove or, if appropriate, return an intern who fails to successfully complete the internship in accordance with § 603a.12(d).

§ 603a.9. Credit towards probationary period.

(a) *Temporary assignment of higher-level duties.* A probationary employee who is temporarily assigned the

duties of a higher-level position shall have the period during which they are performing the higher-level duties credited toward the lower-level probationary period.

(b) *Service in same level position.* If an appointing authority reassigns a probationary employee to another position in the same or a similar job classification within the appointing authority, the employee shall be credited with time served in the previous position toward the completion of the probationary period required for the present position.

§ 603a.10. Effect of leave of absence on probationary period.

(a) *Generally.* A leave of absence shall not count toward the completion of a probationary employee's probationary period. Upon return from a leave of absence, a probationary employee shall complete the unserved portion of the probationary period.

(b) *Extended leave.* When a leave of absence exceeds 30 consecutive workdays, the appointing authority may require that a new, full probationary period be served by the returning probationary employee.

§ 603a.11. Effect of a leave of absence for military duty on probationary period.

A leave of absence for military duty shall not count toward the completion of a probationary employee's probationary period. Upon return from a leave of absence for military duty, a probationary employee shall complete the unserved portion of the probationary period.

§ 603a.12. Conferment of regular status and removal of probationary employees.

(a) *Evaluation of performance.* Prior to the expiration of an employee's probationary period, the appointing authority shall evaluate the employee's performance and provide the employee with the results of the evaluation.

(b) *Form of evaluation.* Performance evaluations of probationary employees shall be made using the same form developed in accordance with § 603a.13(c) (relating to performance evaluations generally).

(c) *Conferment of regular status.* If an employee's overall performance during the probationary period has been rated satisfactory or higher, the appointing authority shall confer regular status upon the employee at the expiration of the probationary period.

(d) *Removal of probationary employee.*

(1) If at any time during the probationary period the appointing authority determines that an employee is failing to perform satisfactorily, the appointing authority may promptly remove or, if appropriate, return, the employee in accordance with the act and this subchapter.

(2) If at the completion of the probationary period the appointing authority determines that an employee failed to perform satisfactorily, the appointing authority will immediately remove or, if appropriate, return, the employee in accordance with the act and this subchapter.

Subchapter B. EMPLOYEE PERFORMANCE EVALUATIONS

- Sec.
- 603a.13. Performance evaluations generally.
- 603a.14. Completion of performance evaluations.
- 603a.15. Retention of performance evaluations.
- 603a.16. Review of performance evaluations.
- 603a.17. Use of performance evaluations.

§ 603a.13. Performance evaluations generally.

(a) *Generally.* Subject to the review and approval of the Office of Administration, appointing authorities shall establish and maintain a job-related system of performance evaluations for employees in the classified service.

(b) *Basis of performance evaluations.* Performance evaluations must be based upon job-related factors appropriate for determining the manner in which the employee performs the duties and carries out the responsibilities of the position occupied.

(c) *Forms and procedures.* Performance evaluation forms and procedures shall be reviewed and approved by the Office of Administration prior to utilization.

§ 603a.14. Completion of performance evaluations.

Performance evaluations of regular employees shall be completed at least once each year, unless a different schedule is approved by the Office of Administration.

§ 603a.15. Retention of performance evaluations.

(a) *Generally.* Appointing authorities shall retain copies of a regular employee's performance evaluation for a period of 3 years.

(b) *Review by Office of Administration.* Upon request by the Office of Administration, performance evaluations shall promptly be made available by an appointing authority to the Office of Administration.

§ 603a.16. Review of performance evaluations.

An appointing authority shall provide the employee with the results of the performance evaluation as soon as practicable after the evaluation is completed. The employee will be given an opportunity to review the performance evaluation with the rater and the reviewing officer. The appointing authority shall inform the employee of the standards used in determining the evaluation.

§ 603a.17. Use of performance evaluations.

Performance evaluations may be utilized for purposes of determining eligibility for promotion, to assist in establishing priority for promotion, or for determining order of furlough as provided in this subpart.

Subchapter C. MOVEMENT OF EMPLOYEES BY APPOINTING AUTHORITIES

Sec.

603a.18. Reassignment by appointing authority.

603a.19. Transfer by appointing authority.

603a.20. Involuntary demotions.

603a.21. Status after involuntary movement.

§ 603a.18. Reassignment by appointing authority.

(a) *Generally.* An appointing authority may reassign an employee from one position to another in the same job classification or in a similar job classification for which the employee qualifies.

(b) *Similar job classification.* Whether a job classification constitutes a similar job classification for purposes of subsection (a) will be determined by the Office of Administration on a case by case basis. In determining whether job classifications are similar, the Office of Administration will consider whether the job classifications have the same maximum hourly salary rate in the compensation plan, and whether the job classifications require comparable minimum qualifications.

(c) *Disapproval.* The Office of Administration may disapprove a reassignment that is not in compliance with the act and this subpart, or that otherwise violates merit principles.

§ 603a.19. Transfer by appointing authority.

(a) *Generally.* Upon agreement between appointing authorities, an appointing authority may transfer an employee from one position to another position in the same job classification within a different appointing authority.

(b) *Initiation of transfer.* A transfer shall be initiated by the appointing authority having jurisdiction over the position to which the transfer is sought and must be approved by the Office of Administration.

(c) *Disapproval.* The Office of Administration may disapprove a transfer that is not in compliance with the act and this subpart, or that otherwise violates merit principles.

§ 603a.20. Involuntary demotions.

An appointing authority may demote an employee who does not satisfactorily perform the duties of the position that they currently hold to a position in any job classification that the employee previously had the status of a regular employee or to any position for which the employee is qualified.

§ 603a.21. Status after involuntary movement.

The corresponding provisions of §§ 603a.1—603a.12 shall apply to appointments made in accordance with this subchapter.

Subchapter D. RECLASSIFICATIONS BY THE OFFICE OF ADMINISTRATION

Sec.

603a.22. Reclassifications.

603a.23. Effect of reclassification on status.

§ 603a.22. Reclassifications.

(a) *Reclassifications required.* When an employee's job duties change or the Board changes a job classification and a reallocation of the position becomes necessary, the employee shall be reclassified to the new job classification if the employee meets the established requirements. If the reclassification is to a lower-level job classification, it will not be construed as a demotion and the reclassified employee shall be credited with seniority acquired in the higher-level job classification.

(b) *Request for classification review.* When an appointing authority believes that a reclassification is necessary, the appointing authority shall submit a written request for a classification review to the Office of Administration, which shall include justification as to why reclassification of the position is necessary.

(c) *Approval.* The Office of Administration will approve requests for reclassification in accordance with the act and this subchapter.

(d) *Denial.* The Office of Administration may deny an appointing authority's request for reclassification if it appears the request is designed to circumvent merit system principles as set forth in the act and this subpart, or is otherwise unnecessary.

§ 603a.23. Effect of reclassification on status.

An employee reclassified laterally or to a lower-level job classification under this subchapter shall retain their current status.

Subchapter E. COMPENSATION

Sec.

603a.24. Effect of change in compensation schedules.

§ 603a.24. Effect of change in compensation schedules.

Revisions to the established schedule of compensation for a job classification, with no significant change in job

specifications as determined by the Office of Administration, will have no effect upon the status and seniority of employees. Changes in compensation may not be construed as promotions or demotions.

CHAPTER 604a. SEPARATION OF EMPLOYEES FROM THE CLASSIFIED SERVICE

Subchap.

A. LEAVES OF ABSENCE

B. FURLOUGH

C. REMOVAL AND SUSPENSION

D. RESIGNATION

E. SENIORITY

Subchapter A. LEAVES OF ABSENCE

Sec.

- 604a.1. Leaves of absence generally.
- 604a.2. Leaves of absence for military duty.
- 604a.3. Vacancies due to leaves of absence for military duty.
- 604a.4. Leave of absence for Senior Management Service employment.

§ 604a.1. Leaves of absence generally.

(a) *Request.* An employee seeking a leave of absence shall submit a written request for a leave of absence to the appointing authority. The written request shall state the date on which the leave will start, the date on which the leave will end and the reason for the request.

(b) *Approval.* A leave of absence may be granted at the discretion of the appointing authority in accordance with the act and this subpart.

(c) *Duration.* Approved leaves of absence shall be for a definite period, up to a 2-year increment of time.

(d) *Extension.* Upon the written request of the employee, a leave of absence may be extended at the discretion of the appointing authority in 2-year increments and for a maximum continuous duration of 12 years. If after a leave of absence consisting of 12 continuous years the employee does not return to a position in accordance with subsection (e), the employee shall be deemed to have resigned from their position on the date the approved leave of absence terminates.

(e) *Right of return.* Upon the expiration of an employee's approved leave of absence, or after an employee requests to return from an approved leave of absence in writing to the appointing authority, the employee shall have the right to return to employment in the classified service with the same appointing authority, subject to the following:

(1) An employee shall have the right to return to a vacant position, which the appointing authority is filling, in the same job classification from which the leave of absence was approved and shall retain the same status as they held prior to taking the leave of absence.

(2) If there are no vacant positions in the same job classification from which the employee took a leave of absence, the employee shall have the right of return to any of the following:

(i) A vacant position, which the appointing authority is filling, in a job classification previously held and shall retain the same status as they held prior to taking the leave of absence.

(ii) A vacant position, which the appointing authority is filling, in a job classification with the same maximum hourly salary and shall retain the same status as they held prior to taking the leave of absence, provided the employee meets the minimum qualifications for the job classification.

(iii) A vacant position, which the appointing authority is filling, in a lower-level job classification and shall retain the same status as they held prior to taking the leave of absence, provided the employee meets the minimum qualifications for the job classification.

(3) If there is no vacancy to which the employee on leave can be returned, or if the employee returned to a lower-level job classification in accordance with paragraph (2) (relating to leaves of absence generally), the employee's name shall be placed on a preferred reemployment list, for a period of 1 year, for employment in the job classification from which the leave of absence was approved.

(f) *Preferred reemployment lists.* Certifications from a preferred reemployment list shall take precedence over all other eligible lists and referrals from internal recruitment methods.

(g) *Scope.* This section shall not apply to leaves of absence for military service and leaves of absence for employment in the Senior Management Service.

§ 604a.2. Leaves of absence for military duty.

(a) *Generally.* An appointing authority shall grant a leave of absence to an employee for military duty.

(b) *Request.* An employee seeking a leave of absence for military duty shall submit a written request for a leave of absence for military duty to the appointing authority as soon as possible prior to the military duty commencing or as soon as possible after the military duty begins. An employee shall include with their written request all documents necessary to establish that the employee is, or will be, on military duty during the relevant period of time.

(c) *Duration.* The duration of the leave of absence shall coincide with the duration of the employee's military duty and any delayed return to work as prescribed by the Uniformed Services Employment and Reemployment Rights Act, as amended (38 U.S.C. §§ 4301—4335).

(d) *Right of return.* An employee on a leave of absence for military duty shall have a guaranteed right of return in accordance with the act, this subpart, and the Uniformed Services Employment and Reemployment Rights Act, as amended.

§ 604a.3. Vacancies due to leaves of absence for military duty.

(a) *Vacancies filled.* When an employee in the classified service is granted a leave of absence for military duty, the position vacated shall be left vacant or otherwise filled by a substitute employee, provided the position vacated is a permanent position.

(b) *Return of incumbent.* Upon return of the incumbent under § 604a.2(d) (relating to leaves of absence for military duty), the substitute employee shall be required to vacate the position.

(1) Substitute employees who held regular status or probationary status in a job classification immediately prior to accepting the substitute appointment or substitute promotion shall have the right to return to their previously held position and status.

(2) A substitute employee who did not hold regular status or probationary status in a job classification immediately prior to accepting the substitute appointment shall be separated.

(c) *Permanent appointment or promotion.* A substitute appointment or substitute promotion shall be converted to

a permanent appointment or promotion when the incumbent who was granted the leave of absence for military duty fails to return to the position within the applicable time frame prescribed by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. §§ 4301—4335).

(d) *Rights of substitute employee.* A regular or probationary employee who accepts a substitute appointment or substitute promotion shall maintain the same rights and privileges to which entitled if the employee had continued to serve in the previous position with the same status. The substitute appointment or substitute promotion will not prejudice the employee's rights to promotion, transfer, reemployment or retention in service.

§ 604a.4. Leave of absence for Senior Management Service employment.

(a) *Generally.* An employee who accepts a Senior Management Service position shall be granted a leave of absence upon starting employment in the Senior Management Service position.

(b) *Duration.* The duration of leave of absence shall coincide with the duration of the employee's employment in the Senior Management Service.

(c) *Return.* Upon leaving employment in a Senior Management Service position, the employee shall have the right to return to a position at the same pay scale group as the last classified service position held prior to employment in the Senior Management Service position, at the same status held, and in the same appointing authority in which the Senior Management Service position was located. If a position does not exist at the time the employee leaves the Senior Management Service position, the appointing authority shall create such a position and place the employee in it.

Subchapter B. FURLOUGH

Sec.
604a.5. Furlough.

§ 604a.5. Furlough.

(a) *Reasons.* Furloughs shall occur only because of a lack of funds or a lack of work.

(b) *Furlough units.* Furloughs will be conducted within approved furlough units. For purposes of this section, a furlough unit shall be defined as all employees in the job classification within an affected institution, division, office, bureau or a combination of the institutions, divisions, offices, or bureaus within an appointing authority. Each appointing authority will submit recommended furlough units to the Office of Administration. Once approved by the Office of Administration, the furlough units will be used for subsequent furloughs. Changes to approved furlough units shall be submitted to and approved by the Office of Administration prior to use in subsequent furloughs.

