

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

General Rules and Department Organization

Proposed Readoption with Amendments: N.J.A.C. 4A:1

Proposed New Rule: N.J.A.C. 4A:1-1.5

Authorized By: Civil Service Commission, Robert M. Czech,
Chair/CEO.

Authority: N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 52:14B-3(1), 52:14B-3(3), and 52:14B-4(f); P.L. 2001, c. 5, P.L. 2001, c. 404, P.L. 2003, c. 246, P.L. 2006, c. 103, and P.L. 2008, c. 29; 42 U.S.C. §§ 12101 et seq.; and 28 CFR Part 35.107.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015-077.

A **public hearing** concerning the notice of rules proposed for readoption with amendments and a new rule will be held on:

Wednesday, August 19, 2015, at 3:00 P.M.
Civil Service Commission Room
44 South Clinton Avenue
Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by September 4, 2015, to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

Or electronically at: <http://info.csc.state.nj.us/cscmailer>

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 4A:1 expires on December 28, 2015. The Civil Service Commission has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:1 was last readopted in 2008, amendments have been adopted concerning definitions of the closing and filing dates for examinations, as well as definitions related to a new method of employee advancement, and terminology to reflect the new name of this agency and its Chief Executive Officer, pursuant to P.L. 2008, c. 29.

It is noted that some of the rules in N.J.A.C. 4A:1 still refer to the Department of Personnel, the Commissioner of Personnel, and the Merit System Board. Proposed amendments codifying P.L. 2008, c. 29, will be described at the end of this Summary. The rules proposed for readoption will initially be described as they currently are, with outmoded terminology.

Subchapter 1 concerns the purpose and scope of the rules and definitions of commonly used Civil Service terms. N.J.A.C. 4A:1-1.1, Purpose, sets forth the purpose of the Civil Service rules. N.J.A.C. 4A:1-1.2, Scope, applicability, and invalidation, sets forth the scope of the rules and the individuals and agencies to whom they apply unless otherwise specified. Subsection (c) provides that the rules are to be regarded as the means by which the statutory purposes of the merit system are effectuated. Subsection (c) further provides that the Commissioner or the Board may relax the rules for good cause, in order to effectuate the purposes of Title 11A, which are set forth at N.J.S.A. 11A:1-2. Finally, subsection (d) sets forth the impact of a declaration of the invalidity of a rule section or a portion of a section.

N.J.A.C. 4A:1-1.3, Definitions, includes definitions of terms commonly used throughout Civil Service rules. It is noted that, when the Civil Service Commission codified a new online examination application system in the rules, it adopted an amendment to the term "filing date for examination," effective April 7, 2014. See 46 N.J.R. 617(a). Previously, "filing date for examination" meant the date by which an application for an examination must be received in the office designated in the announcement. It also provided that the filing date is the date by which a properly addressed application is postmarked. The amendment removed the phrase "received in the office" and replaced it with the word "submitted" in order to reflect the filing of both hard copy and online applications.

Additionally, it is noted that a new rule and amendments effective June 2, 2014, allows for a new method of merit-based advancement appointments. Therefore, when the Civil Service Commission codified this new method, it adopted amendments to N.J.A.C. 4A:1-1.3 to include several new terms. Among them were "advancement appointment," "competency," and "lateral movement." See 46 N.J.R. 1331(c).

When N.J.A.C. 4A:1 was last readopted with amendments effective August 4, 2008, the definition of "class code" was amended to provide that titles in local service will be assigned a designation with a ranking based upon an evaluation of job content. This was already required for titles in State service. See 40 N.J.R. 4519(b). In the case of the new method of advancement adopted in the rules last year, an amendment to this definition provided that the term also means a designation given to a title level under certain circumstances. "Eligible list" means a roster compiled or approved by the Civil Service Commission of persons who are qualified for employment or reemployment. This definition was amended to refer to the Civil Service Commission rather than the Department of Personnel. "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. "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. This definition was amended to refer to the Civil Service Commission rather than the Department of Personnel. "Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. An amendment was adopted that retained the existing definition of title but went on to state that, with certain titles, any references to such titles in this chapter shall mean title level, and, where applicable, the level's associated class code, unless otherwise stated, or the context clearly suggests otherwise. See 46 N.J.R. 1331(c).

