

RULE ADOPTIONS

BANKING

(a)

**DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
Notice of Readoption
Audit Requirements of State Associations
Readoption: N.J.A.C. 3:29**

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:12B-176.

Authorized By: Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Effective Date: May 2, 2014.

New Expiration Date: May 2, 2021.

Take notice that pursuant to the provisions of Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 3:29 will expire on August 23, 2014. The rules set out the audit requirements of State associations, commonly known as savings and loan associations. The Department of Banking and Insurance has reviewed these rules and has determined that the rules should be readopted without amendment. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

(b)

**DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
Qualified Educational Institutions
Readoption with Amendment: N.J.A.C. 3:35**

Proposed: February 3, 2014, at 46 N.J.R. 259(a).

Adopted: May 1, 2014, by Kenneth E. Kobylowski, Commissioner, Department of Banking and Insurance.

Filed: May 2, 2014, as R.2014 d.096, **without change**.

Authority: N.J.S.A. 17:1-15.e and 17:9A-213.

Effective Date: May 2, 2014, Readoption;
June 2, 2014, Amendment.

Expiration Date: May 2, 2021.

Summary of Public Comment and Agency Response:

The Department of Banking and Insurance received no comments.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendment relate to the business of State banking and involve qualified educational institutions that have a qualified interest as an income or principal beneficiary in this State. Although the qualified educational institution must meet the requirements of the Internal Revenue Service Code of 1986, 26 U.S.C. §§ 501(c)(3) and 115 for tax purposes and the registration and regulatory requirements of the Department set forth in N.J.S.A. 17:9A-213 et seq., there is no conflict in the rules readopted with amendment with any Federal requirements or standards on this subject.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 3:35.

Full text of the adopted amendment follows:

3:35-1.7 Records of registration

The Commissioner shall provide public access to the names and addresses of all qualified educational institutions registered pursuant to this subchapter.

CIVIL SERVICE

(c)

CIVIL SERVICE COMMISSION

Job Banding Program

Adopted Amendments: N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1 and 3.2; 4A:8-1.1 and 2.2; and 4A:10-1.1

Adopted New Rule: N.J.A.C. 4A:3-3.2A

Proposed: March 18, 2013, at 45 N.J.R. 500(a).

Notice of Proposed Substantial Changes upon Adoption to Proposal of Amendments and New Rule: February 3, 2014, at 46 N.J.R. 260(a).

Adopted: May 7, 2014, by the Civil Service Commission, Robert M. Czech, Chair/CEO.

Filed: May 7, 2014, as R.2014 d.099, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.10, and **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 11A:2-6.d, 11A:2-11, 11A:2-20, 11A:3-1, 11A:3-3, 11A:3-7, 11A:4-9, 11A:4-12, 11A:4-13, 11A:4-16, 11A:6-15, 11A:6-26, 11A:6-28, 11A:7-1 et seq., and 11A:8-1 et seq.; and P.L. 2008, c. 29.

Effective Date: June 2, 2014.

Expiration Dates: July 1, 2015, N.J.A.C. 4A:1, 4A:2, 4A:7, and 4A:10;
November 18, 2016, N.J.A.C. 4A:3;
February 20, 2016, N.J.A.C. 4A:4;
December 23, 2015, N.J.A.C. 4A:8.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the original rule proposal was held on April 10, 2013, in Trenton, New Jersey. Christopher Myers served as hearing officer. Eighteen people provided comments at that time. Forty-three people provided individual written comments during the public comment period, with three comment groups of 130, 77, and approximately 11,000 persons, respectively, each providing its own distinct form letter comment. The hearing officer recommended adoption of the proposal without change.

However, as indicated in the notice of proposed substantial changes upon adoption to proposed new rule and proposed rule amendments (Substantial Notice), the Civil Service Commission proposed substantial changes to the proposed new rule as well as several of the proposed amendments, and proposed a new amendment to N.J.A.C. 4A:7-3.2. See 46 N.J.R. 260(a). A public hearing on the Substantial Notice was held on February 26, 2014, in Trenton, New Jersey. Elizabeth Rosenthal served as hearing officer. Ten people provided comments at that time. One hundred-forty individuals provided written comments. The hearing officer recommended adoption of the proposal without change.

The record of both public hearings may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Summary of Public Comments and Agency Responses:

The following individuals provided comments during one or both of the comment periods: Kathleen D. Albano; Paul Alfano; Katrina and Nicholas Angarone; Nicole Roberts Apeadu; Keith Aversa, Chief, Placement and Classification Unit, Administrative Office of the Courts (Judiciary); The Honorable Daniel R. Benson, Assemblyman, District 14; Reginald Bethea, Communications Workers of America Local 1039; Leo D. Blake; Beth Schroder Buonsante, Associate Director of Government Relations, New Jersey Education Association; The Honorable Bonnie Watson Coleman, Assemblywoman, District 15; Comment Group A (130 individuals); Comment Group B (77 individuals); Comment Group C (approximately 11,000 members of CWA and the New Jersey American Federation of Labor-Congress of Industrial Organizations (NJ AFL-CIO)); Comment Group D (138 members of CWA Local 1036); Frank M. Crivelli, Esq., representing the New Jersey Law Enforcement Supervisors Association; Kathleen A. Davis, Executive Vice President and Chief Operating Officer of the Chamber of Commerce of Southern New Jersey (CCSNJ); The Honorable Wayne DeAngelo, Assemblyman, District 14; Anil Desai, President, Branch 5, CWA Local 1032; Michael Deutsch; William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities; Marci Durant; Ethan Ellis, President, Next Step; Paul Esposito; Christian Estevez, Executive Vice President, Latino Action Network; Dennis Faherty; Carol E. Gay, President, New Jersey State Industrial Union Council; The Honorable Linda R. Greenstein, New Jersey State Senator, District 14; Thomas Grzymski; Louis Hall, Vice President/Treasurer, New Jersey Superior Officers Association; Seth Hahn, CWA Staff Representative; Alan Hardy, Executive Board Member and Shop Steward, CWA Local 1032; Thomas Helmstetter, Communications Director, Garden State Equality; Krishna Jagannathan; Laurie Kenselaar; Paul L. Kleinbaum, Esq., representing the New Jersey State Policemen's Benevolent Association; Robert J. Latham; Ralph Lee, CWA Local 1036; Adam Liebttag, President, CWA 1036; Angel Llerena; Dominic Marino, President, Professional Firefighters Association; John Menshon, President, Transport Workers Union, Local 225, Branch 4; Maureen McClain; Carlos Mercado, New Jersey Firemens Mutual Benevolent Association; Natalie Mintchwarner; Jamie Murray; Rose V. Patterson; Sharon Reese; Rex Reid, Legislative Representative for the American Federation of State, County and Municipal Employees, New Jersey Council 1; Eric Richard, Legislative Affairs Coordinator, NJ AFL-CIO; Sharon Robinson; Hetty Rosenstein, CWA NJ Director; Tamika A. Rowell; Jennifer Sheets; The Honorable Troy Singleton, Assemblyman, 7th District; Susan Soffel; Deborah Spencer, Secretary, Local 195, International Federation of Professional and Technical Engineers; The Honorable Linda Stender, Assemblywoman, District 22; Norman J. Teufel, Jr.; Fred Vineyard, AmVets Post 911 New Jersey; Karl R. Walko, President, Camden Council No. 10; Charles Wowkanech, President, and Laurel Brennan, Secretary-Treasurer, NJ AFL-CIO; Janet Share Zatz, Assistant Director, Human Resources, Administrative Office of the Courts; and an anonymous union member from Gloucester County.

Comment Group A includes the following individuals:

Eileen Orsini
 Michael J. Becker
 Michelle K. Orsini
 SCO Robert Jones
 Rick and Donna Van Dexter
 Paulina Richman
 SCO Andrew Fisher
 Charles Cossaboone
 Migdalia Ferrer
 A. Lewis
 SCO M. Elwell
 SCO R. Dooley
 Sgt. Gary Lee
 B. Mazzeo
 SCO J. Allen

SCO E. Aguilar
 Sgt. M. Bonham
 S. Buczynski
 Edward L. Zeller
 Ron Butler
 Nelson Morales
 Yvette C. Nichols
 Teresa Gajdos
 SCO Laura Colson
 Susan M. Davidson
 Eric R. Perdomo
 Robert Sutton
 W. Cabbage
 SCO Chris Todd
 SCO Vanisha Williams
 SCO Michael Lynch
 Denise Rivera
 Michael Malinowski
 Renee Rizzo
 Mitch Magpiong
 Ricky Urgo
 Michelle Magpiong
 Albert S. Dooley, Jr.
 Trevor Ernst
 Matthew Stack
 Robert A. Carman, Jr.
 Robert Acosta
 Adam Kundera
 Larry Saul
 Michael W. Fardone
 Reginald J. Deans
 SCO Rigoberto Gonzalez
 Donna Piatt
 SCO Jimmel Still
 Belinda McIver
 Jeffrey Saunders
 Gregory W. Williams
 Richard Kenney
 Carl Ayars
 Carole M. Scherzer
 Gary Jackson
 Michael J. Carty
 Jasmine T. Govens
 Casey Piatt
 Imelda Fowler
 Lilliam Jackson
 Robert P. Caine, Sr.
 Billy B. Fowler, Jr.
 SCO A. Burnett
 SCO William R. Scherzer, Jr.
 Patricia A. Green
 SCO Charles A. Vest
 John Strzemieczny
 Barbara Doherty
 Duke A. Tyson
 J. Brown
 G. Griggs
 SCO Clarence Street
 SCO Heath McCauley
 Steve Harris
 Nicole Crist
 Eugene Bailey
 (unintelligible) Wernik
 Bridget Sheehan
 Brian Heacock
 A. Cozazo
 Gilde Alvarado
 Gloria Melendez
 Jerry A. Morales
 Felicita Miranda

ADOPTIONS**CIVIL SERVICE**

Brian Gandy
 SCO A. Gonzalez
 Clarence Tomlin
 James Redmond
 SCO C. Mount
 Heriberto Jimenez
 Marie Watson
 Caleb Watson
 Melinda Vargas
 Jose E. Torres
 SCO R. Byers
 Dean (unintelligible)
 Brooke L. Flanagan
 Mary V. Flanagan
 Kenneth M. Flanagan
 C. Kenneth Flanagan
 SCO Anisa R. King
 Patricia Schemelia
 Charles Schemelia
 Danielle Resto
 Natasha Resto
 German Diaz
 Kevin O. Street, Sr.
 Gwendolyn Street
 Vivian Farrow
 Shelton V. Farrow, Sr.
 James M. Farrow, Jr.
 James Farrow, Sr.
 Marrisol Santiago
 LaShonda Sultan
 William D. (unintelligible)
 T. Iver
 SCO P. Irsov
 Steve (unintelligible)
 C. (unintelligible)
 SCO A. Beverly
 Jacqueline P. Isley
 Robert Romanishin
 Lucille (unintelligible)
 (seven additional unintelligible names)
 Comment Group B includes the following individuals:
 Jeffrey Heltaway
 Janette Sailor
 Dorthea Knapp
 Lisa Martin-Davis
 Beth Afflerbach Ziegenfuss
 Donna Wojcik
 Jodie Eastlack
 Adele Pandorso
 Nilsa Maymi
 Margaret DiCrescenzo
 Phyllis Thompson
 Christine Sabetta
 Beth Sabetta
 Narcissa L. Miller
 Tamu Wilson
 Beverly Collins
 Pamela Martin
 Joseph H. Hiles
 Michael Sites
 Harry Winters, Sr.
 James M. Johnson
 Bobbi Franklin
 Lois M. Myers
 Charles Myers
 Janice LaRue
 Wendy Carey
 Mary Perna
 Tina Castelli
 Charles Watson

Mark Summerville
 Gerri Bagnato
 Beverly Goetz
 Edward T. Rose
 Karen B. Clark
 Jessica Lucas
 Charles Milligan
 Annie Nagler
 Paul Esposito
 Theresa Ziegler
 Linda J. Spencer
 Roshonda G. Williams
 Minesh Patel
 Cynthia Gallagher
 Lori Holmes
 Shirley Payne
 Monica Barron
 Christine Jefferson
 Shirley Anderson
 Amy Jenkins
 Alma C. Lee
 Stefanie Hasselman
 Theresa Taylor
 Cecilia Brennan
 Priscilla Spenser
 Kathleen E. Sharp
 Nicole Harris
 Kishah Sanders-Zeigler
 Nateresia Ramsaran
 Christopher Hope
 Joanne Ryan
 Teresa Hurst
 Barbara H. Novick
 Anne Abruzzese
 Kathleen Hill
 Maggie Rodriguez
 Donna Adair
 Susan Kaminski
 Joan Schaubeck
 Amy M. Strunk
 Sheila Watson
 Mary Ann Prospero
 Barbara A. Pizzuto
 Mary E. Smith
 Beth Estberg
 Christal R. Williams
 (two unintelligible names)
 In accordance with N.J.S.A. 52:14B-7(c), the Office of Administrative Law has determined not to publish the names of the commenters in Comment Group C in this notice. Copies of the submissions from Comment Group C may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey, by contacting (609) 689-4015, and will be retained by the Office of Administrative Law as part of the permanent file on this rulemaking.
 Comment Group D includes the following individuals:
 Sandra P. Cohen
 Peter Mayes
 Allan Willinger
 Jeffrey Hoffman
 Larry Quinn
 Denis J. Prince
 "ERT"
 Channa Rock
 Laurie A. Pyrch
 Teretha Jones
 Bill (illegible)
 Virginia Brenton
 Chris Dwyer
 Alan L. (illegible)
 Dott (illegible)

David Kaczka
 P. Beasley
 Courtney
 Susan Jacobs
 Michael Boucher
 (illegible) Martina
 Carol M(illegible)
 Liz G(illegible)
 Elliot J. Carter
 Nicole James
 Keith Bobrowski
 Virginia Wheatley
 Doreen K (illegible)
 Harring W. Katz
 Tony Savillio
 Jennifer L. Giberson
 Latonya Wimbush
 Karen Dumas
 Brian Sh(illegible)
 Matt Alvarez
 Nicole Jackson
 Leo T. Kelly
 Joseph Gaim
 Pamela K. (illegible)
 Tina Wolff
 Christian Zogrado
 Stephen Maurer
 Gabriel Mahon
 Susan L. Lockwood
 Andrew Dombroski
 Brian Quinn
 Jessica Daher
 Elaine Politis
 M. Smith
 Ann (illegible)
 Paula (illegible)
 Stasia Burger
 William Kresnosky
 Gary White
 Susan V. Michniewski
 Walter R (illegible)
 Michelle Phillips
 Lisa Bonner
 Janice J. Wolford
 Dorothy Tubur
 Laurence S. Torok
 Francesca Esposito-Weir
 Nikki (illegible)
 Joanne El-Amin
 Alvina Randolph
 Aye Maury Maury
 Shameese Gaines
 Anna Battle
 Charles E. Dink
 Jo-Ann Ayres
 Josette Kamara
 Jayleep Naravaty
 Carolyn Providence
 Spencer Gardener
 Sharon Gregory
 Katrina Bowers
 Jaime Murray
 Sheila A. Mizhariver
 Charles D. Giacomo
 Yuli Chow
 Andrew Benesch
 Susan Brocco
 Patricia Ch (illegible)
 James Gngang
 J. Seifried

David Charest
 Keith A. Clemons
 Ronald A. DeLoach
 Joseph W. Nar
 Ronald N. Quarterman
 Thomas J. Emory, Jr.
 Madeline Murray
 Leshette Williams
 Carol Montgomery
 Willis (illegible)
 Jack Greenberg
 Bob Chapman
 Melinda Martinez
 Thomas Fox
 Louis T. Marino
 Ronald J. Venezia
 Kathy Holmes
 Rebecca (illegible)
 John Di(illegible)
 George Hamway
 Joren Madsen
 L. Sabir
 Sara Feeney
 Debra Wilkinson
 Susanne Fajgier
 B. Leonard
 Rebecca L. Dickerson Johnsey
 Irene Smythe
 Christopher R. Squazzo
 Marian Asanto-Grable
 A. Chris Gould
 Chivon Kistic
 Karen Filbus
 Roy Beebe
 Anita Neal
 Carmen (illegible)
 Sherwood L. (illegible)
 Carolyn G. Averheart
 Arlene (illegible)
 Patricia McGuire
 (Plus 12 additional people whose names were completely illegible)

For purposes of clarity, the comments summarized below and the responses are grouped under subject headings.