(c) *Provisional employees, temporary employees and emergency employees.* An appointing authority shall remove all emergency employees, temporary employees and provisional employees within the designated furlough unit before furloughing a probationary employee or regular employee in the designated furlough unit.

(d) *Order of furlough.* Furloughs shall occur in the following order:

(1) *Probationary employees.* An appointing authority will not furlough a regular employee while a probationary employee is employed in the designated furlough unit. An appointing authority shall furlough probationary employ-

ees in the inverse order of seniority. Seniority for this purpose shall be the length of continuous service in the classified service if there has been no break in service.

(2) *Regular employees.* When it is necessary to furlough regular employees in a designated furlough unit, the last annual or probationary performance evaluations, as applicable, of the regular employees in the furlough shall be converted to categories or relative ranks. The regular employees will be placed into quarters, and those in the lowest quarter will be furloughed or returned under subsection (e), in the inverse order of seniority. Seniority for this purpose shall be the length of continuous service in the classified service if there has been no break in service.

(e) *Rights before furlough.* Upon notification of furlough, and until the effective date of it, a regular employee to be furloughed shall have a right of return to vacant positions in the appointing authority in any job classification and status previously held, or to any job classification and status in the same or lower job classification, if the employee meets the minimum qualifications and provided the appointing authority is filling the vacancy. A probationary employee will be returned to the job classification previously held if the probationary status resulted from promotion.

(f) *Mandatory reemployment after furlough.* A furloughed employee who is unable to exercise their right of return under subsection (e) will be given a mandatory 1-year preference for reemployment in the same job classification and appointing authority from which they were furloughed. The preference does not apply to vacancies that an employee on leave of absence has priority of return, or to a filled position which has been reclassified to a higher-level job classification after the effective date of furlough.

(g) *Optional reemployment after furlough.* A furloughed employee who is unable to exercise their right of return under subsection (e) will, for 1 year, be placed on optional reemployment lists for the job classification from which furloughed and for equal and lower-level job classifications for which they are qualified, for certification to all appointing authorities.

(h) *Reemployment certification.* The following requirements apply to certifications of reemployment lists of furloughed employees:

(1) A certification from a mandatory reemployment list shall preclude issuance of a certification otherwise applicable to available vacancies except for a certification from a preferred reemployment list, which shall take precedence over all other eligible lists. Certification from optional reemployment lists shall be considered equally with all other employment or promotion certifications issued for available vacancies.

(2) Furloughed employees shall be certified from mandatory reemployment lists according to their stated availabilities. The appointing authority will give reemployment preference to those on mandatory reemployment lists with higher overall performance evaluations. In cases of identical performance evaluations, furloughed employees with greater continuous classified service seniority will have reemployment preference.

(3) Furloughed employees shall be certified from optional reemployment lists according to their stated availabilities. The appointing authority may select any furloughed employee from the optional reemployment list, in accordance with merit principles.

(i) *Refusal of reemployment from mandatory reemployment list.* A furloughed employee who refuses reemployment from a mandatory reemployment list in a county other than the county from which they were furloughed, shall retain mandatory reemployment rights solely to the county from which they were furloughed. Furloughed employees who accept or refuse mandatory reemployment in the county from which they were furloughed shall lose all mandatory and optional reemployment rights and consideration.

(j) *Refusal of reemployment from optional reemployment list.* A furloughed employee who refuses appointment from an optional reemployment list in the same job title from which they were furloughed or in a job title with the same pay grade as the job title from which they were furloughed shall forfeit all optional reemployment preference, but shall retain mandatory preference for reemployment. A furloughed employee who refuses appointment from an optional reemployment list in a job title with a pay grade lower than the job title from which they were furloughed shall retain reemployment preference for job titles with pay grades higher than the job title to which reemployment is offered and equal to the job title from which they were furloughed. Reemployment preference is forfeited for all job titles with pay grades equal to and lower than the job title to which reemployment is offered. If preferences subsequently are not, or cannot be, exercised, the furloughed employee shall be considered as having voluntarily resigned as of the furlough effective date.

(k) *Labor agreements.* If there is a labor agreement covering the employees to be furloughed, the terms of the agreement as to furlough and reemployment procedures shall be controlling.

Subchapter C. REMOVAL AND SUSPENSION

- Sec.
- 604a.6. Removal
- 604a.7. Suspension.

§ 604a.6. Removal.

Just cause for removal of a regular employee must be based on at least one merit-related reason.

§ 604a.7. Suspension.

(a) *Generally.* An appointing authority may suspend an employee for good cause, which shall be based on at least one merit-related reason.

(b) *Suspension pending investigation.* An appointing authority may, for the purpose of ascertaining an employee's fitness for continued employment, suspend an employee pending the outcome of an internal or external investigation.

(1) When an investigation has not revealed cause for disciplinary action, the suspension shall be retracted and expunged from all records, and the employee shall receive back pay for the full period of suspension.

(2) When an investigation has revealed cause for disciplinary action, the suspension shall be converted, either in whole or in part, to a disciplinary action.

(c) *Duration of suspension.*

(1) A suspension, including during a pending internal investigation, may not exceed 60 working days in 1 calendar year.

(2) A suspension pending investigation by external agencies may be maintained up to 30 working days after conclusion of the external investigation.

(3) A suspension under 71 Pa.C.S. § 2705(f) (relating to political activity) may not exceed 120 working days.

Subchapter D. RESIGNATION

- Sec.
- 604a.8. Notice of resignation.
- 604a.9. Effective date of resignation.
- 604a.10. Acceptance or rejection of resignation.

§ 604a.8. Notice of resignation.

Notice of resignation shall consist of a voluntary termination of employment evidenced by an affirmative statement, either written or oral, of the employee's intent to resign.

§ 604a.9. Effective date of resignation.

(a) When an employee gives notice of the effective date of resignation, the resignation shall take effect on the specified date.

(b) When an employee does not specify an effective date of resignation, the resignation shall take effect immediately.

(c) A resignation submitted during or at the termination of a leave of absence shall be effective on the date submitted.

§ 604a.10. Acceptance or rejection of resignation.

(a) *Response to notice of resignation.* An appointing authority shall respond to an employee's notice of resignation, in writing, within 15 calendar days after the appointing authority's receipt of the notice of resignation. The appointing authority's response shall state whether the employee's resignation is accepted or rejected by the appointing authority. An appointing authority may not reject a resignation unless the employee is being investigated or removal action is pending.

(b) *Removal after notice of resignation.* The acceptance of a resignation will not bar an appointing authority from thereafter removing an employee for causes that occur or become known during the period between the acceptance and the effective date of the resignation.

(c) *Withdrawal of resignation.* An employee's resignation may not be withdrawn without the written consent of the appointing authority once the resignation has been accepted by the appointing authority. A resignation that has not been accepted by the appointing authority may be withdrawn by the employee at any time prior to acceptance or the effective date.

(d) *Rescission of acceptance after resignation.* Upon notice to the former employee, an appointing authority may rescind its acceptance of a resignation after the effective date for just cause and convert the resignation to a removal.

Subchapter E. SENIORITY

- Sec.
- 604a.11. Break in service.

§ 604a.11. Break in service.

(a) *Generally.* For purposes of seniority, the following shall constitute a break in service:

- (1) Removal for just cause.
- (2) Resignation.
- (3) Retirement.

(4) Failure to accept an offer to return after furlough under 71 Pa.C.S. § 2602(b)(1) (relating to furlough) and this subpart.

(5) Failure to accept an offer to return after a leave of absence under 71 Pa.C.S. § 2608(b) (relating to leave of absence) and this subpart.

(6) Expiration of mandatory, preferred or optional re-employment rights.

(7) Failure to report after a leave of absence.

(b) *Effect on seniority.* If a break in service occurs, the employee shall lose accrued seniority.

(c) *Furlough and leave.* Periods of furlough and leaves of absence shall be deemed continuous employment for seniority purposes, except that during the period of furlough or leave of absence, the employee shall not accrue credit towards seniority.

(d) *Involuntary demotion.* A demotion under § 602a.31 (relating to voluntary demotion) shall terminate seniority in the job classification from which demoted.

CHAPTER 605a. ENFORCEMENT OF ACT; PROHIBITIONS AND PENALTIES

Subchap.

A. OFFICE OF ADMINISTRATION REVIEW OF LEGALITY OF EMPLOYMENT ACTIONS

B. PROHIBITION ON POLITICAL ACTIVITY

C. INVESTIGATIONS; NOTICE OF VIOLATIONS AND PENALTIES

Subchapter A. OFFICE OF ADMINISTRATION REVIEW OF LEGALITY OF EMPLOYMENT ACTIONS

Sec.

605a.1. Reporting.

605a.2. Review of personnel actions.

§ 605a.1. Reporting.

Each appointing authority shall promptly report to the Office of Administration an appointment, promotion, or change in position or job classification of an employee in the classified service in its employ; or any other additional information related to an employee in the classified service in its employ requested by the Office of Administration.

§ 605a.2. Review of personnel actions.

Whenever the Office of Administration determines that a personnel action is not in accordance with the act and this subpart, the Office of Administration will notify the appointing authority in writing, including the reasons for the determination and the required corrective action.

Subchapter B. PROHIBITION ON POLITICAL ACTIVITY

Sec.

605a.3. Scope of prohibition.

§ 605a.3. Scope of prohibition.

(a) The provisions of 71 Pa.C.S. § 2705 (relating to political activity) shall not apply to employees who are on furlough, who are on a leave of absence, or who are on a leave covered under the State Employees' Retirement Code in 71 Pa.C.S. § 5302(b) (relating to credited State service).

(1) An employee who is elected to and assumes public office while on a leave of absence or a leave covered under the State Employees' Retirement Code in 71 Pa.C.S. § 5302(b) shall, upon returning to employment in the classified service, resign from the elective public office and otherwise comply with the provisions of 71 Pa.C.S. § 2705.

(2) An employee who is elected to and assumes public office while on furlough may serve out the remaining portion of the present term of office, provided the duties of the elective public office do not present a conflict of interest with the duties of the employee's position in the classified service, and the employee does not otherwise engage in activity prohibited by 71 Pa.C.S. § 2705. The employee may not seek and accept appointment, nomination, and election for a new term in office.

(b) An employee who is elected to and assumes public office prior to appointment to a position in the classified service may serve out the remaining portion of the present term of office, provided the duties of the elective public office do not present a conflict of interest with the duties of the employee's position in the classified service, and the employee does not otherwise engage in activity prohibited by 71 Pa.C.S. § 2705. The employee may not seek and accept appointment, nomination or election for a new term in office.

Subchapter C. INVESTIGATIONS; NOTICE OF VIOLATIONS AND PENALTIES

Sec.

605a.4. Procedure.

§ 605a.4. Procedure.

(a) *Investigations.* The Office of Administration will investigate allegations of violations of the act or this subpart by an employee.

(b) *Request for Investigation.* An individual suspecting that an individual has violated the act or this subpart may file a written request for investigation with the Office of Administration, which shall contain sufficient details of the alleged violation so as to enable proper investigation by the Office of Administration.

(c) *Hearing.* When appropriate, the Office of Administration may convene a hearing under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) to determine whether an employee violated the act or this subpart and the appropriate penalty or remedy. The hearings shall be conducted in accordance with Chapter 607a (relating to practice and proceedings before the Office of Administration) of this subpart.

(d) *Notice.* Whenever the Office of Administration determines that an employee has violated the act or this subpart, the Office of Administration will give written notice to the appropriate appointing authority of the determination, including appropriate corrective actions. Notice that an employee intentionally falsified information, failed to disclose a material fact or otherwise concealed information to obtain appointment or promotion shall also include a reference to 71 Pa.C.S. § 2702(b) (relating to false statements made under oath and concealing information).

(e) *Penalties.* Unless otherwise required by the act or this subpart, penalties for violation of the act or this subpart shall be within the discretion of the Office of Administration.

(1) *Intentional violation.* Except as provided in paragraphs (2) and (3), an employee who intentionally violates the act or this subpart shall be immediately removed from employment in the classified service.

(2) *Political activity.* An employee who violates 71 Pa.C.S. § 2705 (relating to political activity) or § 605a.3 (relating to scope of prohibition) shall be removed from employment in the classified service, provided the Office of Administration may impose a penalty of suspension

without pay for not more than 120 working days if the Office of Administration finds that the violation does not warrant removal.

(3) *Concealment.* An employee who intentionally falsified information, failed to disclose a material fact, or otherwise concealed information to obtain appointment or promotion shall be removed from all eligible lists for a period of time to be determined by the Office of Administration and, if appointed or promoted, be summarily removed.

(f) *Removal.* When the Office of Administration orders the removal of an employee due to the employee's violation of the act or this subpart, the appointing authority shall remove the employee immediately.

(g) *Ineligibility after removal.* When an employee has been found to have violated the act or this subpart and as a result has been removed from employment in the classified service, the employee shall be ineligible for reappointment to any position in the classified service for a period of time determined by the Office of Administration. In setting the period of ineligibility, the Office of Administration may, in its discretion, determine that permanent ineligibility is appropriate.

CHAPTER 606a. PERSONNEL ACTIONS

- Sec.
- 606a.1. Personnel actions.
- 606a.2. Notice of personnel actions.
- 606a.3. Signatory authority.

§ 606a.1. Personnel actions.

