

RULE ADOPTIONS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Selection and Appointment

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

Adopted Repeal: N.J.A.C. 4A:4-2.13

Proposed: March 20, 2017, at 49 N.J.R. 492(a).

Adopted: June 21, 2017, by Civil Service Commission, Robert M. Czech, Chairperson.

Filed: June 21, 2017, as R.2017 d.142, **with non-substantial 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:4-1 et seq., 11A:7-13, 38:23A-2, 40A:9-1.3 through 1.10, 40A:14-9.9, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1, and 40A:14-180; P.L. 1992, c. 197 and P.L. 2008, c. 29; and Executive Order No. 10 (1982).

Effective Dates: June 21, 2017, Readoption;

July 17, 2017, Amendments and Repeal.

Expiration Date: June 21, 2024.

Summary of Hearing Officer's Recommendations and Agency's Responses:

A public hearing on this proposed readoption with amendments was held on April 19, 2017, in Trenton, New Jersey. Walker Ristau served as hearing officer. No comments were received on the proposed readoption with amendments at that time, and no recommendations were made by the hearing officer. The record of the public hearing may be reviewed by contacting Christopher Myers, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, PO Box 312, Trenton, New Jersey 08625-0312.

Summary of Public Comment and Agency Response: No comments were received.

Summary of Agency-Initiated Change:

The proposed amendment to N.J.A.C. 4A:4-2.5(b)3, which wholly replaced the original language with new language was a technical error. The Civil Service Commission's intent was to retain the original language of permitting the option to open promotional announcements to the next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements and add the language regarding opening the announcement to permanent employees in specified unrelated noncompetitive titles who meet the complete open competitive requirements. Retaining the option of opening promotional announcements in State service to all permanent employees in any competitive title who meet the open competitive requirements is consistent with N.J.A.C. 4A:4-2.4(a)3, (b), and (c). N.J.A.C. 4A:4-2.5(c)1 and (d)4, which also permit employees in any competitive title who meet the open competitive requirements the opportunity to file for Local service announcements and for promotions from the noncompetitive division to the competitive division in State service. Finally, retaining the erroneously deleted language would not negatively affect any party and would essentially retain the status quo.

Federal Standards Statement

A Federal standards analysis is not required because N.J.A.C. 4A:4 is not subject to any Federal requirements or standards.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 4A:4.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***):

SUBCHAPTER 1. TYPES OF APPOINTMENTS

4A:4-1.1 Career service appointments

(a) (No change.)

(b) The Chairperson or designee may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans' preference.

(c) The Chairperson or designee may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division;
2. In appropriate situations, to a related above-entry level title in the competitive division; or
3. An unrelated entry level or above-entry level title in the competitive division, in appropriate situations, such as a classification determination.

4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Civil Service Commission.

(b) (No change.)

4A:4-1.3 Unclassified appointments

(a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Civil Service Commission.

(b) (No change.)

4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. (No change.)
2. The appointing authority certifies that the appointee meets the minimum qualifications for the title at the time of the appointment; and
3. (No change.)

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination that has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Chairperson or designee and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Chairperson or designee for good cause.

4A:4-1.6 Interim appointments

(a) (No change.)

(b) When an appointing authority makes an appointment to a specific position in State service or a specific title in local service, an interim appointment shall be made where the position/title is held by a permanent employee who:

1.-2. (No change.)

3. Has been removed or demoted for disciplinary reasons and is awaiting final administrative action by the Civil Service Commission on appeal; or

4. (No change.)

(c) An interim appointment may be made where the position/title will be abolished at a future date pursuant to a closing or phasedown of a government operation. Such an interim appointment may be made only following official notification to the Chairperson or designee by the applicable department head, in State service, or by the appointing authority, in local service, of the closing or phasedown.

(d)-(e) (No change.)

(f) Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence, on indefinite suspension, or awaiting final administrative action of the Civil Service Commission on the appeal of a disciplinary demotion

or removal, or during the period leading up to the date on which the closing or phasedown of the government operation is scheduled to conclude.

1. (No change.)

(g) (No change.)

(h) If a complete eligible list exists for the title, the interim appointment shall be made from that list. An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

1. If the closing or phasedown of a government operation is rescinded after an interim appointment has been made from an eligible list, the interim appointee who was appointed from the eligible list shall receive a permanent appointment subject to the satisfactory completion of a working test period, regardless of whether the eligible list has already expired. Upon completion of a current working test period, the interim appointee will receive a retroactive permanent appointment date consistent with the date of his or her interim appointment from the eligible list.