1. Comments Received During Comment Period on the Proposal, Giving Rise to the Notice of Substantial Changes on Adoption of the Proposed Amendments and New Rule

Veterans Preference

COMMENT: State Senator Greenstein and Comment Group C stated that the current civil service system properly incorporates veterans preference. Assemblywoman Coleman; Assemblyman DeAngelo; State Senator Greenstein; Assemblyman Singleton; Mses. Buonsante, Gay, Patterson, and Rosenstein; and Messrs. Lee, Menshon, and Vineyard commented that job banding would override veterans preference. Ms. Rosenstein commented that veterans suffer from 25 percent unemployment and homelessness. Assemblyman Singleton, Ms. Patterson, and Mr. Vineyard stated that veterans have earned favored treatment in the public sector due to the sacrifices they have made on behalf of their country. However, Mr. Deutsch commented in favor of eliminating veterans preference because it promotes unfairness and forces appointing authorities to dismiss experienced employees in favor of unknown and untried individuals.

RESPONSE: Veterans preference in the civil service system is established by the State Constitution and by statute; this rule adoption does not eliminate or diminish such protections. With absolute veterans preference, qualified veterans are placed at the top of an open competitive employment list ahead of nonveterans, regardless of their scores. N.J.S.A. 11A:5-5. The Commission must emphasize that job banding has no impact on new hires, so the comments about impairing “absolute” veterans preference, which is limited to the initial open competitive hiring

process, are misplaced. With regard to the veterans preference as applied to promotions, veterans are placed on promotional lists according to their scores. A veteran has preference over a nonveteran if the veteran heads the list. N.J.S.A. 11A:5-7.

As noted above, this adoption does not nor is it intended to eliminate or diminish veterans preference. Rather, veterans would receive the same preference in advancement appointments within the band as are applied in promotional situations. However, in order to clarify this important point, the Commission adopts a proposed substantive change to adopted new rule N.J.A.C. 4A:3-3.2A. This change provides in a new N.J.A.C. 4A:3-3.2A(d)3i that, whenever a veteran ranks at the top of the advancement appointment selection process, a nonveteran shall not be selected unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment. Additionally, a new N.J.A.C. 4A:3-3.2A(d)3ii provides that, when the advancement appointment selection process results in a tie between a veteran and a nonveteran, the veteran must be offered the advancement appointment. The originally proposed new N.J.A.C. 4A:3-3.2A(d)3i, which permits an employee not selected for an advancement appointment to file a grievance, is adopted with a recodification as N.J.A.C. 4A:3-3.2A(d)3iii.

Local Government Issues

COMMENT: Comment Group A stated that, today, New Jersey relies increasingly on the law enforcement community due to natural disasters and large-scale criminal activity, but that job banding would undermine law enforcement. They further commented that job banding would eliminate promotional testing in the New Jersey State Department of Corrections if all officers, sergeants, lieutenants, and majors were lumped into one band. They also charged that job banding would result in the elimination of promotional testing for fire personnel, if lieutenants, captains, and battalion fire chiefs were lumped into one band.

Mr. Crivelli stated that, even if job banding is not intended for State supervisory law enforcement titles or other law enforcement titles, he still opposes job banding as a circumvention of the merit system. He continued that, if job banding were to apply to law enforcement, this would be a grave mistake, as the titles in State law enforcement title series are drastically different from one another in duties, responsibilities, and supervisory authority; moving up in rank is a promotion in every sense of the word. Similarly, Mr. Kleinbaum explained that, in law enforcement, movement into higher-level titles signifies not just the law enforcement officer's ability to handle increasingly difficult levels of work, but also that officer's ability to handle increasingly greater supervisory duties and responsibilities. He added that these considerations make the formal testing process an essential aspect of movement through the ranks. Mr. Kleinbaum urged that the proposal be amended to provide that job banding would not apply to public safety titles generally, and law enforcement titles specifically.

RESPONSE: Job banding is not intended to apply to any law enforcement or public safety titles, whether the jobs are in State or local service. As explained below, a substantive change to N.J.A.C. 4A:3-3.2A is being adopted to limit job banding to State service. Thus, law enforcement and public safety titles in local service are excluded. Further, the Commission adopts an amendment to N.J.A.C. 4A:3-3.2A(b) to exclude law enforcement and public safety titles in State service as well. These are defined as titles that are included in the Police and Firemen's Retirement System (PFRS).

COMMENT: Mr. Dressel stated that it is difficult, under the civil service system that exists today, to reward employees or recruit the best qualified individuals, or to cross-train employees to meet the needs of the public. He stated that the civil service system should be leaner and more streamlined. Ideally, he stated, local jurisdictions would be able to "opt out" of civil service.

With regard to the job banding program, he urged that it not add red tape, procedural layers, or further classification efforts to the present system. He was also concerned that proposed new N.J.A.C. 4A:3-3.2A(a) would require municipalities to fill vacancies whether doing so would meet their needs or not.

Mr. Walko commented that the job banding program is not transferable to local government, which is rampant with discrimination,

noncompetitive appointments, and politics interfering with appointments. Mr. Walko added that job banding would just exacerbate these problems.

Mr. Liebttag charged that, in advance of the Commission's approval of the job banding pilot program, it solicited no input from local appointing authorities, nor did the job banding pilot program include any titles or title series used in local government.

RESPONSE: The Commission understands the need of local governments for a more efficient, responsive civil service system. However, the Civil Service Act would have to be amended for local jurisdictions to "opt out" of civil service. Nevertheless, the Commission has decided to adopt the proposed substantial changes limiting job banding to State service. This is because job banding has been tested within the Executive Branch of State government. See *In the Matter of Job Banding for Human Resource Consultant, Personnel and Labor Analyst, State Budget Specialist, and Test Development Specialist Title Series Pilot Program* (Civil Service Commission, decided 5/6/12). Moreover, this agency approved job banding in the Judicial Branch in 1998, and the program has been successfully applied since that time, with over 4,000 Judiciary employees in banded titles. It should be pointed out, moreover, that the Commission has regulatory authority over the personnel practices governing the Judiciary's career service employees, so that the experience gleaned by the personnel practices of the Judiciary, including their experience with job banding, can be considered instructive for all of State service. The Judicial Unification Act, at N.J.S.A. 2B:11-5, ensured that those career service employees coming to State service from the counties would continue to be subject to N.J.S.A. 11A, the Civil Service Act, and the then Department of Personnel (now Civil Service Commission). "... [The Judicial Unification Act] preserves the judiciary's unquestioned right to create unclassified positions within the judiciary and to appoint individuals to fill those positions pursuant to Rule 1:33-4 Other positions within the judiciary, however, were then, and continue today to be, filled pursuant to Civil Service guidelines" *Thurber v. City of Burlington*, 191 N.J. 487, 498 (2007).

COMMENT: Ms. Zatz noted that the Judiciary has operated under a banding system since its 1995 Statewide unification. She asked for a formal clarification that the proposal is not intended to modify the Judiciary's banding program.

RESPONSE: To clarify this issue, the Commission adopts a proposed substantial change to N.J.A.C. 4A:3-3.2A(b) to state that any job banding program already approved by the Commission, such as the one in Judiciary, can continue without adopting the changes set forth in the new job banding rule. (See this notice of adoption below for a discussion of the further adoption of a proposed substantial change and a technical amendment not requiring additional public notice and comment.)

Accordingly, the following discussion describes the adopted substantial changes to the rule proposal on job banding to limit its applicability to State service, clarify that titles subject to PFRS would not be affected by job banding, and ensure that any job banding program in effect outside of the Executive Branch will not be affected by the new job banding rule.

The heading of proposed new rule N.J.A.C. 4A:3-3.2A is changed from "Job banding" to "Job banding: State service." Therefore, the entire section should be understood to apply only to State service. N.J.A.C. 4A:3-3.2A(b) is also changed so that only State titles and State title series are subject to job banding. A new paragraph (b)3 provides that job banding will not affect titles included in PFRS, while a new paragraph (b)4 states that any existing job banding program outside of the Executive Branch will not be affected by the new rule. A substantial change to the proposed amendment to N.J.A.C. 4A:3-3.5, Reclassification of positions, is also adopted as proposed. Paragraph (c)2, the amendment language referring to grievances regarding an employee's title level within the job band, is substantially changed to refer only to State service and deletes a cross-reference to grievances in local service.

An adopted amendment to N.J.A.C. 4A:3-3.9, Classification appeals, removes references to job bands and title levels in local service. The Commission adopts the proposed deletion of proposed new subsection (d), referring to a title level complaint in local service. Current subsection (d), originally proposed for recodification as subsection (e), and which now addresses classification appeals in local service, was originally proposed for amendment to add language excluding the title level in a

local employee's job band from the classification appeal process. This language is now deleted. Also in this adoption, other subsections of the rule have been recodified accordingly.

One portion of the adopted amendment to N.J.A.C. 4A:4-2.4, Promotional title scope: local service, is substantially changed upon adoption to conform to the change to the rule proposal restricting job banding to State service. The change to this section deletes proposed new paragraph (c)5, which concerns promotional title scopes in local service involving noncompetitive to competitive division promotions where the employee may be serving in a job band. Additionally, in light of the change to subsection (c), subsection (d) is changed to return the language to the current cross-reference to paragraphs (c)2 through 4 rather than to proposed paragraphs (c)2 through 5.

Since job banding will only apply to State service, the proposed amendment to N.J.A.C. 4A:4-7.1A, Intergovernmental transfers, is changed at subsection (e). The original proposed amendment states that, for purposes of the intergovernmental transfers rule, where a position is within a job band, "title" means the entire job band. The adopted subsection, as amended, adds the phrase "in State service" to clarify that any job band involved in an intergovernmental transfer may only be in State service.

Equal Employment Opportunity

COMMENT: Mses. Albano, Gay, McClain, Rosenstein, and Spencer; Messrs. Brennan, Desai, Ellis, Helmstetter, Lee, Reid, Richard, Walko, and Jowkanech; and Comment Groups A, B, and C expressed concern that job banding would lead to discrimination on the basis of race, ethnicity, disability, sexual preference, gender, religion, nationality, age, and marital status. Mr. Hall commented that, without objective promotional testing, an employee who is not selected for an advancement appointment would have a more difficult time trying to prove discriminatory intent. Ms. Durant stated that everyone should be treated fairly and equally.

Comment Group A asked if N.J.A.C. 4A:4-2.14(b) provides justification for circumventing promotional examinations. They noted that the rule provision permits an examination waiver where an individual's disability would make it impracticable for him or her to undergo testing, but where the disability does not prevent satisfactory performance of duties under conditions of actual service. They added that, if this rule provision provides the justification for job banding, it undermines an important protection for disabled Americans. Mr. Teufel commented that these examination waivers do not show that disabled people are competent to perform their job duties, but only that the disability will not prevent the individual from performing those duties.

Mr. Reid stated that the civil service system now furthers the goal of fair compensation for civil service employees. Mr. Reid and Ms. Rosenstein commented that job banding would threaten equal pay for equal work, particularly in light of the commingling of titles within a band.

Mr. Estevez noted that Latinos historically have been underrepresented in higher level positions, which makes this rule proposal of special concern for them. He also expressed concern that employees serving in bilingual variant titles would be banded together and, therefore, lose promotional opportunities that they otherwise would have had to non-bilingual variant titles.

Mr. Desai stated that it used to be rare for Asian-Americans to receive provisional appointments based on management discretion. He added that promotional examinations have offered Asian-Americans opportunities for upward mobility.

Ms. and Mr. Angarone commented that, in the absence of Competency Assessment Review (CAR) standards set forth by rule, job banding would lead to unequal treatment of employees. Ms. Rosenstein stated that the proposal includes no prohibition on the use of "improper factors" in determining which employees receive an advancement appointment.

Mses. Albano, McClain, and Sheets; Messrs. Hall and Marino; and Comment Group B asserted that job banding would lead to the promotion of less capable individuals.

RESPONSE: With respect to discrimination, it is noted that job banding will not affect or impair the wide range of civil rights and discrimination laws in effect at both the Federal and State level. All civil

service employees, whether they are serving inside or outside of job bands, are and will be protected by all such laws. Among these laws include the following Federal enactments: the Civil Rights Act of 1964 at 42 U.S.C. § 2000a; the Equal Pay Act of 1963 at 29 U.S.C. § 206d; the Age Discrimination in Employment Act at 29 U.S.C. §§ 633 et seq.; and the Americans with Disabilities Act at 42 U.S.C. §§ 12101 et seq. Among the State statutes and policies are the following: The New Jersey Law Against Discrimination at N.J.S.A. 10:5-1 et seq., the Civil Service Act at N.J.S.A. 11A:7-1 et seq., and the Statewide Policy Prohibiting Discrimination in the Workplace. All of the procedures and remedies available through these laws will continue to be in place for all civil service employees, whether the employees are serving in a job band or not. For a more complete list of the laws and policies that protect civil service employees from discrimination, go to: http://www.state.nj.us/csc/about/about/regulations/discrimination_laws.html.

Moreover, the negotiated agreements between the State and the unions contain anti-discrimination clauses that prohibit, among other things, discrimination based on race, ethnicity, disability, sexual orientation, gender, religion, nationality, age, marital status, and mental and physical disability.

With regard to Mr. Estevez's comment about banding together bilingual variant titles, nothing in the rule adoption imposes such a requirement. Job banding will neither diminish nor increase the opportunities for upward mobility, whether bilingual or not.

Competitive examination waivers in the case of some test candidates with disabilities were not an impetus for the adopted job banding program. This category of examination waivers was only referred to in the notice of proposal to provide an example of instances in the civil service system in which formal testing is not considered practicable. It is further noted that these waivers are granted on a case-by-case basis, based on the criteria set forth in N.J.A.C. 4A:4-2.14(b)1. One of the criteria is that the appointing authority provide a statement that the "individual can satisfactorily perform the duties of that title under actual conditions of service." See N.J.A.C. 4A:4-2.14(b)1ii.

The current process of administering evaluations of education and experience (E&Es) in almost 60 percent of promotions does not necessarily render the appointee the most capable candidate, as the assessment is essentially limited to a review of education and experience. As the Commission has previously explained, job banding will facilitate the advancement appointment of the most capable individuals, given the requirement that employees receive an advancement appointment based, initially, on their CAR ratings, and then on a more focused selection process established by the appointing authority. The adoption defines competency as the "minimum level of training and orientation needed to successfully perform at a particular title level within a job band." It would be impossible to set forth more specific CAR standards in the rules because the Commission must first approve the request for particular titles to be banded; the competencies then depend on the title being banded.

However, in response to Assembly Concurrent Resolution (ACR) 199, as well as the commenters' discrimination concerns, the Civil Service Commission adopts a proposed substantial change to the adopted new rule and a new amendment to N.J.A.C. 4A:7-3.2 to clarify that employees in job bands will retain their rights under the Statewide Policy Prohibiting Discrimination in the Workplace. A description of these adopted substantial changes follows.

Originally proposed N.J.A.C. 4A:3-3.2A(d)3i, concerning an employee filing a grievance regarding a non-selection for an advancement appointment, is adopted with a recodification to subparagraph (d)3iii as described above concerning veterans preference, and is adopted with a further substantial change related to discrimination. Thus, there is a cross-reference to new subparagraph (d)3iv which clarifies that, where the employee's non-selection is raised by that employee in a discrimination appeal, the model procedures for internal complaints alleging discrimination in the workplace apply. The new subparagraph (d)3iv further provides upon adoption that, should the discrimination appeal reach the Civil Service Commission, the Commission will decide the non-selection issues in making a determination.