N.J.A.C. 4A:1-1.4, Petition for promulgating, amending, or repealing rules, sets forth what must be included in a petition to promulgate, amend, or repeal a rule and states that the Commissioner shall either approve or deny the petition in writing. Subsection (f) provides that the notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law (OAL) pursuant to N.J.A.C. 1:30-3.6. A technical amendment is proposed to subsection (f) to correct the rule cross-reference so that it reads N.J.A.C. 1:30-4.2.

A new rule is proposed, N.J.A.C. 4A:1-1.5, Rulemaking procedures. The proposed new rule is based on changes to the Administrative Procedure Act required by P.L. 2013, c. 259, and implementing rules promulgated by the OAL at N.J.A.C. 1:30. The proposed new rule would state that after a rule proposal has been approved for publication by the Civil Service Commission, the Commission shall file the notice of proposal with the OAL for public notice and comment, and shall make the notice of proposal available by: 1. Mailing or emailing it to interested persons or persons who have made a timely request for it; 2. Distributing it to the Commission's subscription-based, electronic mailing list; 3. Distributing it to the news media maintaining a press office in the State House Complex; and 4. Publishing it on the Commission website, no later than the date of publication of the notice in the New Jersey Register, which shall satisfy the additional method of publicity requirement set forth in N.J.A.C. 1:30-5.2.

Subchapter 2 concerns records, specifically Department of Personnel access to appointing authority records (N.J.A.C. 4A:1-2.1), and Department records that are considered public (N.J.A.C. 4A:1-2.2).

N.J.A.C. 4A:1-2.2(a)2, which permits information concerning "specific educational or medical qualifications required for employment" to be public, is proposed for amendment to specifically exclude from this category "any information relating to an individual's medical, psychiatric, or psychological history, diagnosis, treatment, or evaluation." The amendment would codify identical language from Executive Order No. 26 (2002) prohibiting the public disclosure of such information; reflect the "citizen's reasonable expectation of privacy" set forth in Section 1 of P.L. 2001, c. 404, the Open Public Records Act (OPRA); and bring the rule in line with the prohibition in Section 11 of the law against the disclosure of "any detailed medical or psychological information."

N.J.A.C. 4A:1-2.2(c), in accordance with OPRA, sets forth the Department records that are not considered government records and therefore are not open to public inspection, in addition to any other records specified in OPRA or by certain other laws, orders, or resolutions. Subsection (c) is proposed for amendment to delete language that the Commission believes amounts to excessive legalese and that is unnecessary to accurately express the substance of the subsection.

Paragraph (c)1 indicates that appeal files of the Merit System Board, the Commissioner of Personnel, and the Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) are not government records subject to public inspection. An amendment is proposed to paragraph (c)1 to emphasize that "any" such appeal files come under this restriction. However, final decisions of the Board and the Commissioner are considered public. A technical amendment is proposed to N.J.A.C. 4A:1-2.2(c)1 to add the word "administrative" to the phrase "final decisions," to be consistent with other rules that refer to "final administrative decision," which is actually the correct term. Paragraph (c)1 would also be amended to delete the phrase "including the bases for

these decisions," since all final administrative decisions issued by this agency include detailed reasons.

N.J.A.C. 4A:1-2.2(d) provides a cross-reference to the rule on examination records, N.J.A.C. 4A:4-2.16, and is not proposed for amendment.