(i)-(k) (No change.)

4A:4-1.7 Temporary appointments

(a) The Chairperson or designee may approve temporary appointments to positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved by the Chairperson or designee to a position established as a result of a short-term grant.

(b)-(d) (No change.)

4A:4-1.8 Emergency appointments

The Chairperson or designee may authorize an emergency appointment for a period not to exceed 30 days when the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

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

(a)-(b) (No change.)

(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. (No change.)

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

(d)-(g) (No change.)

4A:4-1.10 Approval of appointments by Civil Service Commission

(a) All initial and subsequent appointments, promotions, and related personnel actions in the career, unclassified, or senior executive service are subject to the review and approval of the Chairperson or designee.

1. (No change.)

(b)-(c) (No change.)

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.1 Announcements and applications

(a) On a daily basis, open competitive examination announcements shall be posted on, and applications made available through, the Civil Service Commission web site (<http://www.state.nj.us/csc>) and may be publicized by other appropriate means, as approved by the Chairperson or designee, to secure sufficient qualified candidates.

(b) (No change.)

(c) Examination announcements shall include at least the following information:

1.-3. (No change.)

4. Filing information;

5. In open competitive examinations, a reference to duties and responsibilities; and

6. For State open competitive announcements: location of the vacancy(ies).

(d) A promotional examination may be reannounced if, within one year of the closing date, if the examination has not been developed and scheduled.

(e) Unless otherwise provided for by the Chairperson or designee, applications for open competitive and promotional examinations shall be submitted to the Civil Service Commission no later than 4:00 P.M. on the announced application filing date.

(f)-(g) (No change.)

(h) All examination applications shall remain confidential, except as the Chairperson or designee may determine to be in the public interest.

(i) (No change.)

4A:4-2.2 Types of examinations

(a) The Chairperson or designee shall administer examinations for appointment in the competitive division of the career service, which may include any one or more of the following:

1.-5. (No change.)

6. Computer-based tests;

7. (No change in text.)

8. Other appropriate measures of knowledge, skills, and abilities.

(b) The Chairperson or designee may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided by the Chairperson or designee for such service outside normal working hours.

(c) (No change.)

4A:4-2.3 Open competitive examinations

(a) Vacancies shall be filled by promotional examination, unless the Chairperson or designee determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1.-5. (No change.)

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.11), except when:

i. A different residency requirement is specified by law or provided by the Chairperson or designee; or

ii. (No change.)

2. Meet all requirements specified in the examination announcement:

i. (No change.)

ii. For good cause, the Chairperson or designee may deem an individual a former law enforcement officer as defined in (b)2i above, even though the individual's separation from service shall not occur except upon a new appointment.

iii. (No change.)

3. File an application with all supporting documents or proofs by the announced filing date and time.

(c) In announcing open competitive examinations, the Chairperson or designee may provide a single application for several announcements and/or title areas (such as police, sheriff, corrections, and bilingual). The applicant's eligibility for particular announcements and/or title areas may depend upon the applicant's residency as indicated on the application.

(d) (No change.)

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

(a)-(b) (No change.)

(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, or, in appropriate circumstances as determined by the Chairperson or designee, an unrelated entry level or above 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.-2. (No change.)

3. All related noncompetitive titles;

4. Unrelated noncompetitive titles, in appropriate circumstances as determined by the Chairperson or designee; or

5. (No change in text.)

(d) The title scopes described in (a)2 and 3 and (c)2 through 5 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 or designee may set another appropriate title scope.

(f) (No change.)

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

(a) (No change.)

(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. (No change.)

2. The next lower in-series title, if one exists, and other competitive division titles within a range of specified class code levels as specified by the appointing authority 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.*** In appropriate circumstances, serving in specified unrelated noncompetitive titles as determined by the Chairperson or designee and possessing the complete open competitive requirements.

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

5.-6. (No change.)

(c) (No change.)

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, or in appropriate circumstances as determined by the Chairperson or designee to an unrelated entry level or above entry level title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1.-5. (No change.)

(e) (No change.)

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1.-2. (No change.)