(a) When used in the act or this subpart, the term personnel action shall be limited to the following:

- (1) Appointment.
- (2) Promotion.
- (3) Removal, including the removal of a probationary employee before the expiration of the probationary period.
- (4) Suspension.
- (5) Acceptance of resignation.
- (6) Demotion.
- (7) Furlough.
- (8) Transfer.
- (9) Reassignment.
- (10) Leave of absence.
- (11) Extension or reduction of probationary period.
- (12) Compensation changes, except salary increments, general pay increases, or special pay for such things as overtime or out-of-class work.
- (13) Performance evaluation.
- (14) Reclassification.
- (15) Return to a position or job classification held prior to promotion.

§ 606a.2. Notice of personnel actions.

(a) *Required.* An appointing authority shall provide written notice of a personnel action to the affected employee.

(b) *Content.* A written notice of a removal, furlough, involuntary demotion or suspension issued to a regular employee shall include a clear statement of the reason(s) for the personnel action, sufficient to apprise the employee of the grounds upon which the personnel action is based. A written notice of a removal, furlough, involun-

tary demotion or suspension shall provide information on the employee's right to appeal the personnel action to the State Civil Service Commission.

(c) *Effective date of personnel action.* Unless otherwise required by the Office of Administration or stated in the notice by the appointing authority, the personnel action will take effect immediately upon the provision of notice to the employee by the appointing authority.

(d) *Simultaneous copy.* When the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Office of Administration. Copies of other notices of personnel actions shall be provided to the Office of Administration upon request.

(e) *Mandatory requirements.* Except as provided in subsection (f), the requirements in this section are mandatory. Failure to adhere to the notice requirements set forth in this section may nullify the personnel action.

(f) *Acceptance of resignation.* The requirements of this section do not apply to an appointing authority's acceptance of an employee's resignation, which are governed by §§ 604a.8—604a.10 (relating to notice of resignation; effective date of resignation; and acceptance or rejection of resignation).

§ 606a.3. Signatory authority.

(a) *Generally.* A notice of personnel action shall be signed by the head of the appointing authority or an authorized designee.

(b) *Authorized designee.* An authorized designee of the head of an appointing authority includes a deputy secretary, a bureau director, an office director, a superintendent, a deputy superintendent or an equivalent position employed by the appointing authority; a human resources director or an equivalent position supporting the appointing authority; or an individual who is delegated signatory authority on behalf of the head of the appointing authority in the manner prescribed by the Office of Administration. For purposes of performance evaluations, an employee's immediate supervisor shall be deemed the authorized designee of the head of the appointing authority without the need for delegation of signatory authority.

(c) *No further delegation.* An authorized designee of the head of an appointing authority may not further delegate signatory authority.

(d) *Rebuttable presumption.* A notice of personnel action bearing the signature of the head of the appointing authority, or an authorized designee, shall create a rebuttable presumption that the head of the appointing authority or the authorized designee signed the notice and had the proper authority to issue the notice.

CHAPTER 607a. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION

Subchap.

A. GENERAL PROVISIONS

B. HEARINGS UNDER SECTION 2202(a)(10) OF THE ACT

C. LIST CANCELLATION HEARINGS

Subchapter A. GENERAL PROVISIONS

- Sec.
- 607a.1. Applicability of General Rules of Administrative Practice and Procedure.
- 607a.2. Public access.
- 607a.3. Presiding officer.
- 607a.4. Computation of time.
- 607a.5. Filings with Docket Clerk.

§ 607a.1. Applicability of General Rules of Administrative Practice and Procedure.

This chapter is intended to supersede 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure). The General Rules of Administrative Practice and Procedure are not applicable to activities of and proceedings before the Office of Administration.

§ 607a.2. Public access.

Hearings scheduled by the Office of Administration under its authority under the act shall be open to the public. Notices of public hearing shall be published by the Office of Administration on its publicly accessible web site.

§ 607a.3. Presiding officer.

(a) Hearings scheduled by the Office of Administration under its authority under the act shall be conducted by a presiding officer designated, in writing, by the Secretary of Administration.

(b) Subsection (a) supersedes 1 Pa. Code § 35.185 (relating to designation of presiding officers).

§ 607a.4. Computation of time.

(a) When any period of time is referred to in this chapter, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any period shall fall on Saturday, Sunday or a legal holiday under the laws of this Commonwealth or the United States, the day shall be omitted from the computation.

(b) Subsection (a) supersedes 1 Pa. Code § 31.12 (relating to computation of time).

§ 607a.5. Filings with Docket Clerk.

(a) *Generally.* When a document is required to be filed with the Docket Clerk, the filing shall occur within the applicable time limits, if any, by first class mail or electronic mail. The Office of Administration shall indicate the mailing address and electronic mail address of the Docket Clerk on its publicly accessible web site.

(b) *Mail.* When a document is filed with the Docket Clerk by first class mail, the date of mailing, as evidenced by the United States Postal Service postmark on the envelope containing the filing, a United States Postal Service Form 3817 (Certificate of Mailing), or another similar United States Postal Service form from which the date of deposit with the United States Postal Service can be determined, shall be deemed the date of filing.

(c) *Electronic mail.* When a document is filed with the Docket Clerk by electronic mail, the date of receipt recorded by the Docket Clerk's electronic mail system shall be deemed the date of filing. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.5(a), 31.11 and 33.34 (relating to communications and filings generally; timely filing required; and date of service).

Subchapter B. HEARINGS UNDER SECTION 2202(a)(10) OF THE ACT

Sec.

607a.6.	Order to show cause.
607a.7.	Answer to order to show cause.
607a.8.	Representation.
607a.9.	Consolidation of proceedings.
607a.10.	Severance of proceedings.
607a.11.	Notice of hearing.
607a.12.	Continuances.
607a.13.	Subpoenas.
607a.14.	Authority of presiding officer.
607a.15.	Form of hearings.
607a.16.	Failure to attend hearing.
607a.17.	Additional hearings and evidence.
607a.18.	Record of proceedings.
607a.19.	Post-hearing brief.
607a.20.	Proposed decision and order.
607a.21.	Exceptions.
607a.22.	Brief opposing exceptions.
607a.23.	Further response or pleading.
607a.24.	Final decision and order.

§ 607a.6. Order to show cause.

(a) *Generally.* The Office of Administration shall commence a proceeding under 71 Pa.C.S. § 2202(a)(10) (relating to duties of Office of Administration) through the filing of a verified order to show cause with the Docket Clerk. The individual against whom the order to show cause is filed shall be deemed the respondent.

(b) *Content.* An order to show cause must set forth with specificity the grounds for the proceeding, including a concise statement of the relevant factual allegations, matters of law and a request for relief.

(c) *Entry of Appearance.* An order to show cause filed under this section shall be accompanied by an entry of appearance for the attorneys and legal interns representing the Office of Administration in the proceeding.

(d) *Service.* On the date of filing, the Office of Administration shall simultaneously serve a copy of the order to show cause on the respondent by first class mail. The date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk). The Office of Administration shall include with its order to show cause a certificate of service indicating proper service on the respondent.

(e) *Supersession.* Subsections (a), (b) and (d) supersede 1 Pa. Code §§ 33.31, 35.14 and 35.121 (relating to service by agency; orders to show cause; and initiation of hearings). Subsection (c) supersedes 1 Pa. Code § 31.24(b) (relating to notice of appearance).

§ 607a.7. Answer to order to show cause.

(a) *Generally.* A respondent shall file with the Docket Clerk an answer to the order to show cause within 20 days of the date of service indicated on the certificate of service accompanying the order to show cause.

(b) *Content.* An answer shall specifically admit or deny the allegations presented in the order to show cause, set forth the facts upon which the respondent relies, and state concisely the relevant matters of law. General denials of the allegations contained in the order to show cause will not be considered as complying with this section and may be deemed a basis for entry of a proposed decision and order without a hearing, unless otherwise required by the act, on the ground that the response has raised no issues requiring a hearing or further proceedings.

(c) *Service.* On the date of filing, a respondent shall simultaneously serve a copy of the answer on the Office of Administration's legal counsel by first class mail at the

mailing address indicated in the order to show cause, unless the Office of Administration agrees to accept service by electronic mail. A respondent shall include with their answer a certificate of service indicating proper service on the Office of Administration.

(1) When an answer is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When an answer is served by electronic mail, the date of receipt recorded by the Office of Administration's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Failure to file answer.* A respondent failing to file an answer with the Docket Clerk within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted and provide a basis for entry of a proposed decision and order without a hearing, unless otherwise required by the act, on the ground that the response has raised no issues requiring a hearing or further proceedings.

(e) *Supersession.* Subsections (a), (b) and (d) supersede 1 Pa. Code § 35.37 (relating to answers to orders to show cause) and subsection (c) supersedes 1 Pa. Code § 33.32 (relating to service by a participant).

§ 607a.8. Representation.

(a) A respondent appearing before the Office of Administration may do so on their own behalf or may be represented by an attorney licensed to practice law in this Commonwealth or a legal intern certified by the Supreme Court of Pennsylvania. An appointing authority shall be represented by an attorney licensed to practice law in this Commonwealth or a legal intern certified by the Supreme Court of Pennsylvania. Attorneys and legal interns shall file with the Docket Clerk an entry of appearance with the Office of Administration.

(b) Subsection (a) supersedes 1 Pa. Code §§ 31.21, 31.22, 31.23 and 31.24.

§ 607a.9. Consolidation of proceedings.

(a) The Office of Administration may consolidate two or more proceedings at its discretion where the proceedings involve a common question of law or fact, provided that consolidation does not prejudice any party thereto.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.45 and 35.122 (relating to consolidation; and consolidation of formal proceedings).

§ 607a.10. Severance of proceedings.

The Office of Administration may sever two or more proceedings at its discretion where the proceedings lack a common question of law or fact, provided that severance does not prejudice any party thereto.

§ 607a.11. Notice of hearing.

(a) The Office of Administration shall provide the parties advance notice of a scheduled hearing. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

§ 607a.12. Continuances.

The presiding officer may, upon a showing of good cause, grant a request for a continuance of a scheduled hearing. The requests shall be submitted as far in advance of the scheduled hearing date as possible, be made in writing, and must state the specific reason(s) for the continuance request. A copy of a request for a continuance shall be simultaneously served on the non-requesting party.

§ 607a.13. Subpoenas.

(a) *Procedure for requesting subpoena.*

(1) A subpoena for the attendance of witnesses or for the production of documents will be issued only upon written application to the presiding officer, with a copy to the non-requesting party. Notwithstanding the forgoing, the presiding officer may, by their own motion, issue a subpoena for the attendance of witnesses or the production of documents.

(2) A written application shall specify the relevance of the testimony or documentary evidence sought. For documentary evidence, the request must specify, to the extent possible, the documents desired and the facts to be proved thereby.

(3) A subpoena for new or additional witnesses will not be issued after a hearing has been started and continued unless orally requested on the record at the hearing and approved by the presiding officer; except that subpoenas issued prior to the start and continuance of the hearing may be reissued upon written request.

(4) Failure to adhere to the requirements of this subsection may result in the refusal to issue the requested subpoena.

(b) *Service of subpoena.*

(1) A subpoena for the attendance of a witness must be personally served on the witness at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour requirement.

(2) A subpoena for the production of documents may be served personally, by mail, by facsimile machine or by other electronic means upon the individual in possession of the documents, the legal counsel for the entity or individual in possession of the documents, or the designated custodian of the documents. A subpoena for the production of documents shall be served no later than 10 business days prior to hearing.

(3) Failure to adhere to the requirements of this subsection may result in a ruling by the presiding officer denying the enforceability of the subpoena.

(c) *Enforcement of subpoena.*

(1) If the subject of a subpoena fails or refuses to comply with the terms of the subpoena, the subpoenaing party may file with the Docket Clerk a request for enforcement.

(2) If the presiding officer determines that the testimony or documentary evidence sought through the subpoena is probative of a material fact or issue relevant to the proceeding, the Secretary of Administration, or their designee, will petition a court of record for enforcement of the subpoena in accordance with 71 Pa.C.S. § 2202(c) (relating to duties of Office of Administration).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 35.142 and 35.145—35.152 (relating to subpoenas; and depositions).

§ 607a.14. Authority of presiding officer.

(a) A presiding officer has the discretionary authority to do the following:

- (1) Determine the burdens of proof and production, if necessary, and determine the order of procedure.
- (2) Regulate the conduct of hearings, including the scheduling, recessing, reconvening and adjournment, and to do acts and take measures necessary or proper for the efficient conduct of hearings.
- (3) Administer oaths and affirmations.
- (4) Receive evidence.
- (5) Rule upon offers of proof and evidentiary objections.
- (6) Hold appropriate conferences before or during hearings and order the parties to submit memoranda in advance of the conference.
- (7) Dispose of procedural requests, including discovery or similar matters.
- (8) Specify the manner in which pleadings are to be submitted to the presiding officer, including the format and contents of these documents.
- (9) Require that the parties, prior to the hearing, submit witness lists or lists of documents, or both, to be presented at the hearing.
- (10) Take other actions as necessary and appropriate to discharge the presiding officer's vested duties, consistent with statutory and regulatory authority.

(b) Subsection (a) supersedes 1 Pa. Code Chapter 35, Subchapter E (relating to presiding officers).

§ 607a.15. Form of hearings.

(a) A hearing before the Office of Administration shall be formal but need not adhere to the technical rules of evidence or procedure. In cases involving issues of fact, oral testimony shall be under oath or affirmation.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.123 and 35.189 (relating to conduct of hearings; and manner of conduct of hearings).

§ 607a.16. Failure to attend hearing.

When a properly notified party fails to appear at a hearing, the hearing may be held without the participation of the non-appearing party and, thereafter, the presiding officer may take appropriate action in due course.

§ 607a.17. Additional hearings and evidence.

(a) After the conclusion of a hearing, but prior to the issuance of a final disposition, the presiding officer may, upon their own motion or upon request of a party, allow one or more additional hearings or the submission of additional relevant evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.128 (relating to additional evidence).

§ 607a.18. Record of proceedings.

(a) A complete record of the proceedings shall be made. A party shall make arrangements to purchase copies of the record directly with the reporting service. The Office of Administration's copy of the record may be reviewed at the Office of Administration's office in Harrisburg. Arrangements to review the record may be made by contacting the Docket Clerk.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.131 and 35.133 (relating to recording of proceedings; and copies of transcripts).

§ 607a.19. Post-hearing brief.

(a) *Generally.* At the close of the proceedings, or as directed by the presiding officer, each party will be given the opportunity to file a legal brief in support of their position.

(b) *Briefing schedule.* The presiding officer will set forth a briefing schedule and the order in which the briefs shall be filed. The briefs shall be filed with the Docket Clerk.

(c) *Content of brief.* A post-hearing brief does not need to conform to a specific format but must include:

(1) A statement of the facts supporting the party's position, with citation to the relevant exhibits and pages of the transcript.

(2) A discussion of the arguments supporting the party's position, including citation to relevant statutes, regulations and case law.

(d) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A party shall include with their brief a certificate of service indicating proper service on the opposing party.

(1) When a brief is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(e) *Supersession.* Subsections (a)—(d) supersede 1 Pa. Code Chapter 35, Subchapter F (relating to briefs).

§ 607a.20. Proposed decision and order.

(a) *Generally.* Upon the closing of the record, the presiding officer shall issue a proposed decision and order, based on the established record, which will be provided to the parties and filed with the Docket Clerk.

(b) *Content.* The proposed decision and order shall contain a statement of (1) findings and conclusions, as well as the reasons or basis therefor, resolving all the material issues of credibility, fact and law presented on the record, and (2) an appropriate order, sanction, relief or denial.

(c) *Finality.* A proposed decision and order shall be deemed a final order of the Office of Administration upon the expiration of 20-calendar days from the date of issuance, unless exceptions are timely and properly filed in accordance with § 607a.21 (relating to exceptions).

(d) *Supersession.* Subsections (a)—(c) supersede 1 Pa. Code §§ 31.13 (relating to issuance of agency orders), 35.201—35.207 (relating to proposed reports generally) and 35.226 (relating to final orders).

§ 607a.21. Exceptions.

(a) *Generally.* A party aggrieved by the proposed decision and order may, within 20 days after the issuance of the proposed decision and order, appeal to the Secretary

of Administration, by filing with the Docket Clerk exceptions to the proposed decision and order, or part of it, in the form of a brief on exceptions.

(b) *Content.*

(1) A brief on exceptions shall, at a minimum:

(i) State the specific issues of procedure, fact or law, or other portion of the proposed decision and order to which each exception is taken.

(ii) Identify the page or part of the proposed decision and order to which each exception is taken.

(iii) Designate by page citation or exhibit number the portions of the record relied upon for each exception.

(2) A brief on exceptions may include specific findings and conclusions proposed in lieu of those to which exception is taken and any proposed additional findings and conclusions.

(c) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief on exceptions on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A party shall include with their brief on exceptions a certificate of service indicating proper service on the opposing party.

(1) When a brief on exceptions is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief on exceptions is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Waiver.* A party's failure to file with the Docket Clerk a brief on exceptions within the time allowed under this section shall constitute a waiver of all objections to the proposed decision and order. Objections to any part of a proposed decision and order that are not included in a party's brief on exceptions shall be deemed waived.

(e) *Supersession.* Subsection (a) supersedes 1 Pa. Code §§ 35.190(a) and 35.211 (relating to appeals to agency head from rulings of presiding officers; and procedure to except to proposed report), subsections (b)—(d) supersede 1 Pa. Code §§ 35.211 and 35.212(a)(1) (relating to procedure to except to proposed report; and content and form of briefs on exceptions) and subsection (d) supersedes 1 Pa. Code 35.213 (relating to effect of failure to except to proposed report).

§ 607a.22. Brief opposing exceptions.

(a) *Generally.* In response to a brief on exceptions, a party may file with the Docket Clerk a brief opposing exceptions within 20 days of date of service of the brief on exceptions.

(b) *Content.* A brief opposing exceptions shall generally follow the same format prescribed in § 607a.21(b) (relating to exceptions) for a brief on exceptions.

(c) *Service.* On the date of filing, a party shall simultaneously serve a copy of the brief opposing exceptions on the opposing party by first class mail, unless the parties mutually agree to accept service by electronic mail. A

party shall include with their brief opposing exceptions a certificate of service indicating proper service on the opposing party.

(1) When a brief opposing exceptions is served by first class mail, the date of mailing shall be deemed the date of service and shall be determined in the manner set forth in § 607a.5(b) (relating to filings with Docket Clerk).

(2) When a brief opposing exceptions is served by electronic mail, the date of receipt recorded by the opposing party's electronic mail system shall be deemed the date of service. A party filing a document by electronic mail is responsible for any delay, disruption, interruption of electronic signals, and readability of the document and accepts the risk that the document may not be properly or timely filed.

(d) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.212(a) and (b) (relating to content and form of briefs on exceptions).

§ 607a.23. Further response or pleading.

After the filing of a brief opposing exceptions, or the expiration of the time period for filing a brief opposing exceptions, whichever occurs first, no further response or pleading by any party will be entertained unless the Secretary of Administration, or their designee, with or without motion, so orders.

§ 607a.24. Final decision and order.

(a) After reviewing the record, including any briefs on exceptions and briefs opposing exceptions, the Secretary of Administration, or their designee, shall issue a final decision and order, which will be provided to the parties and filed with the Docket Clerk. The Secretary of Administration, or their designee, may affirm, modify, or reverse the findings of credibility and fact, the conclusions of law, and the decision of the presiding officer as the secretary deems appropriate on the basis of all of the record evidence.

(b) Subsection (a) supersedes 1 Pa. Code § 35.226(a) (relating to final orders).

Subchapter C. LIST CANCELLATION HEARINGS

- Sec. 607a.25. Generally.
- 607a.26. Notice of list of cancellation hearing.
- 607a.27. Format of hearing.
- 607a.28. Record of proceedings.
- 607a.29. Notice of list cancellation.

§ 607a.25. Generally.

(a) Under 71 Pa.C.S. § 2307(d) (relating to duration of eligible lists), the Office of Administration will hold a hearing before cancelling the whole or a part of an eligible list due to illegality or fraud in connection with the eligible list. The hearings shall be referred to as "list cancellation hearings."

(b) Subsection (a) supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

§ 607a.26. Notice of list cancellation hearing.

(a) The Office of Administration shall provide advance notice of a list cancellation hearing to those eligibles whose names appear on the relevant list. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing. Additionally, the notice will provide instructions on how an eligible can submit to the Office of Administration written objections concerning the list cancellation.

(b) Subsection (a) supersedes 1 Pa. Code § 35.121 (relating to initiation of hearings).

§ 607a.27. Format of hearing.

(a) At the onset of a list cancellation hearing, the presiding officer shall make a statement describing the circumstances necessitating the cancellation of the list, including the findings and conclusions of any investigation undertaken by the Office of Administration. Thereafter, each eligible whose name appears on the relevant list and objected, in writing, to the cancellation will be given an opportunity to state their objections, under oath or affirmation, on the record. After all objections are heard, the presiding officer shall adjourn the hearing, and the record shall be considered closed.

(b) Subsection (a) supersedes 1 Pa. Code § 35.123 (relating to conduct of hearings).

§ 607a.28. Record of proceedings.

(a) A complete record of the proceedings shall be made. Individuals may arrange to purchase copies of the record directly with the reporting service. The Office of Administration's copy of the record may be reviewed at the Office of Administration's office in Harrisburg. Arrangements to review the record may be made by contacting the Docket Clerk.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.131 and 35.133(a) and (b) (relating to recording of proceedings; and copies of transcripts).

§ 607a.29. Notice of list cancellation.

If, after holding a list cancellation hearing, the Office of Administration determines that cancellation of the whole or a part of an eligible list is warranted due to illegality or fraud in connection with the eligible list, the Office of Administration shall provide notice of the cancellation of the list to those eligibles whose names appeared on the relevant list.

[Pa.B. Doc. No. 22-373. Filed for public inspection March 11, 2022, 9:00 a.m.]

Title 34—LABOR AND INDUSTRY

UNEMPLOYMENT COMPENSATION BOARD OF REVIEW

[34 PA. CODE CH. 101]

Appeals from Determinations of Department

In accordance with section 203(d) of the Pennsylvania Unemployment Compensation Law (UC Law) (43 P.S. § 763(d)), and section 506 of The Administrative Code of 1929 (71 P.S. § 186), the Unemployment Compensation Board of Review (Board) is submitting this final-form rulemaking for the purpose of providing additional means for the filing of electronic appeals.

The Board amends §§ 101.2, 101.24, 101.53, 101.82, 101.89, 101.90 and 101.110, as set forth in Annex A.

Statutory Authority

This final-form rulemaking is issued under the authority provided in section 203(d) of the UC Law, which authorizes the Board to adopt, amend or rescind rules of procedure related to appeals. Section 506 of The Administrative Code of 1929 provides authority for the promulgation of rules and regulations for departmental administra-

tive boards, stating: “[T]he several departmental administrative boards and commissions, are hereby empowered to prescribe rules and regulations, not inconsistent with law, for the government of their respective departments, boards, or commissions, . . . [and] the distribution and performance of their business, . . .”

Background

The Board is a departmental administrative board under section 203(c) of the UC Law, which provides that it “. . . shall have all the powers and perform all the duties generally vested in, and imposed upon, departmental administrative boards and commissions. . .” by The Administrative Code of 1929. It is established under sections 202, 207.1 and 503 of The Administrative Code of 1929 (71 P.S. §§ 62, 67.1 and 183). The Board voted to adopt the final-form amendments in Annex A on August 16, 2021.

Under sections 501(e) and 502 of the UC Law (43 P.S. §§ 821(e) and 822) parties may file an appeal from a Department determination or referee decision. Section 101.82 (relating to time for filing appeal from determination of Department) establishes the methods by which an appeal may be filed and how the date of filing is determined for each filing method. The regulation was last amended on September 20, 2003, to expand the methods of filing beyond only personal delivery or delivery by United States mail. Existing § 101.82(b) allows for filing by United States mail, common carrier, fax transmission, electronic transmission other than fax transmission and personal delivery. It also determines the date of filing by each method, including by postage meter mark if there is no United States postmark on a mailed appeal.

The Department has established a new electronic “Pennsylvania UC Claims System” that allows parties to securely file and manage unemployment compensation (UC) claims online. It also enables parties to file appeals electronically by means of the system at no cost. This final-form rulemaking adds filing by means of the Pennsylvania UC Claims System as a method of appeal, while preserving existing methods of filing an appeal for parties that do not have access to the system. This results in additional appeal options for all parties in the UC system and clarifies the way that an appeal filing date is calculated based on the filing method. The additional filing method and the clarity around filing dates will benefit both claimants and employers who participate in the UC system.

These amendments to the regulation are necessary to permit filing appeals by means of this online system, establish the date of filing and allocate the accountability of errors by the electronic system to the Department. The amendment also distinguishes filing by means of e-mail from filing by other methods. The original filing methods remain as alternative options of filing an appeal.

After the Board filed the proposed rulemaking, the General Assembly passed the act of June 30, 2021 (P.L. 173, No. 30) (Act 30). Act 30 amended, inter alia, sections 501 and 502 of the UC Law, to (1) increase the time to appeal a Department determination or referee decision from 15 days to 21 days, and (2) allow the Department to issue a determination or a referee and the Board to issue a decision by mail to the claimant's or employer's last known post office address or by electronic transmission, as designated by the recipient.¹ Given that the Independent Regulatory Review Commission (IRRC) had also

¹ Act 30's amendments to sections 501 and 502 of the UC Law became effective upon the Department's publication of a notice at 51 Pa.B. 4033 (July 24, 2021).

raised the issue of clarity of the deadline of the appeal which required additional amendments, this final-form rulemaking amends §§ 101.24, 101.53, 101.82, 101.89, 101.90 and 101.110 to ensure that these sections both satisfy IRRC's concerns and are consistent with the General Assembly's recent amendments to sections 501 and 502 of the UC Law.

Purpose

This final-form rulemaking amends the existing regulation establishing methods by which a party can file an appeal. It simplifies and clarifies e-mail appeals and establishes appeals filed by means of the Pennsylvania UC Claims System. This final-form rulemaking also amends the existing regulation to increase the time to appeal a Department determination or referee decision from 15 days to 21 days. Finally, it references the Department's ability to issue a determination or a referee and the Board's ability to issue a decision by mail to the claimant's or employer's last known post office address or by electronic transmission, as designated by the party.

Comments

The notice of proposed rulemaking was published at 51 Pa.B. 1318 (March 13, 2021). The Board received no comments from the public or from the Senate Labor and Industry Committee or the House Labor and Industry Committee (Committees). The Board received comments from IRRC, and the Board's responses to IRRC's comments are as follows.

1. § 101.82. *Time for filing appeal from determination of Department.—Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors; Clarity and lack of ambiguity.*

Comment: First, the Preamble explains that a party is "effectively [placed] on notice that if the confirmation is not received, the appeal has not been filed, prompting additional action by the party." What additional actions will a party need to take when confirmation is not received? We ask the Board to explain the implementation procedures when a confirmation e-mail is not received or the System does not generate an acknowledgment. We also ask the Board to explain the reasonableness of omitting additional actions a party will need to take when there are specific timetables for compliance. The Board should consider revising these filing methods to establish standards that are achievable for the regulated community.

Response: The Board amends § 101.82(b)(4) and (4.1) to address IRRC's comment about the additional actions that a party will need to take when confirmation of an appeal is not received. When a party files an e-mail appeal, § 101.82(b)(4) states that the Department will confirm receipt of the appeal by sending the party an auto-reply e-mail. If the party does not receive an auto-reply e-mail, the Department has not successfully received the party's appeal, and the party is responsible to resubmit the appeal. The regulation expressly requires the party to resubmit the appeal prior to the appeal deadline. The party may use any method provided in § 101.82(b) to resubmit the appeal.

When a party files an appeal using the Pennsylvania UC Claims System, § 101.82(b)(4.1) states that, following submission of the appeal, the system will contain (1) a notation showing that the Department successfully received the party's appeal, and (2) information in the Appeals Section that the party's appeal has been filed. If the system does not indicate that the party's appeal has

been filed, the party is responsible to resubmit the appeal prior to the appeal deadline. Again, the party may use any method provided in § 101.82(b) to resubmit the appeal.

In addition to the regulation, the Department's UC web site will provide instructions and suggestions for a party to successfully file an appeal. For e-mail appeals, the majority of filing problems are caused by the party using the incorrect e-mail address to file the appeal, and thus the party does not receive the auto-reply e-mail. After an unsuccessful attempt to file an e-mail appeal, a party should check to make sure that the party used the correct e-mail address. For appeals through the Pennsylvania UC Claims System, the system provides an intuitive filing method with several links to "file appeal" which requires answering a series of questions. If a question is not answered, the user gets an error message and will not be allowed to proceed to the next step until the question is answered. After an unsuccessful attempt to file an appeal through the system, the party should check the Internet connection and make sure that all questions are answered and that the session did not time out. If a party has difficulty filing an appeal using a particular method, the party may use one of the other five methods available under the regulation or may contact the UC Service Center for assistance.

Comment: Second, these paragraphs do not state the deadline for timely filing of an appeal. We ask the Board to improve the clarity of these paragraphs by stating the deadline.

Response: The Board has reviewed the sections pertaining to timely filing of an appeal and has made amendments as follows. The Board amends § 101.82(a) in this final-form rulemaking to implement Act 30's changes to increase the time to appeal a Department determination or referee decision from 15 days to 21 days. Section 101.82(a.1) then states that the Department will mail a copy of the determination to the party's last known post office address or transmit it electronically, as designated by the party. The Board is using the term "party" in this final-form rulemaking, as opposed to "recipient" as provided in Act 30, to make clear that the individual who makes the designation to receive the documentation by mail or electronic transmission is a party. Section 101.82(b) then lists the filing methods for an appeal. Because the deadline is stated in the preceding paragraph, the Board declines to restate the deadline in subsection (b). The Board also improved clarity and consistency with Act 30 in §§ 101.24(c) and 101.90 (relating to reopening of hearing; and further appeal), by increasing the time to appeal from 15 days to 21 days. In addition, the appeal deadline will be provided on the determination or referee decision issued to the parties.

Comment: Third, do the confirmation sent by e-mail and the acknowledgment sent by the System include the date the appeal was deemed filed? We ask the Board to describe the information stated in the confirmation and acknowledgment and clarify these paragraphs to include these details.

Response: Upon successfully filing an e-mail appeal, the party receives an auto-reply e-mail that states the following: "This message serves as confirmation that your e-mail has been received by the Unemployment Compensation Board of Review. Please retain this confirmation for your records." The auto-reply e-mail does not contain the date the appeal was filed, because this auto-reply e-mail is sent in response to all e-mails sent to the Board's appeals e-mail address, not only in response to

appeals. Therefore, the auto-reply e-mail contains the previously stated standard language. However, once the e-mail appeal is received, UC staff upload it into the UC Claims System, and an appeal acknowledgement letter is sent to the party by the system and includes the date the appeal was filed, as provided in § 101.82(c).

Upon successfully submitting the appeal in the Pennsylvania UC Claims System, the system immediately generates notations that “Your appeal has been successfully filed” and “This message confirms the Pennsylvania Department of Labor and Industry (DLI) has received your unemployment compensation appeal.” The notations do not include the date the party filed the appeal, but the party can access that date in the Appeals section of the system. Additionally, after the appeal is processed, an appeal acknowledgement letter is sent to the party by the system and includes the date the appeal was filed, as provided in § 101.82(c). Additionally, the Board submitted copies of the e-mail confirmations and acknowledgements for upper and lower-level appeals and a screenshot of the UC Claims System acknowledgement with the Regulatory Analysis Form.

2. *Regulatory Analysis Form (RAF)*

Comment: We ask the Board to submit screen shots of the portion of the System used to file an appeal in response to RAF Question # 22b.

Response: In addition to the appeal instructions already submitted, the Board submits a copy of the Appeal Process User Guide, which includes screen shots of the appeal process. This guide is posted on the UC web site.

Comment: In addition, responses to RAF Question # 29 state that the “amendments will become effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* on the date of implementation” of the System. We note that the updated System is scheduled to be launched in June 2021. Given that the System will be operational before publication of the final-form regulation, we ask the Board to explain when these amendments will become effective and update the response to RAF Question # 29 and the Preamble accordingly.

Response: The regulations will become effective upon publication in the *Pennsylvania Bulletin*. The RAF has been updated to reflect this change.

3. *Miscellaneous clarity*

Comment: The definition of “personal delivery” in Section 101.2 (relating to definitions) should be updated to cross-reference Section 101.82(b)(1)—(4.1). (Emphasis added.)

Response: This change is made to this final-form rulemaking.

Summary of Final Form Rulemaking

§ 101.2

The Board amends this section to update the citation to § 101.82(b)(1)—(4.1).

§ 101.24

The Board amends § 101.24(b), (c) and (d) to state that a decision is “issued” to a party, as opposed to “mailed” to a party. This amendment is consistent with Act 30 which allows the Department to issue a determination or a referee and the Board to issue a decision by mail to the claimant’s or employer’s last known post office address or by electronic transmission, as designated by the recipient.

To conform with Act 30 and address IRRC’s clarity concerns, the Board amends § 101.24(c) to update the appeal period from 15 days to 21 days.

§ 101.53

Because a referee and the Board are no longer required to only issue decisions by mail, the Board amends § 101.53 (relating to notice) to also reference issuance of decisions by electronic transmission.

§ 101.82

To conform with Act 30, the Board amends § 101.82(a) to update the appeal period from 15 days to 21 days. In addition, the Board amends § 101.82 to include subsection (a.1) to reference that the Department will mail a copy of the determination to the party’s last known post office address or transmit it electronically, as designated by the party.

The Board amends § 101.82(b)(4) to address IRRC’s comment about the additional actions that a party will need to take when confirmation of an e-mail appeal is not received. When a party files an e-mail appeal, § 101.82(b)(4) states that the Department will confirm receipt of the appeal by sending the party an auto-reply e-mail. If the party does not receive an auto-reply e-mail, the Department has not successfully received the party’s appeal, and the party is responsible to resubmit the appeal. The regulation expressly requires the party to resubmit the appeal prior to the appeal deadline. The party may use any method provided in § 101.82(b) to resubmit the appeal.

The Board amends § 101.82(b)(5) and rennumbers it as § 101.82(b)(4.1). The amendments also address IRRC’s comment about the additional actions that a party will need to take when confirmation of appeal through the Pennsylvania UC Claims System is not received. When a party files an appeal using the Pennsylvania UC Claims System, § 101.82(b)(4.1) states that, following submission of the appeal, the system will contain (1) a notation showing that the Department successfully received the party’s appeal, and (2) information in the Appeals Section that the party’s appeal has been filed. If the system does not indicate that the party’s appeal has been filed, the party is responsible to resubmit the appeal prior to the appeal deadline. Again, the party may use any method provided in § 101.82(b) to resubmit the appeal. The amendments also update the terms “delayed” to “untimely” and “redetermined” to “determined” when discussing system or technological failures of the Pennsylvania UC Claims System.

For this final-form rulemaking, the Board returns § 101.82(b)(6) to its original numbering (that is, § 101.82(b)(5)), so no change is necessary to the existing regulation.

The Board amends § 101.82 to include subsection (c) regarding the appeal acknowledgement letter. After a party files an appeal using one of the methods provided in § 101.82(b), the Department or Board will send the party a letter acknowledging that it received the party’s appeal and the date on which the party filed the appeal.

§ 101.89

To conform with Act 30, the Board amends § 101.89 (relating to notice of decision) to reference that a referee is to issue a decision by mail to the claimant’s or employer’s last known post office address or by electronic transmission, as designated by the party, including each party’s counsel or authorized agent. In addition, the

decision date shall be the date the decision is posted on the Pennsylvania UC Claims System and available for viewing.

§ 101.90

To conform with Act 30, the Board amends § 101.90 to update the appeal period from 15 days to 21 days.

§ 101.110

To conform with Act 30, the Board amends § 101.110 (relating to notice of decision of Board) to reference that the Board is to issue a decision by mail to the claimant's or employer's last known post office address or by electronic transmission, as designated by the party, including each party's counsel or authorized agent. Because the Board is no longer required to only issue decisions by mail, the Board clarifies that the decision date is not the mailing date but rather the date the decision is posted on the Pennsylvania UC Claims System and available for viewing.

Affected Persons

This final-form rulemaking will affect all Commonwealth employees who have filed claims for UC benefits, received adverse decisions, and who wish to file appeals, and all employers with former or current employees who have filed claims for UC benefits, received adverse decisions and who wish to file appeals.

Fiscal Impact

This final-form rulemaking does not have any appreciable fiscal impact.

Reporting, Recordkeeping and Paperwork Requirements

This final-form rulemaking will not require the creation of new forms or reporting requirements.

Sunset Date

A sunset date is not appropriate for this final-form rulemaking. However, the Board will continue to monitor its effectiveness.

Effective Date

This final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this final-form rulemaking is Brian Parr, UC Appeals System Administrator, Unemployment Compensation Board of Review, 651 Boas Street, Room 1114, Harrisburg, PA 17121, (717) 787-5122, RA-LIUCBR-REGCOMM@pa.gov.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 1, 2021, the Board submitted a copy of the proposed rulemaking, published at 51 Pa.B. 1318 to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC. The Board did not receive any comments from the Committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on January 25, 2022, the final-form

rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statutes.

(4) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 1318.

Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Board in 34 Pa. Code Chapter 101 are amended by amending §§ 101.2, 101.24, 101.53, 101.82, 101.89, 101.90 and 101.110 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as to form and legality, as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC and the Committees as required by law.

(d) The Chairman of the Department shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This order shall become effective upon publication in the *Pennsylvania Bulletin*.

RICHARD W. BLOOMINGDALE,
Chairperson

(*Editor's Note:* See 52 Pa.B. 1079 (February 12, 2022) for IRRC's approval order.)

Fiscal Note: Fiscal Note 12-112 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VI. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW

CHAPTER 101. GENERAL REQUIREMENTS

Subchapter A. GENERAL PROVISIONS

§ 101.2. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Party—The Department, the claimant, the last employer of the claimant and another employer affected by the appeal proceedings.

Pennsylvania UC Claims System—The Department's information technology system of record for the filing, management and processing of unemployment compensation claims and appeals.

Personal delivery—Delivery by or on behalf of a party that is not enumerated in § 101.82(b)(1)—(4.1) (relating to time for filing appeal from determination of Department) where a person personally files the appeal at a Board office or workforce investment office.

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Subchapter B. PROVISIONS GOVERNING HEARINGS BEFORE THE DEPARTMENT OR REFEREE

HEARINGS

§ 101.24. Reopening of hearing.

* * * * *

(b) A request for reopening which is received by the referee before his decision has been issued to the parties shall be decided by the referee before whom the case is pending. If the request for reopening is allowed, a new hearing shall be scheduled with written notice thereof to each of the parties. At a reopened hearing, the opposing party shall be given the opportunity to object to the reopening if he so desires. If the request for reopening is denied, the referee shall append to the record the request, supporting material and the ruling on the request, so that it shall be subject to review on further appeal.

(c) A request for reopening the hearing which is not received before the decision was issued, but is received or postmarked on or before the 21st day after the decision of the referee was issued to the parties, shall constitute a request for further appeal to the Board and a reopening of the hearing, and the Board will rule upon the request. If the request for reopening is allowed, the case will be remanded and a new hearing scheduled, with written notice thereof to each of the parties. At a reopened hearing, the opposing party shall be given the opportunity to object to the reopening if he so desires. If the request to have the hearing reopened is denied, the Board will append to the record the request, supporting material and the ruling on the request, so that it shall be subject to review in connection with any further appeal to the Commonwealth Court.

(d) If a request for reopening is not received before the decision was issued but is received or postmarked within 15 days after the decision of the Board was issued to the parties, it will be accepted as a request for reconsideration and a reopening of the hearing and the Board will rule upon the request. If the request for reopening is allowed, the Board will vacate its decision and remand the case for further hearing, with written notice thereof to each of the parties. At a reopened hearing, the opposing party shall be given the opportunity to object to the reopening if he so desires. If the request to have the hearing reopened is denied, the Board will append to the record the request, supporting material, and the ruling on the request, so that it shall be subject to review in connection with any further appeal to the Commonwealth Court.

PROCEDURE

§ 101.53. Notice.

Mailing of notices, orders or decisions of a referee, or of the Board to the parties at their last known addresses, or issuance by electronic transmission when permitted by law and this chapter, as furnished by the parties to the

referee, the Board or the Department, shall constitute notice of the matters therein contained.

Subchapter C. APPEALS FROM DETERMINATIONS OF DEPARTMENT

§ 101.82. Time for filing appeal from determination of Department.

(a) A party seeking to appeal a Department determination shall file an appeal in the form and manner specified in § 101.81 (relating to filing of appeal from determination of Department) and this section no later than 21 days after the "determination date" on the determination.

(a.1) The Department will mail a copy of the determination to the party's last known post office address or transmit it electronically, as designated by the party.

(b) A party may file a written appeal by any of the following methods:

* * * * *

(4) *Electronic mail (e-mail).*

(i) The date of filing is the receipt date recorded by the Department appeal office or the Board's e-mail system, if the e-mail message is in a form capable of being processed by that system.

(ii) The Department will confirm receipt of the party's e-mail appeal by sending the party an auto-reply e-mail. If the party does not receive an auto-reply e-mail, the Department has not successfully received the party's appeal, and the party may resubmit the appeal using any method provided in this subsection. Failure to resubmit the appeal prior to the appeal deadline will result in an untimely appeal.

(iii) A party filing by e-mail shall comply with instructions concerning format. A party filing an appeal by e-mail is responsible for using the proper format and for delay, disruption, interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

(4.1) *Pennsylvania UC Claims System.*

(i) The date of filing is the receipt date recorded by the Pennsylvania UC Claims System. Following submission of the appeal, a notation will appear in the Pennsylvania UC Claims System to show that the Department successfully received the party's appeal. Following submission of the appeal, the appeals section of the Pennsylvania UC Claims System will also show that the party's appeal has been filed. If the Pennsylvania UC Claims System does not indicate that the party's appeal has been filed, the party may resubmit the appeal using any method provided in this subsection. Failure to resubmit the appeal prior to the appeal deadline will result in an untimely appeal.

(ii) If the filing is untimely as a result of system or technological failure of the Pennsylvania UC Claims System, the date of filing will be redetermined through the adjudicatory process. The Board will make available to the Referee relevant Department records regarding system outages where a party alleges a late filing due to system or technological failure.

(5) *Personal delivery to a workforce investment office or the Board.* The filing date will be the date the appeal was personally delivered to the workforce investment office or the Board during its normal business hours.

(c) *Appeal acknowledgement letter.* After a party files an appeal using one of the methods provided in subsection (b), the Department or Board will send the party a

letter acknowledging that it received the party’s appeal and the date on which the party filed the appeal.

§ 101.89. Notice of decision.

A copy of the decision of the tribunal shall be mailed to each party’s last known post office address or transmitted electronically, as designated by the party, including each party’s counsel or authorized agent. The decision date shall be the date the decision is posted on the Pennsylvania UC Claims System and available for viewing.

§ 101.90. Further appeal.

(a) Within 21 days after the decision of a referee, the claimant, the Department or an affected employer may file an application for a further appeal with the Board.

* * * * *

§ 101.110. Notice of decision of Board.

A copy of the decision of the Board shall be mailed to each party’s last known post office address or transmitted electronically, as designated by the party, including each party’s counsel or authorized agent. The decision date shall be the date the decision is posted on the Pennsylvania UC Claims System and available for viewing.

[Pa.B. Doc. No. 22-374. Filed for public inspection March 11, 2022, 9:00 a.m.]

**Title 49—PROFESSIONAL AND
VOCATIONAL STANDARDS
STATE BOARD OF BARBER EXAMINERS
[49 PA. CODE CH. 3]
Fees**

The State Board of Barber Examiners (Board) and the Acting Commissioner of the Bureau of Professional and Occupational Affairs (Commissioner) amend Chapter 3 (relating to State Board of Barber Examiners) by amending § 3.103 (relating to fees) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The graduated increases for application fees will be implemented on a 2-fiscal-year basis—on July 1, 2022, and July 1, 2024.

The increased biennial renewal fees will be implemented beginning with the May 1, 2022—April 30, 2024, biennial renewal period. Thereafter, the subsequent graduated increases will be implemented with the biennial renewal for May 1, 2024—April 30, 2026.

Statutory Authority

Under section 14(b) of the act of June 19, 1931 (P.L. 589, No. 202) (63 P.S. § 564(b)), referred to as the Barbers’ License Law (act), all fees required under the act shall be fixed by the Board by regulation and shall be subject to the Regulatory Review Act (71 P.S. §§ 745.1—745.14). Section 14(b) of the act further provides that “[i]f the revenues raised by fees, fines and civil penalties imposed pursuant to [the] act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.” Section 15-A.4(b) of the act (63 P.S. § 566.4(b)), states,

“[t]he board shall have power to make such other rules and regulations. . .as shall be deemed necessary to carry out the provisions of this act.”

Regarding barber, barber shop manager and barber teacher application fees, section 3(a), (c) and (d) of the act (63 P.S. § 553(a), (c) and (d)), require applicants to submit an application in a form as the Board prescribes and also states in pertinent part, “. . .[a]t the time of filing the application and accompanying notarized statements, the applicant shall pay to the department an examination fee to be determined by regulation. . .” Regarding barber by reciprocity application fees, section 4(a) of the act (63 P.S. § 554(a)), states, “[a] barber currently licensed in another state with substantially the same licensure requirements as Pennsylvania shall be granted a Pennsylvania barber license without examination upon payment of the fee.” Regarding barber shop application fees, section 13(b) of the act (63 P.S. § 563(b)), states, “[a] licensed barber over sixty-five years of age may operate a one chair barber shop located in a senior citizen center which is eligible for funding from the State Lottery Fund. . . Shops licensed under this subsection shall be subject to the same fees imposed pursuant to this act for the issuance and biennial renewal of a barber shop license.” Regarding barber school application fees, section 12(a)(1) of the act (63 P.S. § 562(a)(1)), states in pertinent part, “[b]oth the fee for registration of each barber school and the annual renewal fee shall be determined by regulation.” Under section 11 of the act (63 P.S. § 561), “[t]he department shall keep a record of the names and addresses of the barber shops to which, and the names of all persons to whom, licenses are issued under this act. The department shall furnish copies of such records to the public upon request and may establish a reasonable fee for such copies which shall not exceed the cost of reproduction.” Regarding biennial renewal fees, section 8(a) of the act (63 P.S. § 558(a)), states, “[t]he license shall be renewed on or before the thirtieth day of April, 1962, for a period of two years and biennially thereafter, and holders of said licenses shall pay to the department a fee to be determined by regulation for renewal.”

The Commissioner is appointed by the Governor and has a number of powers and duties. Specifically, under section 810 of The Administrative Code of 1929 (71 P.S. § 279.1(a)(7)), the Commissioner has the power and duty, “[u]nless otherwise provided by law, to fix the fees to be charged by the several professional and occupational examining boards within the department[.]”

Background and Purpose of Amendment

Under section 14 of the act, the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. The act further provides that the Board shall increase fees when expenditures outpace revenue. The majority of general operating expenses of the Board are borne by the licensee population through revenue generated by the biennial renewal of licenses. A small percentage of its revenue comes from application fees, fines and civil penalties. Board expenses are the result of direct charges, timesheet-based charges, and licensee-based charges. On an annual basis, the Board reviews its fiscal status and receives an annual report from the Department of State’s Bureau of Finance and Operations (BFO) regarding the Board’s income and expenses.

At a public meeting on April 15, 2019, the BFO and the Board reviewed the Board’s application fees and determined that the existing fee schedule did not reflect the costs of the services provided by the Board. The BFO

presented to the Board its annual report reflecting revenues for fiscal year (FY) 2016-2017, FY 2017-2018 and FY 2018-2019. The BFO explained that there was a negative fund balance because Board expenses were exceeding revenue while the licensee population was declining. The Board, with the encouragement and support of the Bureau of Professional and Occupational Affairs (Bureau), determined that a re-evaluation of all application fees was appropriate, especially given that the Board had not updated its fees since 2014.

During the August 19, 2019, regularly scheduled Board meeting, the BFO presented to the Board actual revenues for FY 2017-2018 and reviewed projected revenues from FY 2018-2019 through FY 2024-2025. The BFO discussed projections for graduated increases of application and biennial renewal fees through FY 2024-2025 to ensure positive fund balance. The sporadic increases and decreases in the licensee population were taken into account when projecting incremental fee increases. The BFO recommended that the Board consider an increase in biennial renewal fees and application fees for FY 2021-2022.

During the January 27, 2020, regularly scheduled Board meeting, the BFO presented its annual report of the Board's income and expenses with updated data. The current BFO fiscal report shows that in fiscal year (FY) 2018-2019, the Board incurred \$656,544.64 in expenditures and generated only \$159,127.33 in revenue, with a remaining deficit balance of (\$335,744). In FY 2019-2020, the Board incurred \$783,291.30 in expenditures and generated \$939,529.40 in revenue, with a remaining deficit balance of (\$179,505.90). For FY 2020-2021, it was estimated that the Board would incur approximately \$800,000 in expenditures and generate only \$400,000 in revenue, with a remaining deficit balance of (\$579,595.90). For FYs 2021-2022 and 2022-2023, the Board is projected to incur \$1.497 million in expenditures and generate \$1.404 million in revenue, with a deficit balance of (\$180,505.90) at the end of FY 2021-2022 and a deficit balance of (\$672,505.90) in FY 2022-2023. Based upon the information presented by the BFO, the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of the act were not sufficient to meet expenditures over a 2-year period. The Board voted to adopt the proposed graduated fee increases for application and biennial renewal fees contained in the BFO's report. An exposure draft was released to stakeholders and interested parties to solicit written comments and no comments were received. Thereafter, the proposed rulemaking was published at 51 Pa.B. 3342 (June 19, 2021) for review and comment. Publication was followed by a 30-day public comment period during which the Board received no public comments. In addition, the Chairpersons of House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments. The Independent Regulatory Review Commission (IRRC) submitted comments as detailed as follows.

Summary of Comments and the Board and Commissioner's Response

In preparing this final-form rulemaking, the Board considered all comments submitted by IRRC.

First, IRRC asked the Board to explain why increasing the initial application fees for barbers, barber shop managers and barber teachers from \$10 to \$30 is reasonable. Initial application fees for barbers, barber shop managers and barber teachers were set at \$10 by Board

regulation in March of 2001. Boards and commissions under the Bureau design initial application fees to cover the cost to process applications.

Application fees are based on time study reports created within the Bureau that lay out each step in processing an application and the amount of time it takes to complete each step. That amount of time per application is multiplied by the total number of anticipated application requests for 1 year to get the total number of minutes per year necessary to process applications. (The number of minutes per year is multiplied by two since the increases are biennial). Initial application fees are based on a formula that multiplies the number of minutes to perform the processing function by the pay rate for the classification of the personnel performing the function and adding a proportionate share of administrative overhead. While application fees only account for approximately 5% of the Board's revenue, the Board, with the encouragement and support of the Bureau determined that a re-evaluation of all application fees was appropriate. The Board evaluated all of its application fees and found that fees charged did not cover the costs to process applications.

As reflected in the fee report forms, Board counsel has a significant role in the initial application process. Initial barber, barber shop manager and barber teacher applications that contain a criminal conviction history must be reviewed and approved by Board counsel. Depending on the applicant's criminal conviction, Board counsel may have to perform additional functions as part of the application process, such as drafting probation offer letters, final orders for a probationary or restricted license, and press releases. The cost to review an application is determined by multiplying the number of minutes to perform the processing function by the pay rate for Board counsel and adding a proportionate share of administrative overhead. As a result, the fee report forms show that it costs \$30 to review and process barber, barber shop manager and barber teacher applications. In comparing the Board's fees to other states, the \$30 application fee for barbers and barber teachers is significantly lower than most of the initial application fees of the 12 surrounding states in the Northeast Region (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont and West Virginia). Initial barber application fees range from a low of \$20 in Maine to a high of \$128 in Delaware. The barber application fees from the surrounding states include: \$20 initial licensure fee in Maine, \$25 application fee in Rhode Island, \$30 application fee in New Hampshire, \$35 initial licensure fee in West Virginia, \$40 initial licensure fee in New York, \$50 initial licensure fee in Maryland, \$50 application fee in New Jersey (plus an initial licensure fee of \$90 during the first year of a renewal cycle (even year), or \$45 during the second year of a renewal cycle (odd year), \$66 application fee in Massachusetts, \$90 examination fee in Ohio (plus a \$30 initial licensure fee), \$100 application fee in Connecticut, \$110 application fee in Vermont and \$128 application fee in Delaware.

Maine, Rhode Island and New Hampshire are the only states that have initial barber application fees that are at or below \$30. Since none of the surrounding states have a barber shop manager license category, a comparison of fees could not be made for this fee. Initial barber teacher application fees range from a low of \$20 in Maine to a high of \$205 in Delaware. The barber teacher application fees from the surrounding states include: \$20 initial licensure fee in Maine, \$25 application fee in Rhode

Island, \$30 application fee in New Hampshire, \$50 initial licensure fee in West Virginia, \$50 application fee in New Jersey (plus an initial licensure fee of \$90 during the first year of a renewal cycle (even year), or \$45 during the second year of a renewal cycle (odd year)), \$170 application fee in Massachusetts, \$185 initial licensure and examination fee in Ohio and \$205 application fee in Delaware. Maine, Rhode Island and New Hampshire are the only states that have initial barber teacher application fees that are at or below \$30.

While the Board and the Commissioner recognize that the increase in fees for barbers, barber shop managers and barber teachers, represent a significant increase of 200%, that increase is only a \$20 increase for initial applications. The Board does not believe the \$20 increase will deter applicants from applying for licensure in this Commonwealth or put this Commonwealth at a competitive disadvantage. Increasing initial application fees to cover the cost of processing those applications will lessen the burden on existing licensees regarding biennial fee increases. In addition, adjusting the initial application fees to cover the costs of applications is a fair and equitable approach because existing licensees will not have to bear the cost of initial applicant costs through biennial licensure fees.

Second, IRRC asked the Board to explain how the graduated increases were determined for biennial renewal fees which are to take effect on May 1, 2022, and May 1, 2024, as well as application increases which are to take effect on July 1, 2024. IRRC also asked the Board to explain why these increases are appropriate and reasonable.

July 1, 2024, application increases

The 2024 application fee increases are calculated using a 9.5% increase, rounded up or down. The 9.5% increase is based upon pay increases for staff that process applications. Staff pay increases are 2.5% in July and 2.25% in January, or 4.75% annually (9.5% biennially). The Board and Acting Commissioner base the increase on pay increases because the application fee is almost entirely dependent upon personnel-related costs.

Even with the 9.5% increase in 2024, the application fees are comparable to other surrounding states. The application fees remain lower than or equal to many of the initial application fees of the surrounding states in the Northeast Region. As stated earlier, initial barber application fees range from a low of \$20 in Maine to a high of \$128 in Delaware. After increasing fees from \$30 to \$33 for initial barber applications, there would only be three of the 12 surrounding states (Maine, Rhode Island, New Hampshire) that would have fees at or below \$33 for those same applications. No other state that surrounds Pennsylvania has a barber shop manager licensure category; therefore, the initial application fee for this category could not be compared to other states. Initial barber teacher applications range from a low of \$20 in Maine to \$205 in Delaware. After increasing fees from \$30 to \$33 for initial barber teacher applications, there would only be three states (Maine, Rhode Island, New Hampshire) that would have fees at or below \$33 for the same application.

Initial barber shop application fees range from a low of \$20 in Maine to a high of \$350 in New Jersey. The barber shop application fees from the surrounding states include: \$20 initial licensure fee in Maine, \$40 initial licensure fee in West Virginia (plus a \$50 inspection fee), \$60 initial licensure fee in New York, \$60 initial licensure fee in New

Hampshire, \$110 initial licensure fee in Ohio, \$128 application fee in Delaware, \$130 application fee in Massachusetts, \$170 application fee in Rhode Island, \$200 initial licensure fee in Maryland, \$330 application fee in Vermont, and \$350 application fee for New Jersey during the first year of a renewal cycle (even year), or \$250 during the second year of a renewal cycle (odd year). After increasing fees from \$145 to \$160 for initial barber shop applications, there would be four states (Rhode Island, Maryland, Vermont and New Jersey) with higher fees for the same application, ranging from \$170—\$350.

Initial barber school application fees range from a low of \$50 for initial inspection in West Virginia to a high of \$1,750 for initial inspection and licensure in Ohio. The barber school application fees from the surrounding states include: \$50 initial inspection fee in West Virginia, \$128 application fee in Delaware, \$150 application fee in New Hampshire, \$250 application fee in New Jersey (plus a \$300 initial licensure fee during the first year of a renewal cycle (even year), or \$150 during the second year of a renewal cycle (odd year)), \$330 application fee in Vermont, \$450 application fee in Massachusetts, \$500 initial licensure fee in Maine and \$1,750 initial licensure and inspection fee in Ohio. After increasing fees from \$170 to \$185 for initial barber school applications, there would be five states (Massachusetts, New Jersey, Vermont, Maine, Ohio) with higher fees for the same application, ranging from \$225—\$1,750.

“Licensure of barber by reciprocity” applications range from a low of \$25 in Rhode Island to a high of \$300 in Ohio. The “licensure of barber by reciprocity” application fees from the surrounding states include: \$25 in Rhode Island, \$40 in New York, \$41 in Maine, \$50 in Vermont, \$100 in Connecticut, \$100 in New Hampshire, \$100 in New Jersey, \$100 in West Virginia, \$128 in Delaware, \$225 in Massachusetts and \$300 in Ohio. After increasing fees from \$60 to \$65 for “licensure of barber by reciprocity” applications, there would be seven states (Connecticut, New Hampshire, New Jersey, West Virginia, Delaware, Massachusetts, Ohio) with higher fees for the same application; ranging from \$100—\$300.

No other state that surrounds Pennsylvania has a “change in barber shop—inspection required” application category; therefore, the initial application fee for this category could not be compared to other states. There are two states that have a “change in barber shop—no inspection required” application; the fee is \$27 in Massachusetts and \$50 in New Jersey. After Pennsylvania changes its fee from \$45 to \$50 for the “change in barber shop—no inspection required” application, it will be the same as New Jersey’s fee. No other state that surrounds Pennsylvania has a “reinspection after first fail—new or change (shop or school)” application category; therefore, the initial application fee for this category could not be compared to other states.

“Verify license/permit/registration” applications range from a low of \$10 in New York to a high of \$50 in Rhode Island and Vermont. The “verify license/permit/registration” application fees from the surrounding states include: \$10 in New York, \$15 in Massachusetts, \$20 in New Hampshire, \$25 in New Jersey, \$25 in Maryland, \$35 in Delaware, \$35 in West Virginia, \$40 in Ohio, \$50 in Rhode Island and \$50 in Vermont. After increasing fees from \$20 to \$22 for “verify license/permit/registration” applications, there would be seven states (New Jersey, Maryland, Delaware, West Virginia, Ohio, Rhode Island, Vermont) with higher fees for the same application; ranging from \$25—\$50.

There are two other states that have a “certification of student status or student training hours” application; the fee is \$40 in Ohio and \$45 in Delaware. After Pennsylvania changes its fee from \$35 to \$40 for the “certification of student status or student training hours” application, it will be the same as Ohio’s fee.

The Board and the Commissioner submit that the 2024 graduated application fee increases are appropriate and reasonable because the increased fees are projected to cover the cost to process the applications for that biennial period. The Board carefully considered the best way to implement an increase in application fees and determined that a graduated fee schedule is favorable because it aligns the actual cost to process applications in each biennial period with the fee for that period. While the Board is reluctant to put additional fiscal burdens on its licensees, the increased fees are not significant when looking at the total increase in dollars. Moreover, even with the implementation of the 2024 graduated application fee increase, the Board’s fees are still comparable with other states.

Biennial increases

In recommending the biennial increases to the Board, the BFO considered the Board’s revenues and expenses while using past histories of prior fee increases as well as changes in the licensee population as a guide in determining the graduated fee increases. The BFO also considered and incorporated the projected increases in initial application fees. Significantly, the Board has not increased its fees since 2014. These increases are appropriate because they are necessary to ensure revenues meet or exceed expenses, as required by the act. The biennial fee increases are reasonable because they are made on a graduated basis to reduce the impact to the licensee population.

For the Board, expenses are exceeding revenues by approximately \$244,000 over the last biennial renewal period. While the Board can continue to do business through its reliance on dollars from the Professional Licensure Augmentation Account (PLAA), where 26 licensing boards under the Department of State deposit revenue, PLAA funds used by the Board must be repaid. To repay the PLAA and move away from a negative fund balance, biennial renewal fees must be increased initially by approximately 30%. With this increase, the Board will not be out of the red within the May 1, 2022, through April 30, 2024, biennial renewal period. An approximate additional 20% increase during the subsequent renewal period starting May 1, 2024, would bring the board to an anticipated restricted account balance of just under \$1,500 at the end of the biennial cycle.

The need for increased revenue and biennial renewal fees is necessary because this Board is seeing a steady increase in expenses. Some of the increase in expenses is simply due to cost of living increases over time. One of the biggest factors impacting Board revenue, however, is the decrease in the licensee population over the last few years. Regardless of the increase in expenses, the decrease in licensees to cover those costs is becoming greater. With a lower licensee population comes a decrease in biennial renewal revenue, which makes up approximately 86% of this Board’s income.

Additionally, over the last few fiscal years, the Board has had some sizable increases to expenses for a variety of reasons. One of the largest financial impacts for the Board was the incorporation of The Pennsylvania Justice Network (JNET), due in part to the enactment of act of

February 15, 2018 (P.L. 14, No. 6) (Act 6 of 2018), which requires mandatory self-reporting of criminal convictions. The Board uses JNET to identify criminal convictions of licensees and to verify compliance with Act 6 of 2018’s mandatory reporting requirement. There was a sizable increase in the number of complaints being processed and opened for prosecution. The additional complaints resulted in increased expenses due to higher prosecutions, investigations, expert witness usage, and hearings. Since incorporation of JNET, expenses have been relatively steady in all of these cost categories. More than likely, this new level of legal workload will be part of the financial picture for the Board going forward.

In addition to the legal expense increases, all 29 boards and commissions under the Bureau have undergone an information technology transformation upgrade with the incorporation of the Pennsylvania Licensing System (PALS). Expenses associated with PALS, including the initial build as well as ongoing maintenance, are proportionately spread across all entities based on licensee population to effectively share costs per licensee. While the initial build is in the past, it has contributed to higher administrative expenses for all boards during the last few fiscal years. Due to PALS’ high functioning database with enhanced features over the Bureau’s previous License 2000 platform, maintenance for this system requires a larger financial commitment from all boards and commissions than the previous system.

In its comment, IRRC asked the Board to include in the response to question # 23 of the Regulatory Analysis Form (RAF), an estimate of the cost to implement this regulation or to explain why it is not possible to do so. To implement this regulation, paper and online applications will have to be revised to reflect the new fees. Paper documents will be revised by Board administrative staff, who will change the fee amounts on an electronic copy of the paper document; this process will take about 15 minutes of staff time to complete the revisions per renewal year to revise the documents as well as 15 minutes for the BPOA Business Licensing Division Chief, BPOA Deputy Commissioner and Board Counsel to each review and sign-off on the revisions. Online applications will be revised in PALS by Board administrative staff; this process will take about 1 hour of staff time to complete the revisions per renewal year as well as 15 minutes for the BPOA Business Licensing Division Chief, BPOA Deputy Commissioner and Board Counsel to each review and sign-off on the revisions. The total estimated cost to revise paper and online documents is \$254; \$127 in FY 2022-2023 and \$127 in FY 2024-2025.

Finally, IRRC asked the Board to include fee report forms for processing biennial renewal applications for barbers, barber shop managers, barber teachers, barber shops and barber schools. The act requires the Board to set fees by regulation so that revenues meet or exceed expenditures. Initial application fees are determined by the cost to review and process an application; the processing cost is documented on fee report forms. Fees for biennial license renewal, however, are not determined in the same way as fees for initial application. Renewing a license is an online process through PALS where a licensee answers a number of questions and pays the appropriate fee. Generally, PALS automatically renews the license.

Unlike initial application fees, biennial renewal fees are designed to cover the operational costs of the Board, including salaries for administrative and legal staff as well as the cost for investigation of complaints, enforce-

ment of statutory and regulatory requirements, hearing expenses and board member expenses. The majority of the Board's operational costs are personnel-related, and much of those costs are not within the Board's control. Staff are generally employees of the Commonwealth, most of whom are civil service personnel; many are in union positions. For these employees, the Board is bound by the negotiated contract. Personnel costs associated with investigation and enforcement depend largely on the number of complaints received that need to be investigated, and the number of those matters that result in disciplinary action. The Board has no control over the number of complaints that are filed against licensees and unlicensed individuals, nor may they control which matters are, or are not, prosecuted. The biennial fees are calculated to ensure that the Board can meet or exceed its operational costs. Since biennial renewal fees are based on operating expenses and do not reflect the cost to process a renewal application, fee report forms are not utilized for biennial renewals fees.

Fiscal Impact and Paperwork Requirements

The amendments increase application and biennial renewal fees on a graduated basis. Applicants, licensees and registrants will be required to comply with the regulation. The fees may be paid by applicants, licensees or registrants or may be paid by their employers, should their employers choose to pay these fees. This final-form rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions of the Commonwealth.

Approximately 1,120 applicants will be impacted annually by the increased application fees. Specifically, the number of applicants affected are as follows: 434 barbers, 100 barber shop managers, 14 barber teachers, 235 barber shops, 5 barber schools, 165 licensure of barber by reciprocity, 10 barber shop change (with inspection), 40 barber shop change (without inspection), 5 reinspection after first fail, 100 verification of license/permit/registration and 12 certification of barber school hours.

Based upon the graduated application fee increases, the total economic impact per fiscal year is as follows:

FY 2022-2023:	\$21,095
FY 2023-2024:	\$21,095
FY 2024-2025:	\$6,664
<u>Total:</u>	<u>\$48,854</u>

There are approximately 8,065 individuals who possess current licenses and registrations issued by the Board who will be required to pay more to renew their licenses and registrations. Factoring in a possible reduction of 1,059 licensees, the remaining 7,006 currently licensed individuals will be affected as follows:

Based upon the above biennial renewal fee increases, the economic impact is as follows:

FY 2021-2022 and FY 2022-2023:	\$357,960
FY 2023-2024 and FY 2024-2025:	\$270,617
<u>Total:</u>	<u>\$628,577</u>

Thus, the total economic impact to applicants, licensees, registrants or employers, if employers choose to pay application or licensing fees, is \$677,431. This amount reflects the economic impact that will occur between FY 2021-2022 and FY 2024-2025.

This final-form rulemaking will require the Board to revise its printed and online application forms, which is a nominal cost. The amendments will not create additional paperwork for the regulated community or for the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned. Additionally, the BFO provides the Board with an annual report detailing the Board's financial condition. In this way, the Board continuously monitors the adequacy of its fee schedule.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 1, 2021, the Board and the Commissioner submitted a notice of proposed rulemaking, published at 51 Pa.B. 3342, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment. Publication was followed by a 30-day public comment period during which the Board received no public comments.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. The HPLC and SCP/PLC did not submit comments. In preparing the final-form rulemaking, the Board and the Commissioner have considered all comments from IRRC.

On December 14, 2021, the Board and the Commissioner delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on January 25, 2022, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 26, 2022, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Matthew Eaton, Division Chief, Bureau of Professional and Occupational Affairs, State Board of Barber Examiners, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-BARBER@pa.gov.

Findings

The State Board of Barber Examiners and the Acting Commissioner find that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose for the proposed regulation published at 51 Pa.B. 3342.

(4) These amendments to the regulations of the State Board of Barber Examiners are necessary and appropriate for the regulation of the practice of barbering in the Commonwealth.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the State Board of Barber Examiners at 49 Pa. Code Chapter 3 are amended by amending § 3.103 to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form regulation to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

DOMINIC L. MUNIZ,
Chairperson, State Board of Barber Examiners
ARION R. CLAGGETT,
Acting Commissioner, Bureau of Professional and Occupational Affairs

(Editor's Note: See 52 Pa.B. 1079 (February 12, 2022), for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4211 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 3. STATE BOARD OF BARBER EXAMINERS

FEES

§ 3.103. Fees.

(a) An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

			<i>Effective July 1, 2022</i>	<i>Effective July 1, 2024</i>
(1) <i>Initial Application for Licensure</i>				
	Barber	\$10	\$30	\$33
	Barber Shop Manager	\$10	\$30	\$33
	Barber Teacher	\$10	\$30	\$33
	Barber Shop	\$110	\$145	\$160
	Barber School	\$140	\$170	\$185
(2) <i>Miscellaneous</i>				
	Licensure of barber by reciprocity	\$55	\$60	\$65
	Change in Barber Shop—inspection required	\$90	\$115	\$125
	Change in Barber Shop—no inspection required	\$40	\$45	\$50
	Reinspection after first fail—new or change (shop or school)	\$90	\$75	\$82
	Verify license/permit/registration	\$15	\$20	\$22
	Certification of student status or student training hours	\$30	\$35	\$40

(b) An applicant for biennial renewal of a license, certificate or registration shall pay the following fees:

			<i>May 1, 2022— April 30, 2024 Biennial Renewal Fee</i>	<i>May 1, 2024— April 30, 2026 Biennial Renewal Fee and thereafter</i>
	Barber	\$109	\$160	\$184
	Barber Shop Manager	\$161	\$215	\$260
	Barber Teacher	\$174	\$225	\$270

			May 1, 2022— April 30, 2024 Biennial Renewal Fee	May 1, 2024— April 30, 2026 Biennial Renewal Fee and thereafter
	Barber Shop	\$187	\$235	\$287
	Barber School	\$291	\$340	\$391

[Pa.B. Doc. No. 22-375. Filed for public inspection March 11, 2022, 9:00 a.m.]

Title 58—RECREATION

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 623b, 627b AND 629b]

**Craps and Mini-Craps Side Wagers and Variations;
Minibaccarat Side Wagers and Variations;
Midibaccarat Side Wagers and Variations; Tem-
porary Regulations**

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and the specific authority in 4 Pa.C.S. § 13A02(1) and (2) (relating to regulatory authority) and § 13A03 (relating to temporary table game regulations), adopts the temporary regulations in Chapters 623b, 627b and 629b (relating to Craps and Mini-Craps side wagers and variations—temporary regulations; Minibaccarat side wagers and variations—temporary regulations; and Midibaccarat side wagers and variations—temporary regulations) to read as set forth in Annex A. The Board’s temporary regulations are added to Part VII (relating to Gaming Control Board) as part of Subpart K (relating to table games).

Purpose of this Temporary Rulemaking

This temporary rulemaking adds a new side wager to the game of Craps and adds provisions for the offering of a mystery bonus on the Royal 9 Progressive wagers in Minibaccarat and Midibaccarat.

Explanation

The first side wager included in this temporary rulemaking is the Hot Shooter Jackpot wager for the table game Craps. This wager must be placed by a player prior to the come out roll starting a round of Craps. If the shooter of the dice rolls eight or more times before a seven out roll occurs, the Hot Shooter Jackpot wager shall win, and payouts shall be determined on the amount of rolls that take place before the seven out roll.

The Board is also adding a mystery bonus payout to two existing progressive wagers in two games, Minibaccarat and Midibaccarat. These mystery bonuses have must-hit-by amounts, where if a player’s contribution to the mystery jackpot puts it over the randomly generated must-hit-by amount, that player wins the jackpot.

Fiscal Impact

Commonwealth. The Board does not expect that this temporary rulemaking will have a fiscal impact on the Board or other Commonwealth agencies. Updates to Rules Submission forms and internal control procedures will be reviewed by existing Board staff.

Political subdivisions. This temporary rulemaking will not have fiscal impact on political subdivisions of this Commonwealth.

Private sector. This temporary rulemaking will provide certificate holders with an additional table game option. If a certificate holder decides to offer any of the side wagers or variations, or both—temporary regulations within the licensed facility, the certificate holder will be required to train their dealers on the rules of play and purchase new equipment—specifically table layouts corresponding to the game and wagers offered. Costs incurred to train employees or purchase/lease equipment should be offset by the proceeds of gaming.

General public.

This temporary rulemaking will not have fiscal impact on the general public.

Paperwork Requirements

If a certificate holder seeks to offer any of the side wagers or variations contained in these temporary regulations the certificate holder will be required to submit a Rules Submission form reflecting the choices in how the game will be offered and with the selected side wagers and variations identified. These forms are available on the Board’s public web site and submitted to Board staff electronically.

Effective Date

This temporary rulemaking will become effective upon publication in the *Pennsylvania Bulletin* and will expire 3 years from the date of publication.

Public Comments

While this temporary rulemaking will be effective upon publication, the Board is seeking comments from the public and affected parties as to how this temporary rulemaking might be improved. Interested persons are invited to submit written comments, suggestions or objections regarding this temporary rulemaking within 30 days after the date of publication in the *Pennsylvania Bulletin* to Chad W. Zimmermann, Assistant Chief Counsel, Pennsylvania Gaming Control Board, 303 Walnut Street, 5th Floor, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation # 125-241.

Contact Person

The contact person for questions about this temporary rulemaking is Chad W. Zimmermann, Assistant Chief Counsel, at (717) 346-8300.

Regulatory Review

Under 4 Pa.C.S. § 1303A, the Board is authorized to adopt temporary regulations which are not subject to the provisions of sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201—1205), referred to as the Commonwealth Documents Law; the Regulatory Review Act (71 P.S. §§ 745.1—745.14); and sections 204(b) and 301(10) of the Commonwealth Attorneys Act (71 P.S. §§ 732-204(b) and 732-301(10)). These temporary regulations expire 3 years after publication in the *Pennsylvania Bulletin*.

Findings

The Board finds that:

(1) Under 4 Pa.C.S. § 1303A, the temporary regulations are exempt from the requirements of the Regulatory Review Act, sections 201—205 of the Commonwealth Documents Law and sections 204(b) and 301(10) of the Commonwealth Attorney Act.

(2) The adoption of the temporary regulations is necessary and appropriate for the administration and enforcement of 4 Pa.C.S. Part II (relating to gaming).

Order

The Board, acting under 4 Pa.C.S. Part II, orders that:

(1) The regulations of the Board, 58 Pa. Code Chapters 623b, 627b and 629b, are amended by adding § 623b.4 and amending §§ 627b.3 and 629b.3 to read as set forth in Annex A.

(2) The temporary regulations are effective upon publication in the *Pennsylvania Bulletin*.

(3) The temporary regulations will be posted on the Board's web site and published in the *Pennsylvania Bulletin*.

(4) The temporary regulations shall be subject to amendment as deemed necessary by the Board.

(5) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

DENISE J. SMYLER,
Chairperson

Fiscal Note: 125-241. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart K. TABLE GAMES

CHAPTER 623b. CRAPS AND MINI-CRAPS SIDE WAGERS AND VARIATIONS—TEMPORARY REGULATIONS

§ 623b.4. Hot Shooter Jackpot wager.

(a) If the certificate holder offers Craps on a fully automated electronic gaming table or a hybrid gaming table, the certificate holder may offer players the option to place a Hot Shooter Jackpot wager.

(b) The layout for a Craps table shall be submitted to the Bureau of Gaming Operations for approval in accordance with § 601a.10(a) (relating to approval of table game layouts, signage and equipment) and if the certificate holder offers the Hot Shooter Jackpot wager, in addition to the requirements in § 623a.2 (relating to Craps and Mini-Craps tables; physical characteristics) the electronic or hybrid layout shall contain a separate area designated for the electronic placement of the Hot Shooter Jackpot wager for each player.

(c) A player may place a Hot Shooter Jackpot wager by electronically placing a value chip on the designated area of the table layout prior to the shooter throwing the dice on the come out roll to establish a point.

(d) If after the come out roll the shooter:

(1) Throws the dice 7 times or less before the next 7 out, the Hot Roller Jackpot wager shall lose.

(2) Throws the dice 8 times or more before the next 7 out, the Hot Roller Jackpot wager shall win and be paid in accordance with subsection (e).

(e) The certificate holder shall pay out winning Hot Shooter Jackpot wagers at the odds in the following payout tables selected by the certificate holder in its Rules Submission form filed in accordance with § 601a.2 (relating to table games Rules Submissions):

<i>Outcome</i>	<i>Paytable</i>
8 to 15 rolls	1 to 1
16 to 23 rolls	2 to 1
24 to 31 rolls	4 to 1
32 to 39 rolls	6 to 1
40 to 44 rolls	11 to 1
45 to 49 rolls	29 to 1
50 or more rolls	99 to 1

CHAPTER 627b. MINIBACCARAT SIDE WAGERS AND VARIATIONS—TEMPORARY REGULATIONS

§ 627b.3. Royal 9 Progressive wager.

* * * * *

(g) *Royal 9 Progressive wager payable for \$1 wager.*

(1) If a table game certificate holder offers a \$1 denomination Royal 9 Progressive wager, the Royal 9 Progressive wager pay table is as follows:

<i>Hand</i>	<i>Paytable</i>
Personal King 9 v. Personal King 9	100% of Mega Jackpot
Personal King 9 on Banker Hand	100% Major Jackpot
Personal King 9 on Player Hand	100% Minor Jackpot
Mega Envy—Any Position's King 9 v. King 9	\$1,000
Suited Royal 9 Tie Hand	\$300
Royal 9 Tie Hand	\$50
Any Suited Royal 9	\$10
Any Royal 9	\$5

(2) The rate of progression for the meters used for the Royal 9 Progressive wager must be specified in the certificate holder's Rules Submission filed in accordance with § 601a.2. If a table game certificate holder offers a \$1 denomination Royal 9 Progressive, the initial and reset amounts must also be in the Rules Submission and shall be at least \$10,000 for the Mega Jackpot, \$90 for the Major Jackpot and \$90 for the Minor Jackpot.

(h) If the progressive table game system utilized by the certificate holder has the capability to offer a mystery progressive, the seed and reseed amount, random must hit by amount and incrementation rate shall be as follows:

<i>Configuration</i>	<i>Reseed</i>	<i>Random Must-Hit-By</i>	<i>Incrementation Rate</i>
1	\$250	\$1,000	5%
2	\$100	\$500	5%
3	\$100	\$200	2%

CHAPTER 629b. MIDIBACCARAT SIDE WAGERS AND VARIATIONS—TEMPORARY REGULATIONS

§ 629b.3. Royal 9 Progressive wager.

* * * * *

(g) *Royal 9 Progressive wager payable for \$1 wager.*

(1) If a table game certificate holder offers a \$1 denomination Royal 9 Progressive wager, the Royal 9 Progressive wager pay table is as follows:

<i>Hand</i>	<i>Pay Table</i>
Personal King 9 v. Personal King 9	100% of Mega Jackpot
Personal King 9 on Banker Hand	100% Major Jackpot
Personal King 9 on Player Hand	100% Minor Jackpot
Mega Envy—Any Position’s King 9 v. King 9	\$1,000
Suited Royal 9 Tie Hand	\$300
Royal 9 Tie Hand	\$50
Any Suited Royal 9	\$10
Any Royal 9	\$5

(2) The rate of progression for the meters used for the Royal 9 Progressive wager must be specified in the certificate holder’s Rules Submission filed in accordance with § 601a.2. If a table game certificate holder offers a \$1 denomination Royal 9 Progressive wager, the initial and reset amounts must also be in the Rules Submission and shall be at least \$10,000 for the Mega Jackpot, \$90 for the Major Jackpot, and \$90 for the Minor Jackpot.

(h) If the progressive table game system utilized by the certificate holder has the capability to offer a mystery progressive, the seed and reseed amount, random must hit by amount and incrementation rate shall be as follows:

<i>Configuration</i>	<i>Reseed</i>	<i>Random Must-Hit-By</i>	<i>Incrementation Rate</i>
1	\$250	\$1,000	5%
2	\$100	\$500	5%
3	\$100	\$200	2%

[Pa.B. Doc. No. 22-376. Filed for public inspection March 11, 2022, 9:00 a.m.]