Subchapter 3 governs the organizational structure of the Civil Service Commission. N.J.A.C. 4A:1-3.1, General provisions, provides for the composition of the Commission. A prior amendment pursuant to P.L. 2008, c. 29, effective June 6, 2011, deleted the reference to the "Department of Personnel" in subsection (a), and replaced it with "Civil Service Commission," along with an explanation that it is established "in, but not of, the Department of Labor and Workforce Development." Further, references to "Commissioner" were changed to "Chairperson," and "Merit System Board" to "Civil Service Commission." N.J.A.C. 4A:1-3.2, Chairperson, delineates the responsibilities of the Chairperson. The rule heading was amended to read "Chairperson" instead of "Commissioner," and substituted all references in the rule to the "Commissioner" with references to the "Chairperson." The rule amendment further updated the duties of the Chairperson in accordance with P.L. 2008, c. 29. Therefore, the Chairperson is the administrator, the chief executive officer, and the appointing authority of the Civil Service Commission, as well as the request officer of the Commission as that term is defined in P.L. 1944, c. 112, § 1. Additionally, several of the duties performed by the former Commissioner were delegated by the Commission to the Chairperson. These duties include the following: maintaining a management information system to implement the Civil Service Act, establishing necessary programs and policies for State and local service, establishing and consulting with advisory boards, making required reports to the Governor and Legislature, and approving appointments in State and local service. Additionally, between Commission meetings, the Chairperson has the authority to provide for interim remedies or relief in a pending appeal, and pursuant to N.J.A.C. 1:1-14.10, reviews requests for interlocutory review of an order or ruling by an administrative law judge. As P.L. 2008, c. 29, deleted the requirement in Title 11A that the Commissioner assist the Governor in personnel and labor relations and render final administrative decisions on classification, salary, layoff rights, and State noncontractual grievances, these duties were deleted. (It is noted that the Commission renders final administrative decisions on all appeals filed under the Civil Service Act, including ones reviewed by the former Commissioner, as provided in prior amendments to N.J.A.C. 4A:1-3.3.) See 43 N.J.R. 1331(a).

N.J.A.C. 4A:1-3.3, Civil Service Commission, delineates the responsibilities of the Commission. In an amendment effective June 6, 2011, pursuant to P.L. 2008, c. 29, the rule heading, Merit System Board, was changed to "Civil Service Commission." The amendment also replaced the reference to the Board in subsection (a) with a reference to the Commission. Paragraph (a)2 was changed to provide that the Chairperson, rather than the Commissioner, refers appeals to the Commission to render final administrative decisions. A cross-reference to N.J.A.C. 4A:1-3.2(a)6 was deleted, as the Commission reviews all appeals, including those formerly reviewed by the Commissioner under that paragraph. See 43 N.J.R. 1331(a).

Subchapter 4 allows the Commissioner of Personnel to take certain special actions. N.J.A.C. 4A:1-4.1 permits the Commissioner to delegate certain functions to appointing authorities and sets forth the procedures to be followed in that regard. An amendment is proposed to N.J.A.C. 4A:1-4.1(b)4, which currently limits the duration of a delegation to three years, although the delegation may be renewed. The language regarding duration and renewal would be deleted. Deleting this language, which is not required by the Civil Service Act (see N.J.S.A. 11A:2-12), would provide the Commission and appointing authorities with greater flexibility in establishing and administering delegations. Oversight would not be affected, and the cancellation, modification, or limitation of a delegation order could be made at any time. See N.J.A.C. 4A:1-4.1(d).

N.J.A.C. 4A:1-4.2 permits the Commissioner to consolidate personnel, training, and related functions in State service. N.J.A.C. 4A:1-4.3 permits the Commissioner to establish pilot programs outside the provisions of Civil Service law and rules.

Finally, Subchapter 5 governs the disability discrimination grievance procedure required by the Americans with Disabilities Act (ADA). This

subchapter is exempt from expiration pursuant to N.J.S.A. 52:14B-5.1(e), as required under 28 CFR Part 35. A technical amendment is proposed to paragraph 1 of the required notice at N.J.A.C. 4A:1-5.3, for grammatical purposes, to delete a comma and add the word "at" before the cross-reference to N.J.A.C. 4A:7-1.1 et seq. Another technical amendment is proposed to N.J.A.C. 4A:1-5.5 to delete the cross-reference to N.J.A.C. 4A:7-1.1 through 3.4 and change it to a cross-reference to N.J.A.C. 4A:7, since the entire rule chapter could be applicable to a grievance alleging employment discrimination. This technical amendment would also add the word "at" for grammatical purposes before the citation to N.J.A.C. 4A:7.