3. Have not received a Performance Assessment Review (PAR) final rating below the Successful level (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and

4. (No change.)

(b) (No change.)

(c) Except when permitted by the Chairperson or designee for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. Good cause may include, but not be limited to, the following:

1. Where the number of employees eligible for examination will result in an incomplete list, or where the number of applications does not exceed the number of provisional incumbents by more than one, the applicant may submit a detailed statement from his or her supervisor describing the out-of-title duties performed and the reasons why it was necessary to perform such duties. A statement shall also be submitted from the appointing authority verifying the supervisor's statement and indicating interest in making an appointment from the resultant eligible list.

(d)-(e) (No change.)

(f) Employees who are separated or displaced as a result of a layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) An appointing authority may request that the time requirements specified in (a) and (b) above be reduced to completion of the working test period if:

1.-2. (No change.)

3. Other valid reasons as determined by the Chairperson or designee.

4A:4-2.7 Promotion upon waiver of competitive examination

(a) Following the announcement of a promotional examination, the Chairperson or designee may authorize the promotion of a qualified permanent employee in the career service by regular appointment without competitive examination and without the establishment of an eligible list if:

1.-4. (No change.)

4A:4-2.8 Scheduling of examinations

(a)-(b) (No change.)

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written or computer-based examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.

2. (No change.)

(d) (No change.)

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Chairperson or designee.

4A:4-2.9 Make-up examinations

(a) Make-up examinations for open competitive and general promotional testing, except for professional level engineering promotional examinations and public safety promotional examinations under (b) below, may be authorized for the following reasons:

1.-7. (No change.)

(b) For professional level engineering, police, fire, correction officer, sheriff's officer, juvenile detention officer, and other public safety promotional examinations, make-up examinations may be authorized only in cases of:

1.-5. (No change.)

(c) (No change in text.)

(d) Employees who have been removed for disciplinary reasons or indefinitely suspended pending criminal charges, and are thereafter exonerated of all charges, shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists, if the suspension or removal resulted in the employee's non-participation in the promotional examination.

(e) Except as provided in N.J.A.C. 4A:4-4.6A, a candidate must request, in writing, a make-up examination, within five days after the examination date due to one of the valid reasons set forth in (a) or (b) above, as applicable. However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of one of the valid reasons set forth in (a) or (b) above, as applicable, of which a candidate is aware upon receipt of the examination notice, except that the candidate shall follow the procedures set forth in N.J.A.C. 4A:4-4.6A, where applicable.

(f) Make-up examinations will be administered to the extent possible under the same conditions as the original examination but, in the case of public safety examinations under (b) above, shall be different in content from the original examination.

(g) (No change in text.)

(h) All candidates taking a make-up examination, except a physical performance examination, shall, as a precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination, or third parties, provided that:

1. In the case of open competitive and promotional public safety examinations referred to in (b) above, candidates shall sign an additional statement accepting the make-up examination as a substitute for the original examination, provided, however, that signing this statement shall not preclude the candidate from challenging the validity of the make-up examination's items, the scoring of the make-up, or the make-up test conditions. See N.J.A.C. 4A:4-6.3 and 6.4.

(i) (No change in text.)

4A:4-2.10 Conduct and security of examinations

(a) The Civil Service Commission shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Bringing cellphones (including work-issued phones), smart phones, and/or any type of electronic recording/imaging device into the building where the examination is being conducted;

Recodify existing 1.-7. as 2.-8. (No change in text.)

(c)-(d) (No change.)

4A:4-2.12 Professional qualifications substitution program

(a) (No change.)

(b) The Civil Service Commission shall make the determination whether prior work experience may be substituted for specified education requirements.

4A:4-2.13 (Reserved)

4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities

(a) Otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, Civil Service Commission staff shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Chairperson or designee may waive an examination for an otherwise qualified candidate or provisional with a physical, mental, or emotional affliction, injury, dysfunction, impairment, or disability that makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Chairperson or designee and contain:

i.-iv. (No change.)

v. Agreement to undergo any additional physical or psychological examinations that the Chairperson or designee deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements will be made for such accommodation.

(d) If reasonable accommodation is not possible, the Chairperson or designee will decide whether to grant a waiver, and if granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Chairperson or designee.

(b)-(h) (No change.)

(i) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Chairperson or designee.