The adopted substantial changes include an amendment to N.J.A.C. 4A:7-3.2, Model procedures for internal complaints alleging discrimination in the workplace. A new paragraph (m)2 provides that, if an appeal filed under N.J.A.C. 4A:7 raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its discrimination determination. Because of adopted new paragraph (m)2, current paragraphs (m)2 and 3, which concern how the appeal is reviewed and where the burden of proof lies, are recodified as paragraphs (m)3 and 4.

Finally, the Commission notes that technical amendments have been adopted to N.J.A.C. 4A:7-3.2 pursuant to P.L. 2008, c. 29, in which the Department of Personnel was abolished and replaced with the Civil Service Commission, a State agency in, but not of, the Department of Labor and Workforce Development. Therefore, all references in this section to the Department of Personnel, the Commissioner of Personnel, and the Merit System Board have been deleted and replaced with the Civil Service Commission. The affected portions of the rule are as follows: N.J.A.C. 4A:7-3.2 (introductory paragraph) and subsections (e), (g), (l), and (m) through (o).

2. Comments Received During Comment Period on the Proposal, Not Giving Rise to the Notice of Substantial Changes on Adoption of the Proposed Amendments and New Rule

Public Hearing

COMMENT: Assemblyman Benson; Assemblywoman Coleman; Assemblyman DeAngelo; State Senator Greenstein; Assemblyman Singleton; K. and N. Angarone; Mses. Buonsante, Murray, Rosenstein and Spencer; Messrs. Bethea, Estevez, Helmstetter, Latham, Liebttag, Menshon and Mercado; and Comment Group C commented that the one public hearing regarding the original notice of proposal, which took place on April 10, 2013, was not enough. Assemblyman Benson, Assemblyman DeAngelo, Messrs. Liebttag and Mercado, and Ms. Rosenstein stated that they were disappointed with the site of the hearing, the Civil Service Commission Room, as it was hot and crowded. Mr. Estevez and Ms. Rosenstein and Comment Group C protested that holding one hearing in Trenton was burdensome for those public employees who do not work near Trenton, and scheduling it during the day was inconvenient for those public employees who were unable to take time off from work. In particular, Ms. Rosenstein charged that it had been represented to her that if she sent in a written request for additional hearings, her request would be granted.

K. and N. Angarone commented that not holding additional hearings throughout the State would be to discount "stakeholder input," in contravention of the Governor's Executive Order No. 4, which requires that State agencies treat their regulated public as customers. Mr. Estevez asserted that no proper notice of the hearing had been provided by the Commission. Comment Group A stated that the proposal is "buried" on the Civil Service Commission website. Mr. Teufel thanked the Commission for publishing the proposal on its website.

RESPONSE: State agencies, in general, are not required by law to hold a public hearing for rulemaking. See N.J.A.C. 1:30-5.5(a). The Commission's rules, however, do provide for a public hearing (see N.J.A.C. 4A:1-3.3(a)3), but there is no requirement for multiple public hearings at various locations. It is noted that union representatives, members of the Legislature, and many other interested individuals were able to attend the hearing scheduled for April 10, 2013, at 3:00 P.M. If necessary, the hearing officer could have remained later to hear comments, but all 18 individuals who had come to provide comments had done so by 4:40 P.M. Thus, everyone who expressed a desire to speak at the public hearing had an opportunity to do so. Furthermore, for those unable to attend the public hearing, there was ample opportunity for all interested individuals to provide written comments by the deadline of May 17, 2013, and no limitation was placed on the length or number of written comments submitted.

With respect to notice of the hearing, as required by law, the Commission provided, with publication of the notice of proposal on its website, at least 15 days' notice of the hearing, and caused the proposal to be distributed to the State House Press Corps. See N.J.A.C. 1:30-5.2(a)4 and 5 and 1:30-5.5(b)1 and 2. Furthermore, as required, the notice of proposal also appeared in the March 18, 2013, issue of the New Jersey

Register. See N.J.A.C. 1:30-5.2(a)2. The Commission appreciates Mr. Teufel's positive comment regarding the publication of the proposal on its website.

Finally, it is noted that Commission staff did *not* represent to Ms. Rosenstein that a written request would lead to additional hearings. The Commission staff only agreed to review her written request.

Civil Service Commission Members

COMMENT: Assemblywomen Coleman and Stender and Assemblyman DeAngelo; Mses. Brennan, Gay, and Rosenstein; and Messrs. Bethea, Marino, Richard, and Wowkanech expressed disappointment that the full Civil Service Commission did not preside over the April 10, 2013 or the February 26, 2014 public hearings. Mr. Liebttag charged that the four sitting members of the five-member Civil Service Commission have no experience with or loyalty to the civil service system and no means by which to make an "informed decision" regarding job banding. Assemblyman DeAngelo asked whether the New Jersey Legislature should hold a hearing and require the Commission members to testify.

RESPONSE: At no time in at least 25 years has the full Civil Service Commission, or its predecessor, the Merit System Board, presided over any public hearings on rules, nor is this required by law. Only a hearing officer is required to preside over a public hearing on rules proposed by a State agency. See N.J.A.C. 1:30-5.5(c). A full summary of all comments made at both public hearings has been presented to the Commission members. With regard to the ability of the individual members of the Commission to make decisions regarding civil service issues, it is noted that they are appointed pursuant to law with the advice and consent of the Senate and are authorized by law to consider and adopt rules. (See N.J.S.A. 11A:2-3 and 11A:2-6.d.)

Meetings with Unions

COMMENT: Assemblyman Wayne DeAngelo, State Senator Greenstein, and Messrs. Marino, Menshon, and Teufel stated that the Commission should have worked with affected employee unions on this rule proposal. Assemblyman DeAngelo; Mses. Brennan, Rosenstein, and Spencer; and Messrs. Richard and Wowkanech charged that there have been no advisory board meetings during the Christie Administration, and that this is contrary to law. Ms. Rosenstein protested that the Commission did not meet with labor representatives even after such a meeting was requested. However, she did acknowledge that Commission staff met on April 5, 2013, with some union representatives (but not all) regarding the proposed job banding amendments to the layoff rules.

RESPONSE: The Commission is not required by law to consult with the Labor Advisory Board regarding proposed rule amendments. Nevertheless, a consultation did, in fact, take place, as Ms. Rosenstein acknowledged, when the Chairperson and other senior staff of the Commission met with union representatives on April 5, 2013, regarding the proposed amendments to the layoff rules relating to job banding, in accordance with N.J.S.A. 11A:8-1.a.

Time Provided for Review

COMMENT: Assemblywoman Coleman; Mses. Brennan, Buonsante, Murray, and Spencer; Messrs. Helmstetter, Menshon, Richard, and Wowkanech; and Comment Group C urged that more time be provided for the review of this rule proposal than the proposal permits, given its complexity and length. Comment Group A asserted that instituting job banding would have far-reaching effects, not just on civil service employees, but on their friends and families.

RESPONSE: As required by law, interested parties had 60 days to review and comment on the original rule proposal, from the date it was published in the March 18, 2013, issue of the New Jersey Register through the deadline for public comments of May 17, 2013. See N.J.A.C. 1:30-5.4(a). They had a further 60 days to review and comment on the Substantial Notice, from the date it was published in the February 3, 2014, issue of the New Jersey Register through the deadline for public comments on April 4, 2014. See *ibid*. The Commission believes that the two 60-day periods constituted ample time to review the proposal and, if desired, provide comments.

Current Civil Service Procedures

COMMENT: Assemblywoman Coleman; State Senator Greenstein; Mses. Buonsante, Gay, Kenselaar, Patterson, Robinson, and Spencer; Messrs. Alfano, Desai, Helmstetter, Kleinbaum, and Lee; and Comment Groups B and C stated that the current civil service system works well as it is and is needed to fight cronyism, bias, nepotism, and general unfairness in the workplace. Assemblyman Benson; State Senator Greenstein; Mses. Buonsante and Kenselaar; Messrs. Helmstetter, Lee, Menshon, and Reid; and Comment Groups A and C favored the objective testing of the current civil service system. Mr. Blake added that objective testing and ranked lists are the foundation of the civil service system. Comment Group A noted that the proposal Summary stated that current open competitive and promotional examination methodology is "clearly consistent" with the State Constitutional and statutory mandates regarding competitive testing. They asked why, if that is so, the current system should be changed as proposed. Mr. Reid noted that the civil service system also provides for the retention of employees based on job performance, and supports employee training.

Ms. Kenselaar, a State employee, stated that, in her experience, management acts as if job banding is already in effect. She claimed that individuals with political connections are being hired rather than those who are the most qualified and that these individuals are "no-shows" in their jobs.

Mr. Grzymiski commented that competitive promotional testing is needed to prevent incompetent individuals from becoming supervisors. He referred first to an employee who had served as a provisional "Section Chief" at the New Jersey Department of Environmental Protection and supervised Mr. Grzymiski for 14 months before the Section Chief lost his position because of a low score on his promotional test. Mr. Grzymiski asked why this individual was given the provisional appointment in the first place. Next, he referred to another supervisor who, he alleged, scored high enough on a promotional test to receive a permanent supervisory appointment, but did not actually perform the duties of his job. Mr. Grzymiski claimed that this supervisor somehow received another promotion a few years later, despite a low test score, through circumvention of a promotional freeze. He alleged that, since then, this supervisor was accused of gender-based discrimination by female subordinates and later made a physical threat against him (Mr. Grzymiski), but when Mr. Grzymiski reported the threat he was retaliated against.

RESPONSE: The current civil service system does not mandate competitive testing in promotions. In the notice of proposal, the Commission identified rule provisions – N.J.A.C. 4A:4-2.7(a) and 4A:4-2.14(b) – that permit the waiver of competitive examination under certain circumstances. Specifically, if testing is not practicable, an eligible was previously tested for the basic skills required for the promotional title, and he or she would be reachable for appointment in accordance with the "Rule of Three," a promotional examination may be waived. Similarly, if the eligible has a disability that makes competitive testing impracticable but the eligible can satisfactorily perform the duties of the title under conditions of actual service, a competitive examination may be waived. Therefore, as observed in the proposal Summary, the Constitutional and statutory mandate to select and advance employees on the basis of their relative knowledge, skills, and abilities in a competitive testing situation does not require that a formal examination be administered for every position.

Moreover, the Commission is also authorized to administer ranked and unranked evaluations of education and experience (referred to as "E&E" for education and experience). See N.J.S.A. 11A:4-1.a and N.J.A.C. 4A:4-2.2(a)5. While these methods of evaluation are legally permissible, and are used in close to 60 percent of promotional situations, they are not formal written or oral examinations. Finally, thousands of State and local employees have been advanced from Trainee to Primary titles "without the usual promotional examination procedures" as provided in N.J.A.C. 4A:3-3.7(j). The Commission notes, therefore, that the law already allows for selection methods other than formal competitive examinations. With job banding, however, the Commission introduces a methodology with standards, which would provide for a much more competitive situation than one will find with the methods described above. Additionally, the process serves to decrease the time between the announcement and appointment, which benefits both the agency and the employee. The

agency is more quickly able to fill immediate staffing needs without resorting to uncertain provisional appointments, while qualified employees do not have to endure a long process prior to an advancement appointment or the attainment of permanency in a provisional title. Also, job banding would further the merit system goal of retaining and advancing employees based on job performance and would not impact employee training.

It is noted that the job banding advancement appointment process would not affect entry-level hiring. Competitive testing would still be the primary method of entering the civil service.

With respect to Mr. Grzymiski's comments, he offers numerous complaints against his former supervisors, asserting that the existing civil service promotional process resulted in what he believed were incompetent supervisors. Clearly, these complaints are not relevant to the Commission's job banding proposal. Moreover, supervisory titles would not be included in a job band.

State Constitutional and Statutory Mandates

COMMENT: Mr. Marino suggested that the Commission work with the Legislature on the issue of job banding. Assemblyman Benson, Assemblywoman Coleman, State Senator Greenstein; and Mr. Reid stated that the rule proposal circumvents the legislative intent of the Civil Service Act. Assemblyman Benson and State Senator Greenstein; Mses. Albano, McClain, and Rosenstein; Mr. Walko; and Comment Group B cautioned that job banding subverts the civil service provisions of the New Jersey Constitution. In particular, Ms. Rosenstein indicated that the Constitution's requirement that relative merit and fitness be determined would be violated by this proposal.

Mr. Hall commented that the use of competitive examinations for civil service hiring long antedates the adoption of the 1947 State Constitution, going all the way back to rules promulgated in 1908. He noted that, with the proposed new rule and amendments, the Commission would be reversing well over a century of established practice. He stated that current civil service law and rules require that civil service employees be competent and free of political coercion, but that banding would undermine these goals. He elaborated that a supervisor's involuntary demotion of an employee due to the employee's unsatisfactory Performance Assessment Review (PAR) rating could be prompted by subjectivity and political motivations. He added that civil service rules now provide only a limited set of circumstances under which promotional examination waivers may occur, in accordance with N.J.S.A. 4A:4-2.7(a). Mr. Hall further stated, however, that job banding would make the few exceptions to competitive testing the rule and "effectively eviscerate" the State Constitutional and statutory imperatives of the merit system. He argued, consequently, that this rule proposal is an improper use of the Commission's powers.

More specifically, Ms. Rosenstein and Mr. Hall commented that, although the proposal stated that no statutory definitions exist for the terms "title," "title series," "promotion" or "class code," this fact does not justify the arbitrary discarding of the present understanding of what these terms mean. Mr. Hall stated that the proposal's representation, without more, that advancement appointments are not really promotions, fails the substantial evidence standard for administrative decision-making.

Mr. Liebttag argued that the Commission cannot do the Legislature's work of rewriting what is already set forth in Title 11A. He specifically pointed to provisions in the Civil Service Act linking compensation to "knowledge, skills and abilities" rather than "competencies," and providing that "titles," rather than "job bands," are central to appointments and promotions. He also argued that Title 11A requires that "titles" be filled by competitive examination, not employer discretion. Mr. Liebttag further asserted that N.J.S.A. 11A:3-1 only recognizes "titles" as the basis for the classification system, and N.J.S.A. 11A:3-2 provides for two divisions within the career service, competitive and noncompetitive. With banding, he stated, titles would essentially become noncompetitive. He argued that the proposal would violate N.J.S.A. 11A:3-7 for two reasons: because it would change the compensation system without negotiations, and because subsection d of the statutory section prohibits local employees from being paid a base salary below the minimum or above the maximum established for an employee's title. Mr. Liebttag pointed to N.J.S.A. 11A:4-1 et seq., which provides for testing

based on titles, and the provisions on layoffs, since layoff rights are based on titles and provide the bulwark against arbitrary layoffs. Ms. Rosenstein stated that this proposal is a back door attack on the State compensation system.

RESPONSE: The Commission believes that the job banding proposal is consistent with principles of merit and fitness. Indeed, as the Commission stated in the notice of proposal:

The ability of an appointing authority to select and appoint qualified individuals in an expedited manner is tied to the Legislature's directive to the Commission to provide public officials with appropriate appointment, supervisory, and other personnel authority, so that they may properly execute their Constitutional and statutory responsibilities, as well as encourage and reward meritorious performance by employees in the public service.

See 45 N.J.R. 500(a) at page 501. With job banding, merit and fitness would be assessed in at least a two-step process: first, on an ongoing basis, it would be determined whether employees meet the predetermined competencies to be eligible for an advancement appointment (CAR); second, from among those employees who meet the competencies, the appointing authority would make one or more selections for an advancement appointment based on an evaluative process that it has established.

Moreover, promulgating definitions of terms, such as "title," "title series," "promotion" and "class code," is well within the Commission's statutory authority under N.J.S.A. 11A:2-6.d. In particular, the assertion that the Commission has not provided "substantial evidence" for the proposed definition of "promotion," as distinguished from an "advancement appointment," is belied, again, by the Commission's statutory authority to promulgate rules in furtherance of the civil service system. As the Commission stated in its notice of proposal:

The Commission notes that there are no statutory definitions of "title," "title series," "promotion," or "class code." The definitions of these terms constitute regulatory, not statutory, provisions that have been utilized over the years to aid in the administration of the Classification Plan as it pertains to the selection process...Effectively, what has been treated as a "promotion" to the next higher, non-supervisory title in a title series is really the demonstration of an employee's ability to handle increasingly difficult levels of work associated with the title. Thus, unless an individual moves to a supervisory or management position, he or she is not really "promoted" to a position that is significantly different from his or her former position.