The heading of Chapter 1, "General Rules and Department Organization," is proposed for amendment to read, "General Rules and Agency Organization," in light of the provisions of P.L. 2008, c. 29. Subchapters 1, 2, 4, and 5 are also proposed for amendment to reflect the provisions of that enactment. Pursuant to the law, 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. The law also required that the Department of Personnel, Commissioner of Personnel, and Merit System Board be replaced by the Civil Service Commission and Chairperson of the Civil Service Commission. Therefore, amendments to reflect these changes, which would include references to "Civil Service Commission," "Commission," "Civil Service Commission staff," "the agency," "Chairperson," "Chairperson or designee," and "Chairperson of the Civil Service Commission or designee," "this agency, the Chairperson or the Civil Service Commission," as well as "civil service system" instead of "merit employment system," as necessary, are proposed to N.J.A.C. 4A:1-1.2(c); 1.4(a), (e), and (f); 2.1; 2.2(a), (a)3, and (c)1; 4.1(a), (a)3, (b), (b)3, (b)5, (c), (d), (e)2, (e)3, and (g); 4.2(a) and (d); 4.3(a), (d), (d)8, (e), and (f); 5.1; 5.3 and paragraph 1 of the required notice; 5.4(a); and 5.5.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed technical amendments to several rules in N.J.A.C. 4A:1 which would change terminology to reflect the enactment of P.L. 2008, c. 29, are anticipated to have a positive social impact, by ensuring that all users of the rules are aware of the current name of this agency and its statutory powers and the current title and statutory powers of the Chairperson of the Civil Service Commission. In general, N.J.A.C. 4A:1 provides a clear division of responsibilities within the agency. Also, the proposed technical amendment to 4A:1-2.2(c)1 is not anticipated to have a social impact as this is a grammatical change emphasizing that all final agency decisions are to be referred to as final "administrative" decisions rather than just final decisions.

The rules proposed for re-adoption with amendments at N.J.A.C. 4A:1 would have an overall positive social impact on all users of Civil Service system rules, in that the rules would continue to be logically organized, understandable, and reflective of current practice as well as current law. N.J.A.C. 4A:1-1.2(c) advises appointing authorities, employees, and members of the public that the Civil Service Commission may relax a rule for good cause in a particular situation. This subsection, and the provisions of Subchapter 4 concerning delegation, consolidation, and pilot programs, demonstrate the flexibility of the Civil Service system to address unusual circumstances not contemplated by the rules and are therefore a positive feature of the rules.

Additionally, the definitions in N.J.A.C. 4A:1-1.3 provide essential information regarding the meaning of numerous terms used elsewhere in the rules. In particular, the definition of "class code" provides a positive social impact in informing local appointing authorities and employees that this system is in place in local government as well as State government. With respect to the definition of "filing date for examination," the major benefit of the online acceptance of applications is the streamlining of the system of submitting, receiving, and processing exam applications. In light of the wide use of computers and the Internet in searching for civil service jobs, the ability to utilize an online application system makes sense. This definition conforms the rules to the

online application system. Additionally, the online application system preserves the original method of submitting hard copy applications for individuals who may have limited access to computers and the Internet, negating any potential negative impact on such applicants.

Proposed new N.J.A.C. 4A:1-1.5, which would implement recently enacted changes to the Administrative Procedure Act, would have a positive social impact by setting forth the methods by which the Commission's rule proposals would be publicized, thereby facilitating public involvement in the rulemaking process.

N.J.A.C. 4A:1-2.2, and the proposed amendment to the rule, in setting forth the types of Civil Service Commission records that are open to public inspection and those that are not, would strike the proper balance between the personal privacy interests of former, current, and prospective Civil Service employees with the public's right to know, as this balance is enunciated in OPRA. Accordingly, this rule with the proposed amendment would have a positive social impact. It is further anticipated that N.J.A.C. 4A:1-2.2 would continue to have a positive social impact in the practical matter of advising interested parties of the Civil Service Commission records that are open to public inspection.

The proposed amendment to N.J.A.C. 4A:1-4.1, regarding delegations, would have a positive social impact for the Civil Service Commission and appointing authorities alike, in permitting greater flexibility in the establishment and administration of delegations.

The rules concerning the disability discrimination grievance procedure help to ensure that people protected by the ADA have equal access to Civil Service Commission facilities and a means of enforcing their rights to such access.

Economic Impact

The proposed technical amendments to several rules in N.J.A.C. 4A:1 which would change terminology to reflect the enactment of P.L. 2008, c. 29, are anticipated to increase governmental efficiency by ensuring that all users of the rules are aware of the current name of this agency and its statutory powers and the current title and statutory powers of the Chairperson of the Civil Service Commission.