(j) (No change.)

4A:4-2.16 Retention and inspection of examination records

(a) (No change.)

(b) All examination records listed in (a)1, 4, and 5 above shall be open to public inspection.

1.-3. (No change.)

4. The Chairperson or designee shall determine which other records may be open to public inspection and the conditions for such inspection.

4A:4-2.17 Application processing fees

(a)-(c) (No change.)

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits,

benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

1.-3. (No change.)

(e) (No change.)

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.1 Types of eligible lists

(a) The Chairperson or designee may establish the following types of eligible lists:

1.-3. (No change.)

4. Police, sheriff's officer, or fire reemployment, which shall include former permanent uniformed members of a police department, sheriff's office, or fire department who have resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interest of the service; and

5. (No change.)

(b) In accordance with P.L. 2015, c. 17, any permanent sheriff's officer who resigned in good standing on or after January 1, 2002, may request that his or her name be placed on a sheriff's officer reemployment list. However, any person appointed as a sheriff's officer prior to the February 2, 2015, effective date of P.L. 2015, c. 17, shall not be displaced by a person appointed from a sheriff's officer reemployment list.

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

(a)-(c) (No change.)

(d) Eligibles on regular or police, sheriff's officer, 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) (No change.)

4A:4-3.3 Duration and cancellation of eligible lists

(a) (No change.)

(b) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Chairperson or designee determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Chairperson or designee prior to its expiration date, except that no list shall have a duration of more than four years.

2. (No change.)

3. Special reemployment, police reemployment, sheriff's officer reemployment, and fire reemployment lists shall have unlimited durations.

(c) The Chairperson or designee may, in cases of fraud, illegality, test invalidity, error by the Civil Service Commission staff, or other good cause, cancel an eligible list prior to its expiration date by issuing an order, which shall provide a means for the notification of eligibles. The Chairperson or designee shall also notify affected appointing authorities.

(d)-(e) (No change.)

4A:4-3.4 Revival of eligible lists

(a) The Civil Service Commission may revive an expired eligible list under the following circumstances:

1. (No change.)

2. To implement an order of the Civil Service Commission in an appeal or proceeding instituted during the life of the list;

3.-5. (No change.)

4A:4-3.5 Consolidation of eligible lists

(a) The Chairperson or designee may consolidate successive eligible lists for a given title that result from successive open competitive or promotional examinations by one or more of the following methods:

1.-3. (No change.)

(b) (No change.)

4A:4-3.6 Additions to eligible lists

(a) The Chairperson or designee may add names to an eligible list at any time during the life of the list under the following circumstances:

1.-5. (No change.)

(b) (No change.)

4A:4-3.7 Priority of eligible lists

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1.-3. (No change.)

4. Regular reemployment, police, sheriff's officer, or fire reemployment; and

5. (No change.)

(b)-(e) (No change.)

4A:4-3.8 Correction of errors

(a) The Civil Service Commission staff may correct an error at any time during the life of an eligible list.

(b) The Chairperson or designee shall determine whether such correction shall affect any prior appointments or certifications.

(c) (No change.)

4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

(a) A municipality, county, or fire district interested in making an appointment pursuant to N.J.A.C. 4A:4-3.9 (hereafter "program") may contact the Chairperson or designee for a list of persons compiled as follows:

1.-3. (No change.)

(b) A person who would like to be placed on a list of persons as indicated in (a) above may contact Civil Service Commission staff to apply for inclusion on a list.

1. (No change.)

(c) In selecting a person from the list, the municipality, county, or fire district shall verify and certify to the Chairperson or designee, the eligibility of the person for appointment pursuant to this program.

1.-2. (No change.)

(d) An appointment made under this program:

1. Shall be reported to the Civil Service Commission;

2.-4. (No change.)

5. Shall not be made to a title other than an entry level title without Civil Service Commission approval.

(e) (No change.)

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.1 Need for certification

(a) When a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by the Chairperson or designee to enable the appropriate Commission staff to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

(b) When a permanent competitive position has been filled on a nonpermanent basis, the Chairperson or designee shall determine whether there is a need to issue a certification.

4A:4-4.2 Issuance of certification

(a) Upon determining that there is a need for a certification as provided in N.J.A.C. 4A:4-4.1, the Chairperson or designee shall issue, or authorize the issuance of, a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list.