See 45 N.J.R. 500(a) at page 502. The Commission believes that the proposed new N.J.A.C. 4A:3-3.2A and amendments to 28 different rule sections of Title 4A of the N.J.A.C. are consistent with one another in accordance with its rulemaking authority.

Mr. Hall states that civil service employees must be competent and free of political coercion. Mr. Hall also expresses concern with supervisors providing employees Performance Assessment Review (PAR) ratings. Initially, the Commission notes that performance evaluations are already authorized under existing law and rules. See N.J.A.C. 4A:6-5. As for Mr. Hall's comments concerning disciplinary action due to political reasons, the employee would have two avenues open to him or her: the major disciplinary appeal process, at N.J.A.C. 4A:2-2; and an appeal challenging a reprisal or political coercion, at N.J.A.C. 4A:2-5.2. Moreover the negotiated agreements between the State and the unions contain anti-discrimination clauses which prohibit, amongst other things, discrimination based on political affiliation.

Finally, the proposal is not in violation of N.J.S.A. 11A:3-7, regarding State compensation, as employees' levels of compensation would not be changed. Salary ranges for all employees, whether in bargaining units or not, would not be modified under this proposal, regardless of whether an employee is serving in a banded or non-banded title. Also, the Commission has never had the authority to establish or interfere with local salary ranges, but this is a moot point, as job banding will not apply to local service.

Rule of Three

COMMENT: Mr. Hall stated that the proposal would violate the Rule of Three. Mr. Teufel commented that, with the Rule of Three, in which an appointing authority is required to appoint one of the top three interested eligibles from a list, the top three eligibles are all close in ability. Therefore, Mr. Teufel stated, if the highest scorer, or the number one person on the list, isn't the best "fit" for the job, appointing one of the other two would still be based on merit. By contrast, he stated, with banding, anyone can be considered, not just the top three interested eligibles. Mr. Teufel asked what would happen if 40 people applied for an advancement appointment and the supervisor chooses the 39th most capable person. He acknowledged that the selection of the 39th most capable person might be based on the candidate's potential for forming good interpersonal relationships with supervisors and coworkers, but that the selection could still do the public interest a disservice due to considerations other than interpersonal skills.

Mr. Walko indicated that the Rule of Three has been in existence for over a century, providing appointing authorities with discretion that is not inconsistent with merit considerations. He added that the proposal eliminates any review of the appointing authority's actions, inviting arbitrary and capricious appointments, while also gutting civil service protections.

RESPONSE: The Rule of Three is not applicable to advancements under job banding, since these are not open competitive or promotional appointments under N.J.S.A. 11A:4-8. The Commission believes that there is adequate protection from arbitrary or improper employer actions under this rule proposal as well as existing rules which would remain in force. These protections include the right to grieve non-selection for advancement, the right to pursue a discrimination complaint, and the right to challenge minor and major disciplinary actions. The Commission also directs the commenters to the detailed discussion below of the job banding pilot program and its achievements. The actual experience of the pilot program, as well as the actual experience of the Judiciary's program, should alleviate fears regarding the potential for a low-rated employee receiving an advancement appointment and concerns that politics would control management's decisions in this area.

Concerns Regarding Cronyism, Nepotism, and Other Abuses

COMMENT: Assemblywoman Coleman; Assemblyman DeAngelo; State Senator Greenstein; Assemblyman Singleton; K. and N. Angarone; Mses. Albano, Brennan, Buonsante, Gay, Patterson, Reese, Robinson, and Sheets; Messrs. Crivelli, Ellis, Faherty, Lee, Menshon, Richard, and Wolkanech; and Comment Groups A and C asserted that the proposed job banding program would replace objective testing with selection based solely on management discretion. Ms. Brennan and Mr. Wolkanech reiterated this concern in comments regarding the Substantial Notice and added that the civil service system needs a balance between management interests and employee rights. Mr. Hall commented that Competency Assessment Review (CAR) ratings would be subject to abuse by supervisors motivated by politics and personal animosity. By contrast, he stated, objective testing proves an individual's fitness for a position. Ms. Durant stated that job banding would provide appointing authorities with the power to hurt people. Assemblywoman Coleman, Ms. Buonsante, and Messrs. Ellis and Hall commented that this proposed program may offer flexibility, but would undermine accountability. Mr. Teufel cautioned that flexibility could lead to poor decision-making on the part of management.

Messrs. Crivelli, Ellis, Menshon, Mercado, Reid, Richard, and Wolkanech; and Mses. Brennan, Rosenstein, Soffel, and Spencer declared that the proposed program would destroy the merit system. Mr. Blake stated that, as a taxpayer and concerned citizen, he pays taxes to ensure that the government is run by qualified public servants and not someone's subjective "favorites." Ms. Rosenstein pointed to the Christie Administration's addition of unclassified Governor's Office Secretarial Assistants to positions outside of the Governor's Office and hundreds of undefined, unclassified Government Representatives.

Mr. Crivelli commented that, in *Kyer v. City of East Orange*, 316 N.J. Super. 524 (App. Div. 1998), the court held that the purpose of the civil service system is to select and advance employees on the basis of merit, encourage meritorious employee performance, and retain and separate employees based on their performance. Mr. Crivelli added that the *Kyer* court held that underlying this policy is the desire to provide

efficient public service free from political control and personal favoritism. Mr. Crivelli concluded that job banding would violate the principles enunciated in *Kyer*, eviscerate the Civil Service Act, and negatively impact not only New Jersey public employees but New Jersey citizens.

Assemblywoman Coleman and Assemblyman Singleton; K. and N. Angarone; Mses. Albano, Brennan, Buonsante, McClain, Patterson, Robinson, and Rosenstein; Messrs. Alfano, Crivelli, Ellis, Esposito, Lee, Menshon, Mercado, Reid, Richard, Walko, and Wowkanech; and Comment Groups A and B commented that the proposal would bring cronyism and nepotism back to the public sector. Ms. Brennan and Mr. Wowkanech reiterated this concern in comments regarding the Substantial Notice. Assemblyman Singleton and Messrs. Ellis, Faherty, and Reid stated that the appeals permitted in the proposal would have to be submitted to those who made the adverse hiring decisions in the first place. State Senator Greenstein, K. and N. Angarone, Mr. Reid, and Comment Group C commented that the civil service system now allows for the objective review of appeals related to the civil service process.

RESPONSE: The Commission believes that as a competency-based human resources process, job banding strongly advances the merit and fitness principles of the civil service system and does not foster cronyism and nepotism in civil service employment. The job banding program is similar to the system that has been successfully used in the Judiciary for nearly 15 years. Through job banding, only those employees who demonstrate the established competencies needed to successfully perform at the higher level will be eligible for an advancement appointment. Moreover, as already indicated above, due to the prevalence of methods other than formal competitive examinations, such as promotional examination waivers in the promotional appointment process, and the use of E&Es in close to 60 percent of promotions, job banding would actually enhance competitive standards in advancing employees from one level to another.

As provided in the proposal, employees would be able to grieve non-selections for an advancement appointment, as well as title level placement and failure of a developmental period following an advancement appointment. At the same time, employees would retain their permanent status, layoff rights and major and minor disciplinary appeal rights. Therefore, the Commission believes that adequate safeguards against abuse of discretion would remain in place under the job banding system. Also, as already noted, job banding would not impact the competitive examination process for entry-level hiring.

Intent of Job Banding

COMMENT: State Senator Greenstein questioned the motives behind job banding. Mr. Faherty asked whether job banding is meant to remove important oversight duties from the Civil Service Commission and therefore save the Commission money. Assemblywoman Coleman questioned the veracity of statements in the rule proposal that the intent of the job banding program is to promote efficiency. Ms. Rosenstein expressed concern that the trend in New Jersey civil service is the combining of hundreds of titles and the designating of other titles as noncompetitive. Mr. Lee predicted that job banding would not stop with promotional jobs, but eventually filter down to entry-level positions so that open competitive testing would be impacted.

Mr. Teufel asserted that reducing the number of competitive examinations is not a good objective for the Civil Service Commission, as ensuring merit and fitness in civil service is the Commission's most important job. Instead of administering fewer tests, he suggested improving the testing process through library research and consultation with employee representatives. He also suggested that political appointees receive training to learn about the special challenges faced by the public sector in providing services to the public: that the private sector experience is not necessarily translatable to the public sector, government's public relationships limit how it can operate, and the measurement of success of an initiative can be different in the public sector than in the private sector.

Mr. Hall commented that the proposal does not indicate how many State service promotions were handled via competitive examination. He asked whether the 74 State and 83 local promotional examination waivers constituted a large proportion of total promotions (perhaps 75 percent) or

only a tiny fraction of the total. He asserted that the proposal makes no showing of undue delays in filling promotions under the present system. Consequently, he argued, the rule proposal fails to meet the substantial evidence standard for administrative decision-making. Mr. Liebtang also stated that the Commission's figures cited in the rule proposal Summary regarding promotional examination waivers are not persuasive, as these figures do not demonstrate that examinations are impracticable or unwarranted.

Mr. Hall further contended that the proposal shows a bias against public employees, as the proposal states that most promotions are really higher-level versions of the same job; apparently, only movements to supervisory or management positions are true promotions. Ultimately, he commented, this proposal is more about administrative convenience and fiscal benefit to the Commission, since the Commission would need to announce far fewer tests under job banding.

RESPONSE: As stated in the notice of proposal, efficiency was an important, but not the only, factor informing the decision to propose the new job banding program. Certainly, the ability of appointing authorities to be able to respond to agency needs in serving the public depends upon being able to efficiently fill positions with qualified employees, and the Commission believes that job banding would enable appointing authorities to do this. Adding a system of standards to the process of advancing employees, which is mostly lacking in the case of promotional examination waivers and promotion through E&E, would benefit the competitive process, and was another important factor in the decision to propose the new job banding program.

In response to Mr. Lee's comment, job banding would not affect entry-level hiring. With regard to title consolidation, the Commission notes that it is required by law to "... [e]stablish, consolidate and abolish titles" See N.J.S.A. 11A:3-1.b. While title consolidation is not an objective of job banding, title consolidation remains an ongoing effort in the current work environment.

The Commission's review of the banding program in the Judiciary and its success over the past 15 years lends support to this proposal. With respect to Mr. Teufel's comment regarding research on testing, this agency has for decades diligently conducted and examined psychometric studies, and employed psychometricians and subject matter experts in a continuing effort to improve the competitive testing process. Moreover, it is unclear what the relationship is between improving the civil service testing process and consultation with employee representatives, as suggested by Mr. Teufel. The Commission does not see a connection between training political appointees and the need for job banding.

Impact on Layoff Process

COMMENT: Assemblyman DeAngelo, Ms. Buonsante, and Mr. Teufel expressed concern about the impact of job banding on the layoff process. Mr. Ellis stated that, in layoffs, job banding would cause employees to be displaced to agencies and a type of work with which they are unfamiliar. Messrs. Faherty and Hall expressed concern regarding the statement in the notice of proposal that employees would have fewer displacement options under job banding; Mr. Hall added that this amounts to a fiscal benefit to the Commission at the expense of employee rights. Ms. Rosenstein indicated that, at the April 5, 2013, meeting with labor representatives, Commission staff did not explain the layoff implications of a band that includes two or more title series or how banding would affect layoff rights for bilingual variant titles.

RESPONSE: With job banding, there would be no dilution of seniority rights, and layoff rights would still be based on seniority. With regard to possible displacements to different agencies and unfamiliar job duties, it is noted that an employee's layoff title rights are exercised within a layoff unit, whether or not the employee serves inside or outside a job band. Therefore, there is no reason why job banding would lead to an employee being displaced to a different agency or to unfamiliar work.

The Commission also believes that job banding would help simplify the layoff process, resulting in far less disruption for appointing authorities and employees than presently occurs in layoffs. For example, if five positions are targeted for layoff within a job band, the five least senior employees in that band would be impacted, regardless of their level within the band. By contrast, in a non-banded title series, "bumping" can occur from the highest title, to the next highest title, and

so on to the lowest title in the series. Clearly, the “ripple” effect in a non-banded title series would result in far more employees being impacted than in a banded title.

Equal Employment Opportunity

COMMENT: Assemblywoman Coleman, Assemblyman DeAngelo, and Comment Group D charged that job banding would lessen the protections that the civil service system provides to women and minorities.

RESPONSE: The Substantial Notice addressed concerns by commenters regarding the original proposal by clarifying that employees in job bands would retain their rights under the Statewide Policy Prohibiting Discrimination in the Workplace. See 46 N.J.R. at 264-65. These amendments are being adopted by the Civil Service Commission.

Economic Impact

COMMENT: Ms. Rowell commented that, as a single mother who derives her sole income from her State employment, she is concerned that job banding would keep her from being promoted and could even cause her to be demoted or possibly let go. Therefore, she urged the Civil Service Commission not to adopt the proposal. Mr. Lee commented that managers would be able to demote employees without just cause, leading to financial hardship. Mr. Faherty indicated that demoting employees would be too easy under job banding.

Mr. Teufel stated that management salary compression has caused high-level State employees to refuse managerial positions, and managers have returned to “working positions.” He indicated that, anecdotally, where he works, at the New Jersey Department of Transportation, quite a few employees hold “multiple positions” and many individuals serve in an “acting” role because of a lack of employees to do managerial work. He asked whether these conditions would “hold employees down” in job bands, predetermined competencies notwithstanding.

RESPONSE: Major disciplinary protections would still be in place for employees serving in job bands. Such employees could not be removed, demoted, or suspended for more than five working days without such protections applying. While it is true that an employee who has received an advancement appointment would still be required to satisfactorily complete the six-month developmental period and could be returned to the lower title level at the end of the period if the employee has not satisfactorily completed it, the employee would still be able to file a grievance with respect to that determination. Finally, job banding is a separate issue from the salary compression of managers in State service.

Relationship to Other Governor Initiatives

COMMENT: Ms. Brennan and Messrs. Richard and Wowkanech asserted that job banding does not mesh with other initiatives of Governor Christie, including objective teacher testing, job training for veterans, and incentives to hire veterans.

RESPONSE: The job banding rule proposal is independent of other Governor initiatives, but consistent with efforts to improve public sector performance. Additionally, it is important to recognize that the adoption of this rule proposal would not immediately lead to the banding of every title or title series in civil service. Before any banding could occur, each title or title series would have to be evaluated by the Commission to determine the propriety of inclusion in a band. It is expected that some titles or title series would be appropriate for banding, while others would not. Also, as already noted, competitive examinations would still be in place for initial hiring, as well as for promotions to supervisory titles and other non-banded titles.

Furthermore, job banding would not conflict with veterans employment initiatives. As indicated above, veterans preference would still apply.

Current Job Banding System in Judiciary

COMMENT: Ms. Brennan and Mr. Wowkanech commented with respect to the Substantial Notice that the use of job banding in the Judiciary is not a justification for implementing such a program Statewide. They pointed out that job banding originated in the Judiciary in meetings between management and negotiations representatives where they considered what was in the best interests of employees.

RESPONSE: As stated in the Substantial Notice:

... [T]his agency approved job banding in the Judicial Branch in 1998, and the program has been successfully applied since that time, with over 4,000 Judiciary employees in banded titles. It should be pointed out, moreover, that the Commission has regulatory authority over the personnel practices governing the Judiciary’s career service employees, so that the experience gleaned by the personnel practices of the Judiciary, including their experience with job banding, can be considered instructive for all of State service. The Judicial Unification Act, at N.J.S.A. 2B:11-5, ensured that those career service employees coming to State service from the counties would continue to be subject to N.J.S.A. 11A, the Civil Service Act, and the then Department of Personnel (now Civil Service Commission). “[The Judicial Unification Act] preserves the judiciary’s unquestioned right to create unclassified positions within the judiciary and to appoint individuals to fill those positions pursuant to Rule 1:33-4.... Other positions within the judiciary, however, were then, and continue today to be, filled pursuant to Civil Service guidelines....” *Thurber v. City of Burlington*, 191 N.J. 487, 498 (2007).