The rules proposed for re-adoption with amendments at N.J.A.C. 4A:1 would minimize the amount of inquiries and controversies requiring agency action. The definitions in N.J.A.C. 4A:1-1.3 set forth the meaning of important terms used throughout the rules. The definition of "class code," which now pertains to both State and local service, is expected to have a positive economic impact on Civil Service Commission operations upon re-adoption. In particular, Civil Service Commission staff now have a more systematic way of reviewing and implementing appointments in local service. In reference to the definition of "filing date for examination," the examination application process was updated to fully utilize modern technology. This, in turn, increases the effectiveness and efficiency of the application process. Additionally, the online application system provides potential applicants with a substantial economic benefit. Potential applicants for open competitive or promotional opportunities are better informed of such opportunities and therefore have an increased chance of being considered for appointment or promotion. Moreover, a more efficient, streamlined promotional examination application process continues to benefit State and local agencies because it reduces the resources these agencies have to allocate to the distribution of promotional announcements.

A positive economic impact is anticipated from the adoption of proposed new N.J.A.C. 4A:1-1.5, as the public would save time and money by being able to view information regarding the rulemaking process on the agency's website or by receiving information electronically without having to travel or incur the expense and the delay of obtaining copies. Additionally, the public would save time and money by being able to submit comments regarding the rulemaking process electronically without having to pay for postage. The agency would benefit from the efficiencies of being able to post information once on its website and distribute information electronically without having to spend the time and money on making and mailing multiple photocopies.

A positive economic impact is anticipated as a result of the proposed re-adoption of N.J.A.C. 4A:1-3. It is expected that State government and local jurisdictions will continue to operate more efficiently with the rules clearly explaining the respective duties of the Commission versus the

Chairperson. Also, with requests for interim relief as well as interlocutory appeals being reviewed by the Chairperson between Commission meetings, these important matters are not held up due to the Commission's meeting schedule. Such matters are reviewed promptly, saving the parties time and resources.

The proposed readoption of N.J.A.C. 4A:1-2.2, which sets forth the Civil Service Commission records that are not considered government records in accordance with OPRA, should continue to have a positive economic impact. Fewer resources would be expended by members of the public and Commission staff in correspondence concerning the Commission's records when such records are not open to public inspection. Moreover, agency records that, due to their nature, should not be open to public inspection, are not provided, preventing disruption of agency operations. The proposed deletion of language referring to the "bases" for agency decisions as being public would, as a practical matter, not change the types of agency records that are public and therefore should not have any economic impact.

The proposed amendment to N.J.A.C. 4A:1-4.1 deleting the three-year limit on delegations and language permitting delegation renewals would have a positive economic impact. Because of the greater flexibility afforded delegations under this amendment, fewer resources and staff time on the part of both the Commission and the affected appointing authority would be expended in drawing up new delegation orders and ending delegations.

Individuals wishing to file a grievance under the ADA are advised in N.J.A.C. 4A:1-5 of the procedures for carrying out such a grievance. The rules at N.J.A.C. 4A:1-5, therefore, would continue to have a positive economic impact on State and local government and employees, as well as on taxpayers in general. Further, N.J.A.C. 4A:1-5 would continue to help disabled individuals obtain better access to Commission services and assistance. The public sector would receive a positive economic benefit by being able to employ talented individuals with disabilities. Taxpayers in general would receive a positive economic benefit when public employers have access to the best workforce possible.

Additionally, the proposed technical amendment to the first paragraph of the required notice at N.J.A.C. 4A:1-5.3 is a change in grammar rather than in meaning with no anticipated economic impact.

Federal Standards Statement

With the exception of Subchapter 5, N.J.A.C. 4A:1 is not subject to any Federal requirements or standards. Although the disability discrimination grievance procedure in Subchapter 5 is subject to requirements set forth by the ADA (42 U.S.C. §§ 12101 et seq.) and its implementing regulations (28 CFR Part 35.107), it is consistent with, but does not exceed, Federal requirements contained therein. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that the rules proposed for readoption with amendments and a new rule at N.J.A.C. 4A:1 would have any jobs impact. No jobs would be created or lost due to the rules proposed for readoption with amendments and a new rule.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption with amendments and a new rule would have any agriculture industry impact. The rules concern employment in the public sector and the organization of the Civil Service Commission.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption with amendments and a new rule at N.J.A.C. 4A:1 would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules would regulate employment in the public sector.

Housing Affordability Impact Analysis

It is not anticipated that the rules proposed for readoption with amendments and a new rule would have any impact on the number of housing units or the average cost of housing in New Jersey. The rules concern employment in the public sector.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a new rule concern employment in the public sector and would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:1.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1 GENERAL RULES AND [DEPARTMENT] AGENCY ORGANIZATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.2 Scope, applicability, and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with [these rules] **this chapter**.

(b) [These rules] **This chapter** shall apply only to the career service unless otherwise specified.

(c) [These rules] **This chapter** shall be considered the means by which the statutory purposes of the [merit employment] **civil service** system are carried out. The [Commissioner or the Board] **Civil Service Commission** may relax [these] a rule[s] **in this chapter** for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the [rules] **chapter** shall not be affected by such determination.

4A:1-1.4 Petition for promulgating, amending, or repealing rules

(a) Any interested person may file a petition with the [Commissioner] **Chairperson** to promulgate, amend, or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule, and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The [Commissioner] **Chairperson** shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the [Commissioner's] **Chairperson's** decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-[3.6]4.2.

4A:1-1.5 Rulemaking procedures

(a) **After a rule proposal has been approved for publication by the Civil Service Commission, the Commission shall file the notice of proposal with the Office of Administrative Law for public notice and comment, and shall make the notice of proposal available by:**

1. Mailing or e-mailing it to interested persons or persons who have made a timely request for it;

2. Distributing it to the Commission's subscription-based, electronic mailing list;

3. Distributing it to the news media maintaining a press office in the State House Complex; and

4. Publishing it on the Commission website, no later than the date of publication of the notice in the New Jersey Register, which shall satisfy the additional method of publicity requirement set forth in N.J.A.C. 1:30-5.2(a)6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 [Department of Personnel] **Civil Service Commission** access to appointing authority records and information

Appointing authorities shall provide [Department of Personnel] **Civil Service Commission** representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following [Department of Personnel] **Civil Service Commission** records shall be public:

1. An individual's name, title, salary, compensation, dates of government service, and reason for separation;
2. Information on specific educational or medical qualifications required for employment, **but not any information relating to an individual's medical, psychiatric, or psychological history, diagnosis, treatment, or evaluation;**
3. Final orders of the [Commissioner or Board] **Commission;** and
4. Other records which are required by law to be made, maintained, or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., [as amended and supplemented,] or any other statute, rule, [promulgated under the authority of any statute or] Executive Order of the Governor, resolution of both houses of the Legislature, Rule of court, or any Federal law[, Federal] or regulation [or Federal order], the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., [as amended and supplemented]:

1. Appeal files in [Merit System Board, Commissioner of Personnel] **any Civil Service Commission** and Division of Equal Employment Opportunity and Affirmative Action matters, including written submissions of the parties and all other related documentation used to make an administrative determination in these matters. However, final **administrative** decisions of the [Board and the Commissioner, including the bases for these decisions,] **Commission** shall be considered public records.

(d) See N.J.A.C. 4A:4-2.16 concerning examination records.

SUBCHAPTER 3. ORGANIZATION

4A:1-3.2 Chairperson

(a) The Chairperson shall:

1. Serve as chairperson of the Civil Service Commission; and
2. Serve as the administrator, the chief executive officer, and the appointing authority of the Commission, as well as the request officer of the Commission, within the meaning of such term as defined in P.L. 1944, c. 112, [§1] § 1.

(b) The Chairperson, on behalf of the Commission, shall:

1. Maintain a management information system to implement Title 11A, New Jersey Statutes;
2. Establish necessary programs and policies for the State and local service;
3. Between meetings of the Commission, provide for interim remedies or relief in a pending appeal where warranted, and review requests for interlocutory review of an order or ruling by an administrative law judge;
4. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations, and other appropriate groups;
5. Make required reports to the Governor and Legislature;
6. Approve appointments in the State and local service; and
7. Perform such other duties as prescribed by law and [these rules] **this chapter**.

4A:1-3.3 Civil Service Commission

(a) The Civil Service Commission shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;
2. Render final administrative decisions on appeals and on other matters referred by the Chairperson;
3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;
4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity;

5. Perform such other duties as prescribed by law and [these rules] **this chapter**.

SUBCHAPTER 4. DELEGATION, CONSOLIDATION, AND PILOT PROGRAMS

4A:1-4.1 Delegation to appointing authorities

(a) The [Commissioner] **Chairperson** may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;
2. Announcing examinations and collecting applications;
3. Administering examinations prepared by [the Department of Personnel] **Civil Service Commission staff;**
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles; and
6. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the [Commissioner] **Chairperson**. Appointing authority employees in carrying out delegated functions are also responsible to the [Department of Personnel] **Chairperson** in performing such functions. The delegation memorandum shall contain:

1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The [Department of Personnel] **Civil Service Commission** representative who will have primary responsibility for supervision of the delegation;
4. The duration of the delegation[, which in no event shall exceed three years, but may be renewed]; and
5. Provisions for appropriate notice advising of the delegation and stating the name, address, and telephone number of the representative of the appointing authority and [Department of Personnel] **Civil Service Commission** employee to be contacted in case of complaints.

(c) [Department of Personnel] **Commission** staff may be assigned to assist in performing the delegated functions.

(d) The [Commissioner] **Chairperson** may cancel, modify, or limit the delegation order at any time.

(e) The following functions may not be delegated:

1. The construction of an examination;
2. Appeal decisions of [the Department, Commissioner or Board] **this agency, the Chairperson, or the Civil Service Commission;** and
3. A function of the [Board] **Commission set forth in N.J.A.C. 4A:1-3.3.**

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials, and facilities after offset by savings effected by the delegation.

(g) The [Department of Personnel] **Chairperson or designee** will conduct appropriate audits of delegated functions.

4A:1-4.2 Consolidation State service

(a) The [Commissioner] **Civil Service Commission**, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training, and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:

1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the [Commissioner] **Commission** may transfer necessary employees, positions, funding, and equipment to the [Department of Personnel] **agency** from other State departments.

4A:1-4.3 Pilot programs

(a) The [Commissioner] **Civil Service Commission** may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and [these rules] **this chapter**.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the [Commissioner] **Chairperson or designee** and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A, New Jersey Statutes;
5. A summary of appointing authority consultations with negotiations representatives;
6. Evaluation criteria;
7. A statement identifying the sections, if any, of [these rules] **this chapter** or of Title 11A, New Jersey Statutes with which the program is at variance; and
8. Such other information as required by the [Commissioner] **Chairperson or designee**.

(e) The [Commissioner] **Chairperson or designee** shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The [Commissioner] **Commission** may accept, modify, or reject the program and establish appropriate conditions.

SUBCHAPTER 5. DISABILITY DISCRIMINATION GRIEVANCE PROCEDURE

4A:1-5.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“ADA” means the Americans with Disabilities Act, 42 U.S.C.[A.] §§ 12101 et seq.

“Agency” means the New Jersey [Department of Personnel] **Civil Service Commission**.

“Designated decision maker” means the [Commissioner of Personnel] **Chairperson** or his or her designee.

4A:1-5.2 Purpose

(a) [These rules are] **This subchapter** is adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 [C.F.R.] **CFR** 35.107.

(b) The purpose of [these rules] **this subchapter** is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.3 Required ADA notice

In addition to any other advice, assistance, or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency’s compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that “no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits

of or be subjected to discrimination” in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code[,] at N.J.A.C. 4A:1-5. As those rules indicate, grievances should be addressed to the agency’s designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey [Department of Personnel] **Civil Service Commission**
PO Box 317
Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the [Department of Personnel,] **Civil Service Commission** at N.J.A.C. 4A:7-1.1 et seq., will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency’s designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases, a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person’s pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

4A:1-5.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator
New Jersey [Department of Personnel] **Civil Service Commission**
PO Box 317
Trenton, New Jersey 08625

(b) All inquiries regarding the agency’s compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 4A:1-5.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the [Department of Personnel,] **Civil Service Commission** at N.J.A.C. 4A:7[-1.1 through 3.4], if those rules are applicable.