1. When the Civil Service Commission has accepted a single application for one or more title areas pursuant to N.J.A.C. 4A:4-2.3(c), the certification shall be drawn from the pool of eligibles, based on their title area and county preference and their residency.

(b) When a certification is issued, the Chairperson or designee shall notify, or authorize the notification of, the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police, sheriff's officer, and fire reemployment lists, the name of one interested eligible for each permanent appointment; or

2. (No change.)

(d) (No change.)

4A:4-4.3 Certification from appropriate lists

(a) When an eligible list for a title is either unavailable or incomplete, the Chairperson or designee may authorize a certification from an eligible list for an appropriate title of the same or higher level, in the same or related series under the following conditions:

1.-4. (No change.)

(b) The Chairperson or designee may also authorize a certification from a common or similar State or local service eligible list under the following circumstances:

1.-4. (No change.)

(c)-(d) (No change.)

4A:4-4.5 Certifications limited to persons of a particular sex, religion, or national origin

(a)-(b) (No change.)

(c) A request for a BFOQ designation shall be signed by the agency or department head, or designee, and the affirmative action officer, and submitted by the appointing authority to the Civil Service Commission, Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) and shall include:

1.-4. (No change.)

5. Such other information as requested by the EEO/AA.

(d) (No change.)

(e) The Director, EEO/AA shall review the request and advise the appointing authority in writing of his or her decision to either accept the BFOQ request or not accept the request based on insufficient justification.

(f) The EEO/AA will audit BFOQ positions to eliminate artificial barriers that may exist to equal employment opportunity and particular BFOQ designations may be reconsidered or eliminated.

(g) (No change.)

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1.-3. (No change.)

4. The eligible has a criminal record which adversely relates to the employment sought.

i. (No change.)

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, juvenile detention officer, firefighter, or judiciary titles and other titles as the Chairperson or designee may determine.

5.-10. (No change.)

11. Other valid reasons as determined by the Chairperson or designee.

(b)-(d) (No change.)

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Chairperson or designee may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f)-(h) (No change.)

4A:4-4.8 Disposition of a certification

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. (No change.)

2. Appoint the eligible whose name has been certified from regular or police, sheriff's officer, or fire reemployment lists; or

3. (No change.)

(b) The appointing authority shall notify the Civil Service Commission of the disposition of the certification by the disposition due date in the manner prescribed by the Chairperson or designee. The disposition due date may be extended beyond the expiration date of the eligible list to fill current vacancies. Under no circumstances shall a disposition due date be extended beyond the expiration date of the eligible list when vacancies do

not exist. An anticipated vacancy shall not be considered the same as an existing vacancy. The report of disposition of the certification shall include:

- 1.-6. (No change.)
- (c) (No change.)
- (d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Chairperson or designee may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8 for layoff procedures.
- (e) (No change.)

4A:4-4.10 Certification of additional eligibles

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that appropriate Commission staff certify additional names.

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

- (a) (No change.)
- (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, sheriff's officer, fire, and regular reemployment lists;
 - 2.-4. (No change.)
 - (c)-(e) (No change.)

4A:4-5.2 Duration

- (a) (No change.)
- (b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:
 - 1. (No change.)
 - 2. In State service, a period of four months of active service, which the Chairperson or designee may extend on request of an appointing authority for an additional two months. Such request should be submitted to appropriate Civil Service Commission staff at least five working days before the end of the four-month period. The appointing authority shall notify the employee of the extension in writing on or before the last day of the four-month period.
 - i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Chairperson or designee for an additional 44 work days. For purposes of this subparagraph, any part of a day shall constitute a work day.
 - ii. (No change.)
 - (c)-(e) (No change.)

4A:4-5.3 Progress reports

- (a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Chairperson or designee has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.
 - (b)-(c) (No change.)
 - (d) In State service, the appointing authority shall:
 - 1. (No change.)
 - 2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to appropriate Civil Service Commission staff, within five days following the last day of the working test period, copies of all progress reports and the final report, and the written notice of separation or return to his or her permanent title;
 - 3. (No change.)
 - 4. Retain for auditing any other records so identified by the Chairperson or designee.
 - (e) In local service, the appointing authority shall furnish working test period progress reports to Civil Service Commission staff upon request.

4A:4-5.4 Working test period appeals

- (a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for appeal procedures.
- (b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for appeal procedures.