See 46 N.J.R. 260, 263.

Job Banding Pilot Program

COMMENT: Mr. Liebttag commented that the current job banding pilot program affecting the Civil Service Commission and the Department of the Treasury involves only about 300 employees who have been designated as confidential and non-represented. He stated that, from such a small sampling of State employees, it would be impossible to extrapolate generalizations regarding the efficacy of the program for the 80,000 jobs in the State workforce. Messrs. Hall and Liebttag asked for information regarding the results of the pilot program. Similarly, K. and N. Angarone asked why the pilot program should lead to a Statewide policy change, how the program’s success was measured, whether affected employees willingly participated and would agree that the pilot program was a success, and whether these affected employees have greater civil service protection from discrimination than other non-union employees.

RESPONSE: The Commission again notes that not all job titles will be banded. An appointing authority may recommend that the Commission consider a title for banding.

The Commission can provide the following information regarding the success of the pilot program at this agency:

The process commenced with the introduction of the CAR form to supervisors and affected employees in April 2012. This was accomplished via agency-wide training offered by the Commission’s Division of Administration and Training. CARs were completed in conjunction with PARs at the beginning of Fiscal Year 2012-2013. Upon the completion of all CARs agency-wide, consultations with Division Directors were held to determine their advancement appointment needs.

Once employees who had met the competencies applied for advancement appointment, the second stage of the selection process commenced. It involved rating the candidates on three screening criteria to determine which candidates would advance to the next stage. The third stage entailed a structured interview and writing exercise. The candidates’ interview responses were scored by the panelists on seven dimensions, which mirrored many of the core competencies in the CAR. In addition, candidates were required to complete a short writing exercise following their interview. The writing exercise was scored on three dimensions.

Upon completion of the interviews and scoring, the Division Directors were again consulted prior to making the final recommendations. It is emphasized that veterans’ preference was applied in accordance with N.J.S.A. 11A:5-7. That is, it was recognized that any veteran who achieved the highest score in the overall selection process would be appointed. However, neither of the two veterans who participated in the process received the highest score for any of the positions. Thus, the nonveterans who achieved the highest scores for each position were selected.

Two months elapsed between closing date and appointment date. As a reference point, this agency announced promotional examinations for the affected titles, prior to banding, in November 2009. The earliest

appointments from these lists occurred in October 2010, almost a full year following announcement.

Almost all candidates, whether selected or not, expressed their appreciation for the swift process. Management was able to evaluate the merits of all candidates for advancement appointment, rather than, under the Rule of Three, just the top three interested eligibles. This agency discovered that employees, supervisors and managers have been more readily identifying areas in need of improvement through use of the CAR. Moreover, employees are motivated to improve their skills, since improvement is tied directly to their advancement appointment opportunities. The CAR serves as a valuable guidance tool.

All candidates for a particular advancement appointment were evaluated according to the same standards. Key factors considered throughout the process included job performance (as measured by the PAR), ability to perform at a higher level (as measured by the CAR), attendance and adherence to time and leave policies (as captured in the attendance score), and professionalism (as captured in the resume/cover letter rating and in the interview process). The selection process better enabled management to evaluate each employee as a whole. Feedback from employees and management has, for the most part, been favorable.

Employees involved in the pilot program are career service employees with all of the civil service protections that such a status implies. As already noted, employees in job bands, whether career or unclassified, whether in or out of a band, would be protected by a wide range of existing Federal and State discrimination laws and policies. Despite the success of the job banding pilot program, it is clearly not anticipated that all civil service employees or even a majority of those employees would be serving in a job band following adoption of this proposal. Determining which titles or title series would be banded is expected to proceed slowly and carefully, on a case-by-case basis.

Details of Job Banding Proposal

COMMENT: Messrs. Bethea and Liebttag commented that job banding would create a complicated, parallel process between banded and non-banded jobs. Ms. Brennan and Rosenstein and Messrs. Liebttag, Richard, and Wowkanech commented that the standards to be used in developing job bands are unclear. Ms. Rosenstein asked how job banding would impact title series and how many titles or title series would be contained in a band. Ms. Brennan and Mr. Wowkanech further asked how many examinations would be administered for a particular appointing authority and examinations would be impacted with job banding. Ms. Rosenstein also asked what would happen to titles with variants. Mr. Crivelli asked for an itemization of the titles that would be affected by the program. Mr. Estevez and Ms. Rosenstein expressed concern about permanent employees' property rights in their respective titles. Mr. Liebttag asked whether CARs would be common to an occupational group or just apply within bands. K. and N. Angarone and Mr. Faherty asked how CAR standards would be established, and asserted that, without standards, the Commission would be inviting a deluge of appeals. Mr. Teufel asked how employees would be able to develop competencies. Mr. Bethea asked how job banding would affect job opportunities and whether bands would contain both competitive and noncompetitive titles. Mr. Liebttag asked how job banding would affect special reemployment lists, pending reclassification appeals and active promotional lists. Ms. Brennan and Mr. Wowkanech stated that the impact of job banding on employees is an important question that needs answering.

RESPONSE: It is not possible at this time to provide a list of titles or title series that would or would not be banded under the job banding program. The request must come before the Commission for review and consideration, on a case-by-case basis. As noted above, the determination regarding the appropriateness of placing certain titles or title series in bands is expected to proceed slowly and carefully. However, it is anticipated that any given CAR would be common to a particular job band rather than an occupational group. The employee would be apprised of the competencies needed to receive an advancement appointment to the next title level. Following adoption of the new rule and amendments and the commencement of banding of some titles and title series, it is expected that the employee and his or her supervisor will confer regarding an employee's opportunities to meet the competencies.

It is not anticipated that job banding would have any negative effect on job opportunities. Vacancies would exist whether the vacancies are in banded or non-banded titles. Most likely, there would be a positive effect on job opportunities due to a reduction in the delay associated with the promotional examination process. Further, it is not anticipated that banding would affect noncompetitive titles since, by definition, such titles do not involve the sort of evaluative process utilized in filling vacancies in competitive division positions.

With regard to pending appeals, it is expected that these would not be affected so long as they were pending prior to the effective date of the proposed new rule and amendments. With regard to any active promotional lists promulgated before the effective date of the rule, these would be cancelled where the title is banded. However, it is expected that special reemployment lists would be affected in the sense that layoff rights for employees in job bands would be based on the employee's job band rather than on his or her title level. Nevertheless, the employee would hold permanent status in the job band.

Appeal Process

COMMENT: Mr. Hall expressed concern about the proposed amendment to N.J.A.C. 4A:2-3.7, stating that it would take away an employee's minor discipline appeal rights to the Civil Service Commission unless the appeal presented issues of "general applicability." He noted that examination appeals would be replaced by grievances not subject to review by the Commission. He commented that the proposal would eliminate employees' due process rights by limiting their ability to challenge title levels.

Mr. Dressel asked whether, if a local employee is not selected for an advancement appointment, he or she would be able to request a desk audit and appeal the matter to the Commission. He also expressed concern that allowing a local employee to file a grievance because of his or her non-selection for an advancement appointment would add a whole new appeal process, which makes little sense since employees cannot now challenge an appointment made in accordance with the Rule of Three. He further asked which employee the union would represent – the employee who was not selected for an advancement appointment or the employee who was selected for the advancement appointment.

Mr. Lee indicated that job banding would lead to out-of-title work without commensurate compensation; for example, employees would be forced to perform supervisory duties at entry-level pay. Mr. Hardy stated that, at the Office of Information Technology (OIT) in the State Department of the Treasury, the only way that employees can be promoted is by filing a classification appeal, as Treasury approves few promotions. Last year, he continued, OIT generated over 100 classification appeals in an agency of over 700 employees. More than half of the appeals, Mr. Hardy elaborated, were successful. He added that, presently, classification appeals involve a classification reviewer from the Civil Service Commission, who is independent of the appointing authority. Mr. Hardy expressed concern that job banding would eliminate the availability of most classification appeals and replace them with grievances decided by the appointing authority. He asserted that the rule proposal would greatly increase the number of misclassified OIT employees. He further stated that, because of this, employee productivity would decrease, as supervisors would be reluctant to assign employees duties that could lead to a misclassification of their positions.

RESPONSE: The proposal does not eliminate the ability of an employee to challenge his or her title level. In State service, appeals regarding title levels would be handled as grievances once the employee follows the steps set forth in the proposed new N.J.A.C. 4A:3-3.9(c)4 through 6. Pursuant to N.J.A.C. 4A:2-3.3, where departmental grievance procedures are established by negotiated agreement, such agreement shall be the applicable appeal process. If an employee is not covered by a negotiated agreement, or the agreement does not address a grievance appeal process, the provisions of N.J.A.C. 4A:2-3 apply. Classification appeals to this agency would still be available in the case of titles and title series outside bands and would also apply regarding the proper classification of the band.

With regard to the situation in the Department of the Treasury, the classification appeal process is not intended to be a substitute for the promotional process.

The Commission notes that eligibles for promotion to non-banded titles or for promotion to a higher band may still file Rule of Three bypass appeals. See N.J.A.C. 4A:4-6.3. With regard to the proposed amendment to N.J.A.C. 4A:2-3.7, this change is not substantive. The principle that a minor disciplinary matter or a grievance must present a question of general applicability to be reviewed by the Civil Service Commission is already in the rule and has been in effect since the provision's adoption in 1989. The proposed amendment is simply intended to clarify the procedure for dismissing minor disciplinary appeals that do not present issues of general applicability.

Finally, as already noted, job banding will not apply in local service.

Working Test Periods

COMMENT: Mr. Reid noted that the working test period under job banding would be six months long, with no provision for probationary reports during this time. Mr. Dressel asked what the standards would be for an employee's failure of a developmental period.

RESPONSE: Initially, the Commission notes that the period of evaluation of an employee who has received an advancement appointment would be neither a working test period nor a probationary period, but, as Mr. Dressel indicated, a developmental period. The employee serving in a developmental period would naturally receive management feedback during that time even without use of a formal job performance report. Additionally, the employee is encouraged to seek feedback from his or her supervisor or manager as often as possible during the developmental period. With respect to standards by which to judge an employee's success or failure of a developmental period, these would be up to the appointing authority to formulate.

In Support of Job Banding

COMMENT: Ms. Mintchwarner and an anonymous union member from Gloucester County commented that they favor job banding. Ms. Mintchwarner stated that, presently, civil service employees are not promoted based on their relative knowledge, skills, and abilities and expressed the belief that the situation would change with job banding. Mr. Jagannathan indicated that 11 months elapsed between his examination date and his certification notice, with another three months intervening between his interview and his appointment date. He stated that State agencies waste time with a hiring process hampered by unnecessary red tape. He asserted that, if this does not change, the private sector will continue to "gobble up" prime talent while the public sector gets the "leftovers." If this rule proposal would eliminate the delays he described, he favors it.

Ms. Davis commented that the CCSNJ supports job banding. She referred to reports of the CCSNJ's Board Council on Responsible Government Spending titled, "Meeting the Challenge: Saving Taxpayer Dollars by Adopting Best Business Practices." She stated that the report recommended the use of private sector practices to reduce and contain State government spending and improve operational efficiency. She commented that the State's employment system is a "costly antique" which differs from the private sector's best practices, with the miscategorization of employees, a lack of incentives for productivity, the inefficient allocation of resources, and the stifling of career development. She added that some of the State's problems could be solved by reducing titles and defining jobs more broadly. She stated that too many titles are encumbered by too few employees, noting that there are 841 titles in which only one employee is serving and 1,810 titles in which five or fewer employees are serving. She further stated that the present system limits the State's ability to deploy its workforce where it is really needed. Finally, she expressed her belief that job bands would enable employees who have the knowledge, skills and abilities for the job to move up in the job band.

RESPONSE: The Commission appreciates the expressions of support and has decided to adopt the rule proposal. However, with respect to Mr. Jagannathan's suggestion that the entire competitive examination process is flawed, even for entry-level positions, the Commission notes that it will continue to administer competitive testing for initial hiring, where practicable, and job banding would not be employed for law enforcement and public safety titles, or other titles and title series for which banding would not be appropriate. Nevertheless, the Commission believes that the process of utilizing CARs and a selection process established by the

appointing authority for the advancement appointments of employees does provide the necessary evaluation of employees' abilities and would help lead to the wise allocation of tax dollars and public resources. Therefore, in appropriate situations, the job banding advancement appointment process would serve the important public purposes mandated by State law.

3. Comments Received on Notice of Proposed Substantial Changes on Adoption of Proposed Amendments

Civil Service Commission Members

COMMENT: Assemblywomen Coleman and Stender and Assemblyman DeAngelo; Mses. Brennan, Gay, and Rosenstein; and Messrs. Bethea, Marino, Richard, and Wowkanech expressed disappointment that the full Civil Service Commission did not preside over the April 10, 2013, or the February 26, 2014, public hearings. Mr. Liebttag charged that the four sitting members of the five-member Civil Service Commission have no experience with or loyalty to the civil service system and no means by which to make an "informed decision" regarding job banding. Assemblyman DeAngelo asked whether the New Jersey Legislature should hold a hearing and require the Commission members to testify.

RESPONSE: At no time in at least 25 years has the full Civil Service Commission, or its predecessor, the Merit System Board, presided over any public hearings on rules, nor is this required by law. Only a hearing officer is required to preside over a public hearing on rules proposed by a State agency. See N.J.A.C. 1:30-5.5(c). A full summary of all comments made at both public hearings has been presented to the Commission members. With regard to the ability of the individual members of the Commission to make decisions regarding civil service issues, it is noted that they are appointed pursuant to law with the advice and consent of the Senate and are authorized by law to consider and adopt rules. (See N.J.S.A. 11A:2-3 and 11A:2-6.d.)

State Legislature's Objections

COMMENT: Assemblywoman Stender stated that job banding is a radical change from the current system. Assemblywomen Coleman and Stender, Assemblymen Benson and DeAngelo, State Senator Greenstein, and Mr. Hahn noted that the State Legislature recently passed two resolutions expressing its disapproval of the rule proposal and that, by moving forward with it, the Commission is ignoring the will of the Legislature. Mr. Hahn stated that, in accordance with Article 5, Section 4, paragraph 6 of the State Constitution, the Legislature can overturn the proposal if the Commission adopts it, and observed that there are enough willing Assembly members and State Senators to do so. Mr. Hahn further stated that, while this Substantial Notice addresses some of the Legislature's concerns, other objections have not been addressed. Moreover, the Legislature never said that the Commission should move forward with job banding if some of its concerns were addressed.

RESPONSE: The process undertaken by the Legislature in furtherance of N.J. Const., Article V, Sec. IV, Para. 6, in this instance was procedurally defective.

Current Civil Service Procedures

COMMENT: Ms. Apeadu and Comment Group D stated that the current civil service system works well as it is and is needed to fight cronyism, bias, nepotism, and general unfairness in the workplace. Comment Group D urged that civil service not return to the days of the "Old Boys' Club." They urged that the civil service system not be modified as proposed.

Ms. Apeadu, also a State employee, described her personal experience, in which she was demoted because she "didn't know the right people," while a coworker with political connections was promoted.

RESPONSE: The current civil service system does not mandate competitive testing in promotions. In the notice of proposal, the Commission identified rule provisions – N.J.A.C. 4A:4-2.7(a) and 4A:4-2.14(b) – that permit the waiver of competitive examination under certain circumstances. Specifically, if testing is not practicable, an eligible was previously tested for the basic skills required for the promotional title, and he or she would be reachable for appointment in accordance with the "Rule of Three," a promotional examination may be waived. Similarly, if the eligible has a disability that makes competitive testing impracticable

but the eligible can satisfactorily perform the duties of the title under conditions of actual service, a competitive examination may be waived. Therefore, as observed in the proposal Summary, the Constitutional and statutory mandate to select and advance employees on the basis of their relative knowledge, skills, and abilities in a competitive testing situation does not require that a formal examination be administered for every position.

Moreover, the Commission is also authorized to administer ranked and unranked evaluations of education and experience (referred to as "E&E" for education and experience). See N.J.S.A. 11A:4-1.a and N.J.A.C. 4A:4-2.2(a)5. While these methods of evaluation are legally permissible, and are used in close to 60 percent of promotional situations, they are not formal written or oral examinations. Finally, thousands of State and local employees have been advanced from Trainee to Primary titles "without the usual promotional examination procedures" as provided in N.J.A.C. 4A:3-3.7(j). The Commission notes, therefore, that the law already allows for selection methods other than formal competitive examinations. With job banding, however, the Commission introduces a methodology with standards, which would provide for a much more competitive situation than one will find with the methods described above. Additionally, the process serves to decrease the time between the announcement and appointment, which benefits both the agency and the employee. The agency is more quickly able to fill immediate staffing needs without resorting to uncertain provisional appointments, while qualified employees do not have to endure a long process prior to an advancement appointment or the attainment of permanency in a provisional title. Also, job banding would further the merit system goal of retaining and advancing employees based on job performance and would not impact employee training.

It is noted that the job banding advancement appointment process would not affect entry-level hiring. Competitive testing would still be the primary method of entering the civil service.

State Constitutional and Statutory Mandates

COMMENT: Assemblywoman Stender and Mr. Llerena stated that the rule proposal circumvents the legislative intent of the Civil Service Act.

RESPONSE: The Commission believes that the job banding proposal is consistent with principles of merit and fitness. Indeed, as the Commission stated in the notice of proposal:

The ability of an appointing authority to select and appoint qualified individuals in an expedited manner is tied to the Legislature's directive to the Commission to provide public officials with appropriate appointment, supervisory, and other personnel authority, so that they may properly execute their Constitutional and statutory responsibilities, as well as encourage and reward meritorious performance by employees in the public service.

See 45 N.J.R. 500(a) at page 501. With job banding, merit and fitness would be assessed in at least a two-step process: first, on an ongoing basis, it would be determined whether employees meet the predetermined competencies to be eligible for an advancement appointment (CAR); second, from among those employees who meet the competencies, the appointing authority would make one or more selections for an advancement appointment based on an evaluative process that it has established.

Concerns Regarding Cronyism, Nepotism, and Other Abuses

COMMENT: Comment Group D asserted that the proposed job banding program would replace objective testing with selection based solely on management discretion.

Comment Group D expressed concern that they paid taxes to ensure that the government is run by qualified public servants and not someone's subjective "favorites."

Ms. Apeadu and Comment Group D commented that the proposal would bring cronyism and nepotism back to the public sector.

RESPONSE: The Commission believes that as a competency-based human resources process, job banding strongly advances the merit and fitness principles of the civil service system and does not foster cronyism and nepotism in civil service employment. The job banding program is similar to the system that has been successfully used in the Judiciary for nearly 15 years. Through job banding, only those employees who

demonstrate the established competencies needed to successfully perform at the higher level will be eligible for an advancement appointment. Moreover, as already indicated above, due to the prevalence of methods other than formal competitive examinations, such as promotional examination waivers in the promotional appointment process, and the use of E&Es in close to 60 percent of promotions, job banding would actually enhance competitive standards in advancing employees from one level to another.

As provided in the proposal, employees would be able to grieve non-selections for an advancement appointment, as well as title level placement and failure of a developmental period following an advancement appointment. At the same time, employees would retain their permanent status, layoff rights and major and minor disciplinary appeal rights. Therefore, the Commission believes that adequate safeguards against abuse of discretion would remain in place under the job banding system. Also, as already noted, job banding would not impact the competitive examination process for entry-level hiring.

Intent of Job Banding

COMMENT: Mr. Llerena suggested that saving money and the eventual privatization of jobs are the motives.

RESPONSE: As stated in the notice of proposal, efficiency was an important, but not the only, factor informing the decision to propose the new job banding program. Certainly, the ability of appointing authorities to be able to respond to agency needs in serving the public depends upon being able to efficiently fill positions with qualified employees, and the Commission believes that job banding would enable appointing authorities to do this. Adding a system of standards to the process of advancing employees, which is mostly lacking in the case of promotional examination waivers and promotion through E&E, would benefit the competitive process, and was another important factor in the decision to propose the new job banding program. Privatization is not a goal of job banding.

Veterans Preference

COMMENT: Assemblyman Benson expressed concern that veterans would lose protection, even under the amendments proposed in the Substantial Notice.

RESPONSE: As indicated in the Substantial Notice, none of the rule changes are intended to eliminate or diminish veterans preference protections. In particular, absolute veterans preference would not be impacted since job banding would not affect open competitive hiring. Moreover, to clarify this point, the Commission proposed in the Substantial Notice:

... a substantive change to proposed new rule N.J.A.C. 4A:3-3.2A. This change would provide in a new N.J.A.C. 4A:3-3.2A(d)3i that, whenever a veteran ranks at the top of the advancement appointment selection process, a nonveteran shall not be selected unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment. Additionally, a new N.J.A.C. 4A:3-3.2A(d)3ii would provide that, when the advancement appointment selection process results in a tie between a veteran and a nonveteran, the veteran must be offered the advancement appointment

See 46 N.J.R. at 261.

The Commission believes that the above-mentioned amendments, to be adopted in this notice of adoption, adequately address Assemblyman Benson's concerns, as well as the similar concerns raised by commenters and ACR 199 with regard to the original proposal.

Application of this Proposal to the Judiciary

COMMENT: Mr. Aversa noted that the Commission's notice of proposed substantial changes attempts to address the concerns of the Judiciary that the new job banding program would apply to its existing program and thus includes a new paragraph (b)4 in the proposed new N.J.A.C. 4A:3-3.2A. Paragraph (b)4 would state as follows: "[a]ny job banding program approved prior to (the effective date of this rule) pursuant to the Commission's authority under the law can continue without adopting the changes provided in this section." However, the Judiciary's concerns remain, stated Mr. Aversa, because job banding

provisions would not be limited to the proposed new rule but are proposed throughout Civil Service rules, so that a more specific exception from job banding for the Judiciary is necessary. Mr. Aversa suggested that the language in proposed paragraph (b)4 read as follows: “[a]ny job banding program approved prior to (the effective date of this rule) pursuant to the Commission’s authority under the law, such as the Judiciary’s job banding program, can continue in its current form without adopting the changes provided in Title 4A.”

RESPONSE: The Commission is adopting the proposed substantial change, which provides that any job banding program approved prior to the effective date of this rule can continue as originally approved. Nevertheless, the Commission notes that ACR 215 calls into question the underpinnings of the job banding program approved in Judiciary, as well as the Commission’s authority to act on existing Judiciary job banding classification appeals. In fact, it would appear that if ACR 215 is valid, it not only preempts any negotiated contract provisions, but also requires a re-evaluation of the Department of Personnel-approved System for Judiciary. Therefore, to address Mr. Aversa’s concerns, the Commission will further clarify the amended language upon adoption to specifically exempt the job banding system in Judiciary. This further change is a technical one not subject to additional public notice and comment. It is noted, however, that this further change will be moot if the Legislature invalidates job banding.

Adoption of Substantial Changes

As noted above, in the Response to the Comment by Mr. Aversa on behalf of the Judiciary, the Commission is adopting, with further technical changes, the proposed substantial change concerning job banding programs previously approved by this agency. The Commission is also adopting, without further changes, the other substantial changes described more fully in the Substantial Notice, namely: 1) clarifying that veterans’ preference applies to job banding appointments; 2) limiting job banding to State service; 3) excluding job titles in the Police and Firemen’s Retirement System (PFRS); and 4) clarifying that employees who complain of discrimination in the advancement process retain their appeal rights under the State Policy Prohibiting Discrimination in the Workplace.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rule would establish a new job banding program in State service and would not be subject to any Federal standards or requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 1

GENERAL RULES AND DEPARTMENT ORGANIZATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.3 Definitions

The following words and terms, when used in any Commission rule, shall have the following meanings unless the context clearly indicates otherwise:

“Advancement appointment” means a movement within a job band, upon achievement of a specific number of predetermined competencies, to a higher title level and, where applicable, associated higher class code, which does not require competitive examination.

“Class code” means a designation assigned to job titles in State and local service with ranking based upon an evaluation of job content. In the case of job bands, all references to class code shall mean a designation assigned to title levels, unless a job band class code is specifically stated.

“Competency” means the minimum level of training and orientation needed to successfully perform at a particular title level within a job band.

“Eligible list” means a roster compiled or approved by the Civil Service Commission of persons who are qualified for employment or reemployment.

“Job band” means a grouping of titles or title series into a single broad band consisting of title levels with similar duties, responsibilities, and qualifications.

“Lateral movement” means an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code. In the case of job bands, a lateral movement means a movement to a title level in another job band with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code.

“Promotion” means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title. In the case of job bands, a promotion means a movement to a title with a higher class code not in the employee’s current job band.

“Senior executive service” means positions in State service designated by the Commission as having substantial managerial, policy influencing, or policy executing responsibilities not included in the career or unclassified services.

“Title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), any references to such titles in any Commission rule shall mean the title level within the job band, and, where applicable, the level’s associated class code, unless otherwise stated, or the context clearly suggests otherwise.

CHAPTER 2

APPEALS, DISCIPLINE, AND SEPARATIONS

SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

4A:2-3.7 Appeals from appointing authority decisions: State service

(a) Minor discipline may be appealed to the Commission under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Civil Service Commission shall review the appeal upon a written record or such other proceeding as the Commission directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission’s decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the Commission will render a final administrative decision upon a written record or such other proceeding as the Commission directs.

(b) Grievances may be appealed to the Commission within 20 days of the conclusion of Step Two procedures under this subchapter or the conclusion of departmental procedures under a negotiated agreement.

1. The Commission shall review the appeal on a written record or such other proceeding as the Commission directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission’s decision will be a final administrative decision.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Civil Service Commission grievance form and all written records and decisions established during departmental reviews; and
2. Written argument and documentation.

(d) A copy of all material submitted to the Civil Service Commission must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In Commission reviews, the employee shall present issues of general applicability in the interpretation of law, rule, or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.
2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

CHAPTER 3
CLASSIFICATION, SERVICES, AND COMPENSATION

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.2 Divisions within the career service

(a) The Civil Service Commission shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures of N.J.A.C. 4A:4-2, except as provided in N.J.A.C. 4A:3-3.2A.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Civil Service Commission that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job;
2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems, and working conditions; or
3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses, and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities, and negotiations representatives.

2. After the comment period and the public hearing, if any, the Civil Service Commission shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to noncompetitive divisions, the Commission's decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.
2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.
3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of vacancies in SES positions shall be posted, at a minimum, within the department in which the vacancies exist. Posting is not required if the department selects the incumbent for a position at the time of the initial allocation to the SES.

i. A department head wishing to circulate a Statewide posting of the vacancy shall do so through the Chairperson of the Civil Service Commission or designee.

2. The department shall contact the Chairperson or designee for assistance in recruiting to fill SES vacancies before recruiting applicants outside State service. Where possible, SES members from other departments will be encouraged to apply for a vacant SES position when it will not be filled from within the requesting department.

3. If the position is an initial conversion of a position previously assigned to the career service, the appointing authority shall notify in writing the incumbent of the availability of the SES position and provide the individual with the opportunity to complete the entire SES selection process.

4. The departmental selection process is at the option of the department. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

5. The department head shall forward his or her selection(s) to the Chairperson or designee.

6. Final appointment shall be subject to approval by the Chairperson or designee.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the placement of the non-appointed incumbent:

- i. Reassign the employee to a vacant position;
- ii. Separate a provisional employee without underlying career status and reassign the non-appointed incumbent to the position; or
- iii. Return an employee, serving provisionally in the highest permanent title held by the non-appointed incumbent, and reassign the non-appointed incumbent to the permanent title vacated by the provisional employee.

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

- i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series or job band, as the case may be, for which the employee is qualified in the same or another organizational unit.
- ii. The career status and compensation rights of the non-appointed incumbent shall be determined in accordance with the rules governing voluntary demotion. See N.J.A.C. 4A:4-7.8.
- iii. If the organizational unit offers the non-appointed incumbent options under either (b)3 or 4 above, the employee may accept either option.
- iv. If the organizational unit offers only the option under (b)3 above, the non-appointed incumbent shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the placement of a non-appointed incumbent under (b)3 or 4 above. See N.J.A.C. 4A:8.

6. If the placement of the non-appointed incumbent causes a reduction in salary of the employee, the department head may, at his or her discretion, recommend to the Chairperson or designee placement of the employee at a salary no greater than the salary the employee received in the permanent title held immediately prior to non-appointment.

(c) A non-appointed incumbent without career status may be:

1. Reassigned to an unclassified title;

2. Reassigned to a vacant career service title for which no eligible list exists; or
3. Terminated.

4A:3-2.6 SES benefits: State service

(a) Effective January 1, 1997, SES members with underlying career service status shall be entitled to the same amount of vacation, sick, and administrative leave received by career service employees. See N.J.A.C. 4A:6-1.2, 1.3, and 1.9. SES members without underlying career status shall be subject to the unclassified leave plan, if any, utilized in his or her department.

(b) SES members shall be entitled to participate in all leave-related programs open to career service employees and employees in the executive/senior management cadre of a department, including State family leave, Federal family and medical leave, donated leave, and the voluntary furlough program. See N.J.A.C. 4A:6.

(c) An SES member may apply for a career service promotional examination in his or her current unit scope, as long as the permanent title he or she held immediately prior to SES appointment would have made the SES member eligible for the examination.

1. If the SES member had been permanent in a job band, and in accordance with N.J.A.C. 4A:3-3.2 and 4A:4-2.6 would be eligible for a promotion outside of the band, the SES member may apply for the promotional test.

2. If the movement in a job band would be an advancement appointment to a higher level within the band, the SES member may apply for the advancement in accordance with N.J.A.C. 4A:3-3.2.

4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Chairperson of the Civil Service Commission or designee at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the return of the employee to his or her career status:

- i. Reassign the employee to a vacant position/title;
- ii. Separate a provisional employee without underlying career status and reassign the returning employee to the position/title;
- iii. Return an employee serving provisionally in the permanent title previously held by the returning employee to his or her permanent title and reassign the returning employee to the position/title vacated by the provisional employee; and
- iv. If the returning employee's last held permanent position/title no longer exists, or his or her last held permanent title is no longer appropriate as a result of the position's allocation to SES, the employee shall have lateral and demotional rights determined as if the title currently exists.

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

- i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series or job band, as the case may be, for which the employee is qualified in the same or another organizational unit.
- ii. The status and compensation rights of the returning employee shall be determined in accordance with applicable rules.
- iii. When the organizational unit offers the employee options under either (c)3 or 4 above, the employee may accept either option.
- iv. If the organizational unit offers only the option under (c)3 above, the employee shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the return of a permanent employee under (c)3 or 4 above. See N.J.A.C. 4A:8.

6. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

7. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)7 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary.

iii. The department head may, at his or her discretion, recommend to the Chairperson of the Civil Service Commission or designee placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed is vacated or abolished due to a reduction in force, and the SES member has career status, the SES member shall have lateral, demotional, and special reemployment rights based upon the permanent title held immediately prior to SES appointment.

(e) Individuals without underlying career status who are separated from the SES may be:

1. Appointed to an unclassified title;
2. Appointed to a vacant career service title for which no eligible list exists; or
3. Terminated.

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.2 Establishment of classification plans

(a) The Civil Service Commission shall establish and maintain classification plans for all job titles in the career, senior executive, and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles;
2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title; and
3. A list of job bands to which titles have been assigned (see N.J.A.C. 4A:3-3.2A).

(c) A single specification may be used for a title series or job band. In such cases, the distinction between different titles in the series or levels in the job band, as the case may be, will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification plans.

4A:3-3.2A Job banding*: **State service***

(a) The job banding program, in the interest of efficiency, facilitates advancement appointments of qualified employees to the next higher title level within a job band when a vacancy exists.

(b) The Civil Service Commission shall review titles and title series ***in State service*** to determine whether they are appropriate for job banding.

1. This determination shall be guided by whether a movement from one position to a higher level position may be achieved based on an evaluation of relative knowledge, skills, and abilities without resorting to competitive examination procedures, while still satisfying the State Constitutional and statutory mandate for merit and fitness in selections and appointments.

2. The Chairperson or designee shall approve a specific number of competencies for each title level that an employee must attain to advance from a lower title level to the next higher title level.

***3. Job titles in the Police and Firemen's Retirement System (PFRS) shall not be included in job banding.**

4. Any job banding program approved prior to June 2, 2014, pursuant to the Commission's authority under the law, such as the

Judiciary's job banding program, can continue without adopting the changes provided in Title 4A.*

(c) Each title assigned to a job band shall thereafter be considered a title level. Movement from a lower title level to the next higher title level within a band shall be considered an advancement appointment. An involuntary movement from a higher title level to the next lower title level within a band, except for failure of the developmental period as set forth in (f) below, shall be considered a major disciplinary demotion. See N.J.A.C. 4A:2-2.

1. An employee may file a grievance regarding the appropriateness of the title level in which he or she is serving, in accordance with N.J.A.C. 4A:2-3 and 4A:3-3.9, as applicable.

(d) Eligibility for advancement appointment to the next higher level within a band requires that an employee attain a predetermined number of competencies approved by the Chairperson or designee in accordance with (b)2 above. Prior to attaining the predetermined number of competencies, an employee's competencies shall be evaluated twice a year, concurrently with an employee's Performance Assessment Review (PAR). (See N.J.A.C. 4A:6-5.)

1. When an appointing authority determines a need to fill a position at a particular level within a band, it may consider for advancement appointment all employees who have attained the predetermined competencies.

2. The appointing authority shall notify all employees of the advancement appointment opportunity by the conspicuous posting of a notice at all work sites where the announced advancement appointment may occur, as well as on the appointing authority's intranet and internet web sites, and via electronic communication.

i. Those interested employees serving in the level immediately below the higher level within the band to be filled who have demonstrated attainment of the required competencies shall be provided with a notice by the appointing authority and offered the opportunity to file a resume for consideration.

ii. Notices shall include the same information as required by N.J.A.C. 4A:4-2.1(c) and shall be posted for a period of no less than 14 calendar days prior to commencement of the advancement appointment selection process conducted by the appointing authority, with electronic communications to employees sent at least 14 days prior to commencement of the process.

3. Once an appointing authority determines which eligible employees are interested, it shall conduct an advancement appointment selection process and make a determination as to which employee or employees may receive an advancement appointment.

***i. Whenever a veteran ranks highest in the advancement appointment selection process, a nonveteran shall not be appointed unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment.**

ii. When the advancement appointment selection process results in a tie between a veteran and a nonveteran, the veteran shall be offered the advancement appointment.*

***[i.]* *iii.* An employee who is not selected for an advancement appointment may file a grievance in accordance with N.J.A.C. 4A:2-3*, unless (d)3iv below applies*.**

iv. If the employee's non-selection is raised by that employee in a discrimination appeal under N.J.A.C. 4A:7-3, the model procedures for internal complaints alleging discrimination in the workplace at N.J.A.C. 4A:7-3.2 shall apply. Should the appeal reach the Civil Service Commission, the Commission, in determining the appeal, shall also decide the issues pertaining to non-selection.

(e) Once an employee accepts an advancement appointment, the employee shall be compensated in accordance with N.J.A.C. 4A:3-4.9, within the salary range established for that title level within the band.

1. An employee's anniversary date shall be set in accordance with N.J.A.C. 4A:3-4.5.

(f) All advancement appointments are subject to a six-month developmental period that commences upon the employee's selection for an advancement appointment. This developmental period shall serve as a transition between the employee's prior title level and the higher title level.

1. Upon successful completion of the six-month developmental period, the employee shall remain in the higher title level.

2. Should the employee fail the six-month developmental period, he or she shall be returned to his or her prior title level.

i. An employee may appeal his or her failure of the six-month developmental period by filing a grievance in accordance with N.J.A.C. 4A:2-3.

(g) If an employee receives an unsatisfactory final PAR rating, he or she shall again be required to demonstrate the attainment of the predetermined competencies corresponding to the title level in which the employee is serving.

(h) An appointing authority may, as a result of an employee's unsatisfactory final PAR rating, effect an involuntary demotion of the employee in accordance with major disciplinary procedures. See N.J.A.C. 4A:2-2.

(i) The movement to a supervisory title outside of the band shall be effected through promotional examination procedures. The movement from a title level within a band to a higher title level in a different band, or from a non-banded title to a title level within a band, may be authorized by the Chairperson or designee when the appointing authority has certified that the employee meets the predetermined competencies corresponding to the title level to which the employee is to move.

4A:3-3.3 Administration of classification plans

(a) The Chairperson of the Civil Service Commission or designee shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;

2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority, and responsibility;

3. Modify specifications for existing titles, series, or job bands, as the case may be, to ensure their accuracy; and

4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Chairperson or designee of new positions to be established, the authority and reasons for their establishment, and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Chairperson or designee with updated organization charts on an annual basis.

(d) Positions in the career, unclassified, and senior executive services shall be subject to job audit by the Chairperson or designee to ensure accurate classification and compliance with Title 11A, New Jersey statutes, and Title 4A, N.J.A.C.

(e) In State service, each department and autonomous agency shall designate an individual as the agency representative, to serve as its liaison with the appropriate Commission representative on all classification and compensation matters.

(f) In State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of the following to the appropriate Commission representative. The Commission representative shall verify that proper notice has been given of each of the following:

1. Reorganizations;

2. Job content reevaluation requests;

3. Requests for new titles or title series;

4. Job specification modification requests;

5. Employee relations group changes; and

6. Establishment, modification, or termination of flexitime programs, alternate workweek programs, and adjusted hours of operation.

4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Chairperson of the Civil Service Commission or designee, shall after review:

1. Reclassify the position to a more appropriate title if there is one;

2. Establish a new title to which the position shall be reclassified; or

3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) An appointing authority may request a classification review by the Chairperson of the Commission or designee in a manner and form as determined by the Chairperson or designee. Such review may be initiated by the Chairperson of the Commission or designee. An employee or union representative may request a classification review in accordance with N.J.A.C. 4A:3-3.9.

(c) No reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by an appropriate Commission representative.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules.

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with a reclassification determination, an appeal to the Civil Service Commission may be filed in accordance with N.J.A.C. 4A:3-3.9. *[Appeals]* ***In State service, appeals*** pertaining to an employee's title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6 *(State) and 4A:2-3.1(d) (local)]*.

4A:3-3.6 New titles

(a) The Civil Service Commission may determine that a new title, title series, or job band is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title, title series, or job band.

(b) Requests for new titles, title series, or job bands must be submitted in writing by the appointing authority to an appropriate representative of the Civil Service Commission on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;
2. Designation of any title to be abolished or replaced; and
3. Any other information requested by the Commission representative.

(c) If the Commission representative determines that there is a need for a new title, title series, or job band, new job specification(s) will be prepared and in State service the title, series, or band will be evaluated for compensation purposes.

(d) Pending approval by the appropriate Commission representative of a new title, title series, or job band, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e) In State service, appeals from a salary evaluation of a new title will be processed in accordance with N.J.A.C. 4A:3-4.3.

(f) The effective date of the creation of a new title by the appropriate Commission representative will be:

1. In State service:
 - i. The beginning of the pay period immediately after 14 days from the date the appropriate Commission representative receives the new title request and all requested information;
 - ii. The date of appointment to the Tentative Title; or
 - iii. An appropriate date as established by the Commission representative when a classification review has been initiated by the Commission representative; or
2. In local service, an appropriate date as established by the Commission representative.

4A:3-3.7 Trainee, apprentice, recruit, and intern titles

(a) Trainee, apprentice, recruit, and intern titles may be established in State and local service to provide for entry level employment.

1. Unless otherwise specified, this section applies to all titles designated by the term "trainee" and to other titles where the job

specification necessitates the application of this section, such as apprentice, recruit, and intern titles.

2. A single trainee title may provide entry level employment for more than one title, title series, or job band, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular, or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete a working test period.

(d) The duration of the training period shall be as follows:

1. In the case of trainees and recruits only, the length of the training period shall be designated in the job specification for the particular title.

i. The designated length of a training period for a trainee (not an apprentice, recruit, or intern) title shall not be longer than 12 months, unless otherwise provided by law.

ii. The length of a training period for a recruit title may vary in accordance with the applicable job specification or be determined by separate regulatory requirements; or

2. The length of a training period for an apprentice or intern title shall be not less than 12 months and not more than the length of time provided in the applicable job specification to successfully complete the training period, as determined by the time permitted for completion of formal coursework and preparatory training, and, where applicable, attainment of any required certifications, permits, and/or licenses.

(e) The training period must be continuous, except if interrupted by leave or layoff from the title.

(f) The training period may include provisional service in the case of a trainee title.

(g) The training period may include service of the trainee, recruit, apprentice, or intern in a higher related title.

(h) In the case of trainees (not apprentices, recruits, or interns), the training period shall be extended, upon approval by the Chairperson of the Civil Service Commission or designee, beyond the time designated in the job specification when:

1. The trainee has not yet completed the working test period; or
2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(i) In the case of trainees, apprentices, recruits, and interns, the training period may be reduced, upon approval by the Chairperson of the Civil Service Commission or designee, to a shorter period than designated in the specification when:

1. The employee has completed the working test period;
2. The employee meets the minimum qualifications for the primary title; and

3. All employees in the same title subject to the training period in the same appointing authority who meet the conditions specified in (i)1 and 2 above are provided with a reduced training period.

(j) The advancement of the successful, permanent trainee, apprentice, recruit, or intern, as applicable, to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate primary title.

1. To effect advancement, the appointing authority must certify the employee's successful completion of the training period, as well as, where the job specification for the primary title so provides, the satisfaction of any and all additional requirements beyond the trainee requirements, such as obtaining a license, completing extra training, or attaining a particular proficiency standard.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The failure of a permanent employee to successfully complete the training period as indicated in the job specification shall be considered a cause for separation.

4. Trainees, apprentices, recruits, or interns, as applicable, who are advanced to a primary title, shall be required to complete a working test period in the primary title. Employees who fail to successfully complete a working test period in the primary title have no right to return to the trainee, apprentice, recruit, or intern title.

(k) For anniversary date changes in State service when a trainee, apprentice, recruit, or intern receives a regular appointment to the primary title, see N.J.A.C. 4A:3-4.5.

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal by an employee or union representative shall be made in writing. The appeal shall include a position classification questionnaire completed by the appellant, and shall specify the title which the appellant believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the appellant's most recent PAR form (see N.J.A.C. 4A:6-5).

4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:

- i. The position is properly placed at the existing title level;
- ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or
- iii. The position should be placed at a different title level.

5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:

- i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or
- ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.

6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.

i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.

7. In the case of an appeal not pertaining to a title level within the employee's particular job band, the agency representative shall review the appeal, affix to it an organizational chart, and ensure that the information set forth in (c)1, 2, and 3 above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may in writing indicate with the submitted appeal a recommended approval or rejection of the appeal for specified reasons. The agency representative shall notify the appellant of the submission to the Commission representative. If additional information is required of the appellant, the agency representative shall forward the appeal with organizational chart and the additional information to the appropriate representative of the Civil Service Commission within 10 days of receipt of the appellant's response to the request for additional information.

8. A representative of the Civil Service Commission shall review the appeal filed pursuant to (c)7 above, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, and appellant are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

- (1) The position is properly classified;
- (2) The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or
- (3) The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

*[(d) In local service, a complaint regarding the employee's title level within the band shall not be subject to the classification appeal process.

1. The appointing authority shall advise the appropriate representative of the Commission of any changes in the title levels of employees for recordkeeping purposes.]*

[(e)] *(d)* In local service, an appeal from an employee, union representative, or appointing authority *[not pertaining to a title level within the employee's particular job band]* shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the appeal shall also include a completed position classification questionnaire and an organizational chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt of the questionnaire from the appellant, the appellant may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

[(f)] *(e)* Appeals from the decision of the Commission representative to the Civil Service Commission pursuant to (c)7 and 8 or *[(e)]* *(d)* above may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Civil Service Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commission within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and the recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

3. If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

i. In State service, the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission; or

ii. In local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

4. The decision by the Commission is the final administrative determination.

[(g)] *(f)* See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commission.

SUBCHAPTER 4. COMPENSATION

4A:3-4.9 Advancement pay adjustments: State service

(a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range, unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such adjustment result in a higher salary than that provided for in this section. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (f) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

2. Employees are serving in a title which is reevaluated to a higher class code;

3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or

4. Employees are appointed to a title with a higher class code, when the conditions in (a)1, 2, or 3 above are not applicable, provided the Chairperson of the Civil Service Commission or designee finds the following criteria are met:

i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and

ii. The service in the lower title provided significant preparation and training for service in the higher title.

(b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

(c) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

(d) Employees who do not meet the criteria set forth in (a) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in (b) and (c) above shall be applied as appropriate.

(e) The anniversary date will be retained if the total salary increase after workweek adjustment is less than two increments in the employee's previous range. If the total salary increase after workweek adjustment is two increments or more, or the advancement results in step eight or nine, the anniversary date will be determined by the effective date of the action (frozen if step eight or nine).

(f) The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step in the former range.

WORKWEEK OF EMPLOYEE'S NEW TITLE

		35 or 3E	NL or NE	40, 4E, or N4
Workweek of Employee's	Former Title	35 or 3E	NO CHANGE	+1
				+2
Former Title	NL or NE	-1	NO CHANGE	+1
				+2
40, 4E or N4		-2	-1	NO CHANGE

EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a 10-month title, is promoted to a 12-month title with salary range A15. There is no change in workweek. The work year adjustment would bring the employee to step four, range A13. Then, salary is calculated based on (a) above.

CHAPTER 4
SELECTION AND APPOINTMENT

SUBCHAPTER 1. TYPES OF APPOINTMENTS

4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under N.J.A.C. 4A:4-1.3, 1.4, 1.5, 1.6, 1.7, or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;

2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or

3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

1. The employee may accept appointment to other titles at the same or lower level, in the same or a different series for which the employee qualifies in the same or another organizational unit.

2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(d) on certification procedures.

(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;

2. The next two lower in-series titles used in the local jurisdiction; or

3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of one year of permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;

2. The next two lower in-series noncompetitive titles used in the local jurisdiction;

3. All related noncompetitive titles; *or*

4. Any competitive title*.*[*]; or

5. Any job band, as appropriate.]*

(d) The title scopes described in (a)2 and 3 and (c)2 through *[*]* *4* above or any combination of such scopes may be used when a wider title scope is appropriate or the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Civil Service Commission.

(e) In extraordinary circumstances, the Chairperson of the Civil Service Commission may set another appropriate title scope.

(f) The local jurisdiction may be required to provide an appropriate representative of the Civil Service Commission with copies of ordinances, tables of organization, or other evidence of the jurisdiction's use of titles.

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;

2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or

3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.

2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.

3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.

4. To related titles, pursuant to an established plan approved by the Chairperson of the Civil Service Commission or designee.

5. When open to a job band, to the highest level within the band.

6. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;

2. All applicants who are permanent in a bridge title or titles approved by the Chairperson or designee and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Civil Service Commission as related to a higher category title in terms of work performed and knowledge, skills, and abilities required;

3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above;

4. When open to a job band, to the highest level within the band; or

5. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;

2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;

3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;

4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or

5. In extraordinary circumstances, the Chairperson or designee may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.

2. Within each sub-list as provided in (a)1 above, the order of names shall be:

i. Eligibles entitled to disabled veterans preference in order of their scores;

ii. Eligibles entitled to veterans preference in order of their scores; and

iii. Non-veteran eligibles in order of their scores.

3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

4. See N.J.A.C. 4A:5-2.1 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. In the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles shall be ranked in descending order of the class code or class level of the job band, as applicable. Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

EXAMPLE 1.: Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

EXAMPLE 2.: Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired, or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Civil Service Commission.

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire, and regular reemployment lists;

2. Appointments to a comparable or lower related title in lieu of layoff;

3. Appointments to titles previously held on a permanent basis within current permanent continuous service; or

4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

(e) Advancement appointments to a higher title level in a job band are subject to a developmental period. See N.J.A.C. 4A:3-3.2A.

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring, and administration (see N.J.A.C. 4A:4-6.4);

2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and

3. Examination related matters other than (a)1 and 2 above (see N.J.A.C. 4A:4-6.6) including:

i. Disqualifications under N.J.A.C. 4A:4-6.1;

ii. List extension or revival; and

iii. Denial of veterans preference for a particular examination.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Civil Service Commission, the filing of an appeal shall not affect the promulgation of a list, a certification, or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

(g) The non-selection of an employee for an advancement appointment in accordance with N.J.A.C. 4A:3-3.2A shall not be subject to examination appeal procedures. Grievance appeal procedures shall apply. See N.J.A.C. 4A:2-3.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item, and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed.

2. An appeal must be filed with an appropriate representative of the Civil Service Commission as indicated on the notice advising of disqualification.

(b) The Civil Service Commission shall decide any appeal on the written record or such other proceeding as the Commission deems appropriate.

(c) The non-selection of an employee for an advancement appointment in accordance with N.J.A.C. 4A:3-3.2A shall not be subject to examination appeal procedures. Grievance appeal procedures shall apply. See N.J.A.C. 4A:2-3.

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title or job band, as applicable, other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change, or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 through 2.7, 7.6, and 7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title or job band with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title or job band within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) In local service, a permanent transfer shall require the consent of both organizational units and the approval of the Chair/CEO of the Civil Service Commission. In State service, the consent of the affected employee shall also be required.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. In State service, the consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods, or for any other documented purpose, which is in the best interest of the public service. All temporary transfers must be approved by the Chair/CEO of the Civil Service Commission.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Chair/CEO of the Civil Service Commission may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

- i. The organizational unit to which the transfer is being made;
- ii. The effective date of the transfer; and
- iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Chair/CEO of the Civil Service Commission finds that a more immediate transfer is required to provide a needed service.

4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in

which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson of the Civil Service Commission or designee.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8. A transferring employee, other than a police officer or firefighter, who is not a New Jersey resident and transfers to a receiving jurisdiction following a layoff of more than seven days, is subject to the New Jersey residency requirement at P.L. 2011, c. 70.

2. The optional waiver of accumulated sick leave and seniority rights by a law enforcement officer, including a sheriff's officer and a county correction officer, shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Chairperson of the Civil Service Commission or designee.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Chairperson of the Civil Service Commission or designee approve the title, based on the following criteria:

i. The title(s) shall have substantially similar duties and responsibilities;

ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;

iii. There shall be no special skills, licenses, certification, or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) For purposes of this section, in the case of a position within a job band ***in State service***, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

(f) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, 1.3, Sick leave, and 1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education, and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff, or demotional rights and sick and vacation entitlements.

2. In State service, the employee's anniversary date, administrative leave entitlement, and rate of compensation on direct movement as adjusted for workweek, work year, and the employee relations grouping, shall be retained.

(c) If the nature of the work, education, and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year, and employee relations grouping, anniversary date, and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when an appropriate representative of the Civil Service Commission has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit, and the approval of the Chairperson of the Civil Service Commission or designee, except when the title change results from changes in the Civil Service Commission Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Chairperson or designee.

(e) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is:

1. The voluntary movement of a permanent employee from his or her permanent title to a lower title in local service;

2. In State service, the voluntary movement to another title with a lower class code, within the same organizational unit; or

3. In the case of a job band, the voluntary movement to:

i. A lower title level within the same band; or

ii. Another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the approval of the Chairperson of the Civil Service Commission or designee, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;

2. The demotion was agreed to by both the employee and the appointing authority; and

3. The demotion was for a set period of time up to a maximum of one year.

(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURES, AND APPEALS

4A:7-3.1 Policy prohibiting discrimination in the workplace

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

2. This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

3. It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, advancement appointment, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

(b) It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

1. Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

i. Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in (a) above;

ii. Treating an individual differently because of the individual's race, color, national origin, or other protected category, or because an individual has the physical, cultural, or linguistic characteristics of a racial, religious, or other protected category;

iii. Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious, or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious, or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious, or other protected category;

iv. Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;

v. Using derogatory references with regard to any of the protected categories in any communication;

vi. Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or

vii. Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

(c) It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

i. Generalized gender-based remarks and comments;

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;

iii. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text

messages, invitations, gestures, or inappropriate comments about a person's clothing;

iv. Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines, or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;

v. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, advancement appointment, or retention;

vi. Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation, advancement appointment, or promotional opportunity; or

vii. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. All employees are expected to cooperate with investigations undertaken pursuant to (g) below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.

(e) Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and N.J.A.C. 4A:7-3.2, a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

(f) Each State agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State agency (that is, on bulletin boards or on the State agency's intranet site). The Department of the Treasury shall distribute the policy to Statewide vendors/contractors, whereas each State agency shall distribute the policy to vendors/contractors with whom the State agency has a direct relationship.

(g) Each State agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

1. All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough, and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

2. Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its recurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving

two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

3. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

4. Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

(h) Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

1. Termination of an employee;
2. Failing to promote an employee or select an employee for an advancement appointment;
3. Altering an employee's work assignment for reasons other than legitimate business reasons;
4. Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
5. Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

(i) An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

(k) Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

(l) All State agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

Each State department, commission, State college or university, agency and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy

of the completed procedure with the *[Department of Personnel]* *Civil Service Commission*, Division of EEO/AA.

"(a) All employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee).

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the *[Department of Personnel]* *Civil Service Commission*, Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A copy of all complaints (regardless of the format in which submitted) must be submitted to the *[Department of Personnel]* *Civil Service Commission*, Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(j) An investigatory report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;
2. A summary of the parties' positions;
3. A summary of the facts developed though the investigation; and
4. An analysis of the allegations and the facts. The investigatory report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the investigatory report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and

the right of appeal to the Merit System Board as set forth in subsection (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA, *[Department of Personnel]* ***Civil Service Commission***, shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

- i. A brief summary of the parties' positions;
- ii. A brief summary of the facts developed during the investigation; and
- iii. An explanation of the determination, which shall include whether:
 - (1) The allegations were either substantiated or not substantiated; and
 - (2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(m) A complainant who is in the career, unclassified or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within twenty days of the receipt of the final letter of determination from the (State agency head or designee), to the *[Merit System Board]* ***Civil Service Commission***, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The *[Commissioner]* ***Commission*** may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in this section or a combination of procedures as the *[Commissioner]* ***Commission*** deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

[2. The Merit System Board] ***3. The Civil Service Commission*** shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

[3.] ***4.*** The appellant shall have the burden of proof in all discrimination appeals brought before the *[Merit System Board]* ***Civil Service Commission***.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the *[Merit System Board]* ***Civil Service Commission*** at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee.

1. The burden of proof shall be on the appellant.

2. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested.

3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the *[Merit System Board]* ***Civil Service Commission*** of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames

for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:
- i. Division on Civil Rights
N.J. Department of Law & Public Safety
(Within 180 days of the discriminatory act)
 - ii. US Equal Employment Opportunity Commission (EEOC)
(Within 300 days of the discriminatory act)"

CHAPTER 8 LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency, or other related reasons.

1. Demotions for economy, efficiency, or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

(b) In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band.

1. All references to titles in this chapter shall mean the job band in the case of those titles approved for inclusion in job bands.

2. All references to class codes in this chapter shall mean the class code of the lowest title level in the band in the case of those titles approved for inclusion in a job band.

(c) The Chairperson of the Civil Service Commission or designee shall determine seniority (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional, and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

(d) At no time shall any employee be subject to any layoff action if the employee is on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency.

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.2 Exercise of lateral and demotional rights

(a) Employees shall be ranked, for purposes of exercise of layoff rights, in order of seniority.

(b) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the department or autonomous agency and indicate:

1. Job locations at which he or she will accept lateral title rights; and
2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(c) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(d) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;
2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;
3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job

location, the specific position shall be based on the level of the permanent title held and seniority;

4. The position held by the employee serving in a working test period with the least seniority;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the Chairperson of the Civil Service Commission or designee, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Unsatisfactory or equivalent rating;

6. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4).

(e) Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (d)1 through 4 above.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series or job band from which they were laid off.

(h) When employees are granted demotional title rights, the employees shall be entitled to exercise these rights regardless of whether they have greater or less seniority than the employees against whom they are exercising such rights.

CHAPTER 10
VIOLATIONS AND PENALTIES

SUBCHAPTER 1. VIOLATIONS

4A:10-1.1 General provisions

(a) No person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C.

(b) No person or appointing authority shall fail to comply with an order of the Civil Service Commission or the Chairperson of the Commission or designee.

(c) No person or appointing authority shall obstruct a person's lawful opportunity to participate in the selection and appointment process or a person's lawful pursuit of any remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(d) No person shall make any false statement or perform any fraudulent act in connection with any examination, certification, appointment, or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(e) No person shall pay, offer, solicit, or accept any compensation, service, or other consideration to affect any appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

1. No person shall pay or offer any compensation, service, or other consideration to induce the retirement or resignation of an employee in order to gain a promotion or the opportunity for a promotion, or an advancement appointment or the opportunity for an advancement appointment.

2. No person shall solicit or accept any compensation, service, or other consideration as an inducement to retire or resign in order to allow an employee to gain a promotion or the opportunity for a promotion, or an advancement appointment or the opportunity for an advancement appointment.

(f) Appointing authorities shall timely supply all information, documents, and other materials requested by the Civil Service Commission or an appropriate representative of the Commission for the purpose of efficiently and accurately administering the merit system.

(ANNOTATION: On January 9, 2014, the Concurrent Resolution below was passed by the New Jersey Legislature concerning N.J.A.C. 4A:3-3.2A. See 46 N.J.R. 257(a). This annotation is provided by the New Jersey Office of Administrative Law pursuant to N.J.S.A. 52:14B-4.3.

ASSEMBLY CONCURRENT RESOLUTION No. 215

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED DECEMBER 12, 2013

Sponsored by:

**Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)**

**Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)**

**Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)
Assemblyman WAYNE P. DEANGELO**

**District 14 (Mercer and Middlesex)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)**

**Assemblyman THOMAS P. GIBLIN
District 34 (Essex and Passaic)**

**Assemblywoman SHAVONDA E. SUMTER
District 35 (Bergen and Passaic)**

Co-Sponsored by:

Assemblywoman Watson Coleman, Senators Gordon, Greenstein and Turner

SYNOPSIS

Invalidates or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program.

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and invalidating or prohibiting the adoption of a rule proposed by the Civil Service Commission to establish a job banding program.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, The Civil Service Commission proposed a new rule, N.J.A.C.4A:3-3.2A, entitled "Job Banding Program," which was filed with the Office of Administrative Law on February 28, 2013 and published in the New Jersey Register on March 18, 2013; and

WHEREAS, The proposed new rule is contrary to the spirit, intent, and plain meaning of the provision in the New Jersey Constitution that requires that promotions be based on merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. The fact that the proposed new rule would eliminate competitive promotional examinations for tens of thousands of positions for which such exams have been administered for decades is compelling evidence that it is practicable to continue to determine the merit and fitness of candidates for such promotional positions by competitive examination in accordance with the New Jersey Constitution. The proposed new rule is not consistent with the legislative intent that the public policy of this State is to select and advance employees on the basis of their relative knowledge, skills and abilities, ensure equal employment opportunity at all levels of public service, and protect career public employees from political coercion. The proposed new rule is not consistent with the legislative intent that a competitive promotional examination process be established, maintained, and administered by the Civil Service Commission to ensure that promotions are based on merit and fitness and are not based on patronage or discriminatory reason. The proposed new rule is not consistent with the legislative intent that whenever a veteran ranks highest on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shall show cause before the commission why a veteran should not receive such promotion. The proposed new rule is not consistent with the intent of the Legislature as expressed in the language of the Civil Service Act, including the spirit, intent, or plain meaning of N.J.S.A.11A:3-1, N.J.S.A.11A:4-1, N.J.S.A.11A:4-8 or N.J.S.A.11A:5-7;

WHEREAS, Assembly Concurrent Resolution No. 199 of 2013, passed by the General Assembly on June 24, 2013 and by the Senate on June 27, 2013, set forth the finding of the Legislature that the proposed rule, filed on February 28, 2013 and published on March 18, 2013, is not consistent with the Legislature’s intent, and that concurrent resolution was filed with the Secretary of State and transmitted to the Governor and the Chair of the Civil Service Commission. The Civil Service Commission has 30 days from the date of transmittal to amend or withdraw the proposed rule; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a rule or regulation, a public hearing must be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing must be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. The Legislature prohibits, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled “Job Banding Program,” from being adopted and from taking effect pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
2. If the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule entitled “Job Banding Program,” pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
3. The Secretary of the Senate or the Clerk of the General Assembly shall transmit a copy of this concurrent resolution to the Governor, the Chair of the Civil Service Commission, and the Office of Administrative Law.
4. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits, in whole, the rule proposed by the Civil Service Commission to establish a job banding program, specifically N.J.A.C. 4A:3-3.2A filed on February 28, 2013 and published on March 18, 2013, from being adopted and taking effect. If, at the time of passage of this concurrent resolution, the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled “Job Banding Program,” pursuant to the

power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey. Previously, the Legislature passed Assembly Concurrent Resolution No. 199 of 2013 stating the finding of the Legislature that the proposed rule is not consistent with legislative intent.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

**Commissioner
Organization of the Department
Reporting Responsibilities**

Adopted Amendment: N.J.A.C. 6A:2-2.4

Adopted: May 8, 2014, by the State Board of Education, Christopher D. Cerf, Commissioner, Department of Education and Secretary, State Board of Education.
 Filed: May 8, 2014, as R.2014 d.100.
 Authority: N.J.S.A. 18A:4-22 and 52:14B-3(1).
 Effective Date: May 8, 2014.
 Expiration Date: November 15, 2019.

These organizational rule amendments are exempt from the notice and public comment requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and are effective upon filing with the Office of Administrative Law, pursuant to N.J.S.A. 52:14B-4(b).

Full text of the adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

6A:2-2.4 Reporting responsibilities

(a) The following senior managers report directly to the Commissioner/**Assistant Commissioner of Operations**:

1. The Chief of Staff. The following organizational units and/or their chief officers report directly to the Chief of Staff:

- i. (No change.)
- ii. The Director of the Office of Project Management; [and]
- iii. Planning & Interdivisional Initiatives; **and**

iv. State Operated School Districts;

2. The Chief Performance Officer/Assistant Commissioner for the Division of Data Research Evaluation and Reporting. The following organizational units and/or their chief officers report directly to the Chief Performance Officer/Assistant Commissioner for the Division of Data Research Evaluation and Reporting:

- i. [Educational Data Management] **The Director of the Office of Assessments;**
- ii. Student Performance Metrics; [and]
- iii. [The Director of the Office of Assessments] **Educational Data Management; and**

iv. School Technology;

3. The Chief Talent Officer/Assistant Commissioner for the Division of Teacher and Leader Effectiveness. The following organizational units and/or their chief officers report directly to the Chief Talent Officer/Assistant Commissioner for the Division of Teacher and Leader Effectiveness:

- i.-iii. (No change.)
- iv. [Retention/Recognition] **The Director of the Office of Professional Development; and**
- v. [The Director of the Office of Professional Development] **Retention/Recognition;**

4. The Chief Academic Officer for the Division of Academics. The following organizational units and/or their chief officers report directly to the Chief Academic Officer for the Division of Academics:

- i.-iv. (No change.)
- v. The Director of the Amistad Commission; [and]

5. The Chief Innovation Officer/Assistant Commissioner for the Division of Charter Schools, School Choice, Technology, Turnarounds. The following organizational units and/or their chief officers report