

PROPOSED RULEMAKING

STATE CIVIL SERVICE COMMISSION

[4 PA. CODE CH. 105]

Hearings

The State Civil Service Commission (Commission) proposes to delete § 105.12 (relating to requests) of its regulations and add §§ 105.12a and 105.12b (relating to appeal requests; and signatures) to read as set forth in Annex A.

Statutory Authority

The Commission's authority to promulgate regulations is set forth in 71 Pa.C.S. § 3003(1) (relating to duties of commission) and section 506 of The Administrative Code of 1929 (71 P.S. § 186).

Purpose and Background

Section 3003(7) of 71 Pa.C.S. confers upon the Commission a duty to schedule and hold public hearings upon receiving notice of appeals. The filing requirements for appeals to the Commission are currently set forth in § 105.12 of the Commission's regulations. The Commission seeks to make the requirements set forth in this section easier to navigate by promulgating a new regulation that reorganizes and reformats the requirements. Additional amendments within the new regulations are also proposed to reflect the Commission's current practices and procedures including the acceptance of electronic signatures.

Description of Proposed Rulemaking

The Commission proposes to delete § 105.12 of its regulations and add §§ 105.12a and 105.12b. Each of these proposed actions are described as follows.

§ 105.12. Requests

This section is proposed to be deleted and incorporated into § 105.12a.

§ 105.12a. Appeal requests

This section reorganizes and reformats the contents of § 105.12 which is proposed to be deleted, adds the place of filing, clarifies how time limits for appeal requests are calculated, eliminates the personal signature requirement to allow for electronic signatures and adds a requirement related to written notices of the challenged actions.

In reorganizing and reformatting the contents of § 105.12, headings are proposed to be added to identify the topic of each subsection thereby making the regulation easier to navigate. Language identifying the place of filing is also proposed to be added to eliminate any potential confusion with proceedings before the Governor's Office of Administration (OA). The potential confusion stems from the changes implemented by 71 Pa.C.S. Part III (relating to civil service reform). As a result of the implementation of 71 Pa.C.S. Part III, the OA is now responsible for the administration of classified service employment, whereas the Commission has retained appellate oversight.

Additionally, to highlight the importance of timely filing appeal requests, the requirements related to time limits are moved to their own subsection. Previously, the time limit requirements were grouped with the requirements relating to the form of the appeal request. The time limit

requirements are now located at the beginning of the regulation immediately following the place and manner of filing.

Directly following the time limits subsection, new language is proposed to be added clarifying that the date received will be used as the filing date for appeal requests without postmarks or where the postmarks are unreadable. This has been the Commission's practice. However, the Commission has noticed an increased number of filings which were submitted by mail that do not bear postmarks. This subsection is proposed to be added in response to that growing issue.

The language requiring individuals to personally sign their appeal requests is also proposed to be revised. As currently written § 105.12(a)(2) of the Commission's regulations requires persons appealing to personally sign their appeal request forms. By effect, individuals who electronically file their appeals are also required to mail or hand deliver another copy containing their original signature. This proposed regulation deletes the word "personally" to eliminate this redundancy in filing.

Lastly, language is proposed to be added requiring persons appealing to include a copy of the written notice of the challenged action or, in the alternative, if written notice was not received, a written explanation of why the appeal does not contain a written notification. Prior to the enactment of 71 Pa.C.S. Part III, the Commission received or had immediate access to copies of all written notices of challenged actions. Generally, the written notice provides the framework for the appeal because it sets forth the challenged action and identifies the agency taking the action. For that reason, § 105.15(c)(1) (relating to procedure under 71 Pa.C.S. § 3003(7)(i)) of the Commission's regulations requires that the written notice be entered as an exhibit at the hearing.

The Commission also reviews the information contained within the written notice to confirm the received date; the effective date of the action; the nature of the challenged action; the charges, if any; the involved appointing authority; and the job title and status of the person appealing. Occasionally, persons appealing provide mistaken information, such as misidentifying the appointing authority, which is easily clarified by reviewing the written notice. The issuance date on the written notice is also critical in determining the timeliness of appeal. Therefore, it is important for the Commission to receive a copy of the written notice.

Presently, the Commission's practice is to request a copy of the written notice from the person appealing. The language proposed to be added to this regulation formalizes this practice and provides an alternative for circumstances in which written notice was not provided.

§ 105.12b. Signatures

This proposed section permits the use of either handwritten or electronic signatures on filings submitted to the Commission. This regulation also proposes to establish parameters for using electronic signatures. The Commission has a longstanding practice of accepting electronic signatures for filings other than appeal requests. As previously explained, § 105.12 of the Commission's regulations constrained the Commission from accepting electronic signatures on appeal requests. This will be remedied by proposed § 105.12a, thereby enabling the Commission to accept electronic signatures on all submissions.

Persons Likely to be Affected

This proposed rulemaking would affect all persons who wish to file an appeal with the Commission and participants in hearings before the Commission.

Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its appointing authorities.

Paperwork Requirement

This proposed rulemaking will not add to existing paperwork requirements. The proposed amendments may actually reduce current paperwork because physical copies containing personal signatures will no longer be required when submitting appeal requests.

Effective Date

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

Individuals interested in further information may contact Michele Whiting, Administrative Professional, State Civil Service Commission, Executive Office, P.O. Box 569, 320 Market Street, Harrisburg, PA 17108-0569, (717) 783-8806, fax (717) 783-8736, ra-cs-exec_dir@pa.gov.

This proposed rulemaking is available electronically through the State Civil Service Commission's web site at <http://www.scs.cpa.gov>.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on July 22, 2024, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Review Form to the Independent Regulatory Review Commission (IRRC), the chairperson of the State Government Committee of the Senate and the chairperson of the Labor and Industry Committee of the House of Representatives. A copy of this material will be available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review by the State Civil Service Commission, the General Assembly and the Governor.

Public Comments

The Commission invites written comments, suggestions or objections to this proposed rulemaking from interested persons, agencies and organizations, in-person comments or questions at its public hearing on the proposed amendments to be held as follows:

Location: State Civil Service Commission
Harrisburg Office Headquarters—Public Hearing Room
Strawberry Square
Bowman Tower, 4th Floor
320 Market Street
Harrisburg, PA 17108-0569

Date: August 22, 2024

Time: 9:30 a.m.

Individuals desiring to present their views on the proposed amendments or receive a copy shall notify Michele Whiting, Administrative Professional, State Civil Service Commission, Executive Office, P.O. Box 569, 320 Market Street, Harrisburg, PA 17108-0569, (717) 783-8806, fax (717) 783-8736, ra-cs-exec_dir@pa.gov.

Notification of intent to speak at the public hearing shall be made no later than 4:30 p.m. on August 21, 2024. Speakers will be required to identify themselves and the organization they represent, if any. Persons with a disability who wish to attend this public hearing and who may require an auxiliary aid or other service to participate should also contact Michele Whiting to discuss possible accommodation of needs.

MARIA P. DONATUCCI,
Chairwoman

Fiscal Note: 61-14. No fiscal impact; recommends adoption.

Annex A**TITLE 4. ADMINISTRATION****PART IV. CIVIL SERVICE COMMISSION****Subpart A. RULES OF THE CIVIL SERVICE COMMISSION****CHAPTER 105. NOTICE AND HEARINGS****§ 105.12. [Requests] [Reserved].**

[(a) Requests for hearings shall be:

(1) Made in writing.

(2) Personally signed by the individual appealing.

(3) Received or postmarked not more than 20 calendar days after the employee receives notice of the challenged personnel action. A person appealing discrimination under 71 Pa.C.S. § 2704 (relating to prohibition of discrimination) shall appeal within 20 calendar days of the alleged discrimination.

(b) The person appealing shall state clearly and concisely the:

(1) Grounds of the interest of the person in the subject matter.

(2) Facts relied upon.

(3) Relief sought.

(c) Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the appeal form include:

(1) The acts complained of.

(2) How the treatment differs from treatment of others similarly situated.

(3) When the acts occurred.

(4) When and how the appellant first became aware of the alleged discrimination.

(d) Acceptance of an amendment to an appeal is solely at the discretion of the Commissioners.

(e) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.9 and 35.10 (relating to formal complaints generally; and form and content of formal complaints).]

(*Editor's Note:* Sections 105.12a and 105.12b are proposed to be added and are printed in regular type to enhance readability.)

§ 105.12a. Appeal requests.

(a) *Place and manner.* Requests for hearings shall be filed with the Commission on and in accordance with the Commission's form, which may be obtained by contacting the Commission.

(b) *Time limits.*

(1) *Under 71 Pa.C.S. § 3003(7)(i).* Requests for hearings shall be received by close of business or postmarked not more than 20 calendar days after the employee received notice of the challenged action.

(2) *Under 71 Pa.C.S. § 3003(7)(ii).* Requests for hearings shall be received:

(i) by close of business or postmarked not more than 20 calendar days after the employee or job seeker received notice of the challenged action; or

(ii) by close of business or postmarked not more than 20 calendar days after the employee or job seeker became aware of the alleged discrimination.

(c) *Receipt.* If there is no postmark or the postmark is unreadable, the filing date shall be the date recorded by the Commission when it receives the document.

(d) *Form.* Requests for hearings shall be:

(1) Made in writing.

(2) Signed by the individual appealing.

(e) *Contents.*

(1) *General requirements.* Requests for hearings shall state clearly and concisely all of the following:

(i) Grounds of the interest of the person in the subject matter.

(ii) Facts relied upon.

(iii) Relief sought.

(2) *Written notification.*

(i) Requests for hearings shall include a copy of the written notice of the challenged actions.

(ii) If written notice was not received, a written explanation of why the appeal does not contain a written notification shall be included with the request for hearing.

(3) *Discrimination claims.*

(i) In addition to the requirements in paragraphs (1) and (2), requests for hearings which allege discrimination shall specify all of the following:

(1) The acts complained of.

(2) How the treatment differs from treatment of others similarly situated, if applicable.

(3) When the acts occurred.

(4) When and how the person appealing first became aware of the alleged discrimination.

(ii) Requests for hearings which allege discrimination and do not include specific facts relating to discrimination may be dismissed.

(f) *Amendments.* Acceptance of an amendment to an appeal is solely at the discretion of the Commissioners.

(g) Subsections (a)—(f) supplement 1 Pa. Code §§ 35.9 and 35.10 (relating to formal complaints generally; and form and content of formal complaints).

§ 105.12b. Signatures.

(a) *General Rule.* Signatures may be handwritten or electronic.

(b) *Electronic Signature.*

(1) The use of an electronic signature shall have the same force and effect as a handwritten signature.

(2) Electronic signatures shall comply with sections 303—312 of the Electronic Transactions Act (73 P.S. §§ 2260.303—2260.312) and other laws governing electronic signatures.

[Pa.B. Doc. No. 24-1111. Filed for public inspection August 9, 2024, 9:00 a.m.]