4A:4-5.5 Restoration to eligible list or former title

- (a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Chairperson or designee determines that the employee is suitable for appointment to another position.
 - 1. The Chairperson or designee may consider:
 - i.-iii. (No change.)
 - 2.-3. (No change.)
 - (b)-(c) (No change.)

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.1 Examination and selection disqualification

- (a) A person may be denied examination eligibility or appointment when he or she:
 - 1.-2. (No change.)
 - 3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Chairperson or designee considers the condition incapacitating;
 - 4.-9. (No change.)
 - (b)-(d) (No change.)

4A:4-6.3 Examination and selection appeals

- (a)-(b) (No change.)
- (c) Unless ordered by the Civil Service Commission or Chairperson, 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)-(g) (No change.)

4A:4-6.4 Review of examination items, scoring, and administration

- (a) No later than five business days after the examination has been held, candidates for multiple choice examinations may contact appropriate Civil Service Commission staff by telephone to make an appointment to review the keyed test booklet.
 - 1.-2. (No change.)
 - (b) No later than five business days after the examination has been held, candidates for tests other than multiple choice may contact Commission staff by telephone to make an appointment to review the test. These candidates may file an appeal in writing of examination items and scoring within 20 days after the candidate's date of review. Candidates for tests other than multiple choice who do not request a review of their examination papers may file an appeal of examination items and scoring within 20 days of the notice date of examination results.
 - (c) An examination candidate wishing to challenge the manner in which the examination was administered must file an appeal in writing at the examination site on the day of the examination.
 - (d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Chairperson or designee permits.
 - (e) In order to maintain the security of the examination process, the Chairperson or designee may, on a particular examination, modify or eliminate the review of examination questions and answers. Candidates shall be notified of any such restrictions at the time that the examination is administered.
 - (f) The Civil Service Commission shall decide any appeal on the written record or such other proceeding as the Commission deems appropriate.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to appropriate Civil Service Commission staff a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist, or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2.-3. (No change.)

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. (No change.)

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Civil Service Commission representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii.-iv. (No change.)

3. (No change.)

(c) Upon receipt of satisfactory documentation, appropriate Civil Service Commission staff shall notify the eligible that:

1. (No change.)

2. He or she may file an appeal with the Civil Service Commission within 20 days of such notification;

3.-4. (No change.)

(d) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Civil Service Commission, within 20 days, all background information, including any investigations and all complete medical, psychological, and/or psychiatric reports that were the basis for the removal request.

1. The appointing authority shall also furnish to the appellant's attorney or to a New Jersey licensed psychologist or psychiatrist of the appellant's choice upon request all of the information supplied to the Civil Service Commission.

2. (No change.)

(e) The appellant may submit to the Civil Service Commission a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing, which must be submitted within 90 calendar days of the filing of his or her appeal to the Civil Service Commission. The appellant shall furnish the appointing authority with copies of all submissions to the Civil Service Commission. See (f) below for report requirements.

(f) The Civil Service Commission may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1.-5. (No change.)

(g) The Civil Service Commission shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations, or other materials.

1.-2. (No change.)

3. The Panel shall prepare a written report and recommendation for the Civil Service Commission.

i. (No change.)

ii. Both parties may file written exceptions with the Civil Service Commission within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Civil Service Commission may refer an appellant for an independent professional evaluation.

5. The Civil Service Commission may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Civil Service Commission shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

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

(a)-(b) (No change.)

(c) In local service, a permanent transfer shall require the consent of both organizational units and the approval of the Chairperson. In State service, the consent of the affected employee shall also be required.

1.-2. (No change.)

(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 Chairperson or designee.

(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 Chairperson or designee 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. (No change.)

(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. (No change.)

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Chairperson or designee 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.

1. Non-permanent employees serving in entry-level law enforcement titles who were appointed from an eligible list and who have completed the required Police Training Commission training course may intergovernmentally transfer upon consent of the sending and receiving jurisdictions, but will be required to complete the full 12-month working test period with the receiving jurisdiction.

(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 or designee.

1. (No change.)

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 or designee.

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

1. (No change.)

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 or designee approve the title, based on the following criteria:

- i.-iv. (No change.)
- (d)-(f) (No change.)

4A:4-7.3 Relocation assistance: State service

(a) Subject to available appropriations, the Chairperson or designee may allow relocation assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to a relocation of an office or unit, or a closing or phasedown in anticipation of closing of a State operation.

- 1.-2. (No change.)

(b) Such assistance may consist of all or part of the following:

- 1. (No change.)

2. A one-time moving expense allowance, which is to be set by the Chairperson or designee not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

- i.-ii. (No change.)

3. The relocation allowance, which is to be set by the Chairperson not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including, but not limited to, broker's fees and closing costs.

- i.-ii. (No change.)

(c) (No change.)

4A:4-7.6 Lateral title change

(a) (No change.)

(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. The determination whether both titles are substantially similar shall be in accordance with N.J.A.C. 4A:8-2.1(a).

1.-2. (No change.)

(c) (No change.)

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit, and the approval of the Chairperson 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) (No change.)

4A:4-7.8 Voluntary demotion

(a)-(d) (No change.)

(e) With the approval of the Chairperson 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)-(g) (No change.)

4A:4-7.10 Regular reemployment

(a) (No change.)

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the Chairperson or designee shall place the employee's name on a reemployment list. A regular reemployment list shall be subject to certification to all appointing authorities in a jurisdiction.

(c) Police, sheriff's officer, and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement, or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:4-3.3(b)1.

1. (No change.)

(d) (No change.)

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency, or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed, or combined with those of the State or of a separate political subdivision operating under Title 11A,

New Jersey Statutes, Civil Service Commission staff, upon request of both appointing authorities, shall approve the transfer of some or all affected employees to the receiving unit.

(b)-(d) (No change.)

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT

Flood Hazard Area Control Act Rules

Coastal Zone Management Rules

Freshwater Wetlands Protection Act Rules

Adopted Amendments: N.J.A.C. 7:7-6.4, 15.2, and 25.1; 7:7A-11.1; and 7:13-1.2, 6.7, 7.8 through 7.12, 7.29, 7.56, 7.58, 7.61, 8.5, 8.6, 8.8, 8.13, 9.5, 9.6, 9.8 through 9.10, 11.2, 12.5, 12.14, 13.1, 13.2, 13.6 through 13.8, 13.14 through 13.20, and 20.1

Adopted New Rule: N.J.A.C. 7:13-13.4

Proposed: June 20, 2016, at 48 N.J.R. 1014(a).

Adopted: June 19, 2017, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: June 20, 2017, as R.2017 d.141, **with non-substantial changes** not requiring additional public notice (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., specifically 13:1D-33, 13:20-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

DEP Docket Number: 05-16-05.

Effective Date: July 17, 2017.

Expiration Dates: November 14, 2021, N.J.A.C. 7:7;
August 5, 2022, N.J.A.C. 7:7A;
October 6, 2021, N.J.A.C. 7:13.

The rule adoption can also be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

The Department of Environmental Protection (Department) is adopting amendments and new rules in the Flood Hazard Area Control Act (FHACA) Rules, N.J.A.C. 7:13, the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7, and the Freshwater Wetlands Protection Act (FWPA) Rules, N.J.A.C. 7:7A, that address certain concerns raised through the public comment process for the FHACA Rules adopted effective June 20, 2016. The adopted amendments and new rules fall into six categories: improvements to riparian zone protections; improving the consistency of the FHACA Rules with the Uniform Construction Code (UCC) and National Flood Insurance Program (NFIP); improving the consistency between the FHACA Rules and CZM Rules; facilitation of environmentally beneficial activities; clarification that permits-by-rule, general permits-by-certification, and general permits may not be used for activities qualifying as "major development;" and implementation of a cap on stormwater calculation review fees and clarification regarding the appropriate application fee to modify these calculations.

Summary of Hearing Officer's Recommendation and Agency

Response:

The Department held one public hearing on the notice of proposal on Friday, July 22, 2016, at 10:00 A.M., at the New Jersey Department of Environmental Protection Public Hearing Room, Trenton. Ms. Virginia Kop'kash, Assistant Commissioner, Land Use Management, was the hearing officer for the public hearing. Five persons provided written comments and/or oral comments at the public hearing. The hearing officer recommended that the amendments and new rule be adopted with the changes described in the responses to comments and summary of agency-initiated changes below. The Department accepts the recommendation. The hearing record is available for inspection in accordance with applicable law by contacting: