

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Selection and Appointment

Proposed New Rules: N.J.A.C. 4A:4-3.11 and 3.12

Authorized By: Civil Service Commission, Deirdré Webster Cobb, Chairperson.

Authority: N.J.S.A. 11A:4-1 et seq.; and P.L. 2021 c. 7.

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

Proposal Number: PRN 2021-079.

A **public hearing** concerning the proposed new rules will be held on:

September 15, 2021, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey 08625-0312

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

Submit written comments by October 15, 2021, to:

Allison Chris Myers, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

PO Box 312

Trenton, New Jersey 08625-0312

Rule.comments@csc.nj.gov

The agency proposal follows:

Summary

The Civil Service Commission (Commission) is proposing new rules at N.J.A.C. 4A:4-3.11 and 3.12, in order to implement P.L. 2021, c. 7, concerning the law enforcement examination requirement for entry-level law enforcement officers.

On February 4, 2021, Governor Phil Murphy signed P.L. 2021, c. 7 (Chapter 7), which revised the manner in which entry-level law enforcement officers may be permanently appointed in State and local jurisdictions that have adopted the provisions of Title 11A, the Civil Service Act. Chapter 7 is effective six months following enactment on February 4, 2021, although it authorizes the Commission to take “any anticipatory administration action in advance as shall be necessary” for its implementation.

Currently, regular appointments to titles allocated to the competitive division of the career service are subject to a competitive examination process administered by the Commission. Civil Service entry-level law enforcement titles are assigned to the competitive division of the career service. The names of applicants who pass a competitive examination for a title or specific group of titles are then placed on an eligible list for the title or specific group of titles. For open competitive eligible lists, which are generally utilized to fill entry-level law enforcement positions, eligibles who are entitled to disabled veterans’ preference are listed first, in order of their scores on the test. Eligibles entitled to veterans preference are listed second, in order of their

scores on the test. Finally, non-veteran eligibles are listed third, in order of their scores on the test. See N.J.A.C. 4A:4-3.2(a)2. Eligible lists for entry-level law enforcement titles are promulgated for two years from the date of their establishment but may be extended to a maximum duration of four years. When a vacancy is to be filled in the competitive division of the career service, the hiring jurisdiction will request that the Commission certify the eligible list. Upon receipt of the certification, the jurisdiction is required to appoint one of the top three interested eligibles, provided that disabled veterans and then veterans be appointed in their order of ranking from the open competitive list. The jurisdiction is then required to return the certification to the Commission, so the Commission can ensure compliance with its regulatory provisions to record appointments and perform other administrative functions related to maintaining the eligible list.

Although the entry-level law enforcement examination is designed to create a neutral, objective, and equitable means to establish candidacy for entry-level law enforcement positions in civil service jurisdictions, as the Governor indicated in his signing statement, “because of a multiplicity of factors, including the inability of some candidates to afford the privately run preparatory courses that give certain candidates an edge, these tests can sometimes yield eligibility lists that disproportionately reflect non-minority candidates at the top of the list.” Therefore, Chapter 7 established another option that jurisdictions can utilize in lieu of traditional civil service selection and appointment procedures with the goal of hiring more diverse candidates into entry-level law enforcement positions. Specifically,

Chapter 7 authorizes the Commission to exempt, from the requirement to take a competitive examination for an entry-level law enforcement position, a person who has successfully completed the full Basic Course for Police Officers training course at a school approved and authorized by the New Jersey Police Training Commission. It further permits a municipal or county police department to hire a person, exempt from the competitive examination for an entry level law enforcement title, upon adoption of an ordinance or resolution by the governing body authorizing such hiring by the police department and the adoption of a conflict of interest and nepotism policy.

The Commission finds it necessary to promulgate rules to establish processes to fully implement the Act. For example, Chapter 7 does not specify the process by which appointments outside of the competitive examination process are to be recorded with the Commission. Under the traditional process, permanent appointments to career service titles in the competitive division are recorded with the Commission through the certification process required at N.J.S.A. 11A-4.8. The recording of a permanent appointment with the Commission is crucial, as it provides a basis upon which other civil service tenure rights are established. For example, an individual appointed to a career service title is not considered permanent until that individual successfully completes a working test period for the title. Chapter 7 did not eliminate the requirement of a working test period. Additionally, disciplinary appeal rights are only afforded to those individuals who are serving in their working test period or who are permanent. Eligibility for promotional examinations for the various police officer career service title series requires the employee to be permanent

in his or her title. Additionally, layoff rights are only afforded to employees who have achieved permanency in their title. Thus, if an appointment is not recorded with the Commission, it would be impossible to ensure that the appointees to career service entry-level law enforcement titles under Chapter 7 are afforded the full panoply of civil service protections. Therefore, it is necessary to promulgate rules to establish a uniform process to record appointments made under Chapter 7 with the Commission.

The exemption at Chapter 7 from testing only applies to people who have successfully completed the full Basic Course for Police Officers training course at a school approved and authorized by the New Jersey Police Training Commission. All civil service job specifications for entry-level career service law enforcement titles require completion of a training course approved by the Police Training Commission. However, all police departments do not utilize the same law enforcement titles. Moreover, law enforcement agencies that are not police departments utilize different civil service career service entry-level law enforcement titles. For example, incumbents in the entry-level career service title of County Correctional Police Officer are required to complete the Basic Course for Correction Officers, not the Basic Course for Police Officers. Accordingly, the Commission finds it necessary to specify which entry-level career service law enforcement titles are eligible for use pursuant to Chapter 7.

Significantly, the mandate at Chapter 7 that the Commission exempt from examination individuals who have taken the Basic Course for Police Officers is not limited to county and municipal police departments alone, and there are other career

service entry-level law enforcement titles that require completion of the full Basic Course for Police Officers utilized exclusively by State appointing authorities. N.J.S.A. 52:17B-4.9 defines a law enforcement officer as “a permanent full-time member of an enforcement agency who is statutorily empowered to act for the detection, investigation, arrest and conviction of persons violating the criminal laws of this State, and statutorily required to successfully complete a training course approved, or certified as being substantially equivalent to an approved course, by the Police Training Commission.” It also defines a law enforcement agency as “a department, division, bureau, commission, board or other authority of the State or any political subdivision thereof which has by statute or ordinance responsibility of detecting and enforcing general criminal laws of the State.” Certain State appointing authorities, such as the Department of Human Services, the State colleges, and the Department of Environmental Protection, have established police divisions that are responsible for detecting and enforcing the criminal laws of the State. The career service entry-level law enforcement titles utilized by these State departments are: Police Officer Palisades Interstate Park, Police Officer Recruit Human Services, Campus Police Officer Recruit, and State Park Police Officer Trainee. The responsibilities of all four titles include acting in the detection, investigation, arrest, and conviction of persons violating the criminal law. One of the requirements for the four titles includes taking and passing the entry-level law enforcement examination and completing the full Basic Course for Police Officers. As noted in the Governor’s signing statement, Chapter 7 is intended to “expand diversity of their police forces in

instances where the test may have limited that option.” Therefore, the Commission is also issuing regulations to address State appointing authorities that utilize career service entry-level law enforcement titles requiring incumbents to complete the full Basic Course for Police Officers.

Proposed new N.J.A.C. 4A:4-3.11, Certain entry-level law enforcement appointments, exemption from entry-level law enforcement examination, sets forth that civil service titles of Police Officer and County Police Officer, which are the entry-level law enforcement titles that require completion of the full Basic Course for Police Officers, can be utilized by county and municipal police departments. It also specifies that State appointing authorities that maintain police forces that utilize the entry-level law enforcement titles of Campus Police Officer Recruit, Police Officer Palisades Interstate Park, Police Officer Recruit Human Services, and State Park Police Trainee, which also require completion of the full Basic Course for Police Officers, can make appointments under this program. Finally, as the individual appointing authorities have sole discretion as to whom they hire under Chapter 7, none of the Commission’s statutory and regulatory processes for making entry-level appointments are utilized. Accordingly, the Commission has no basis on which to adjudicate disputes that may arise under an appointing authority’s application of Chapter 7. Therefore, proposed new N.J.A.C. 4A:4-3.11(c) specifies that individuals not appointed by an appointing authority under this program cannot appeal that action to the Commission.

Proposed new N.J.A.C. 4A:4-3.12, Procedures for certain entry-level law

enforcement appointments who are exempted from entry-level law enforcement examination, specifies what information and documentation an appointing authority is required to submit to the Commission to record an appointment under the program. It also reflects the intent of Chapter 7 to increase diversity in police department hiring in cases where an examination may have limited that option by indicating that appointments can be made under the program regardless of the existence of an open-competitive or regular reemployment list. However, an appointing authority would not be permitted to make an appointment under this program if a special reemployment list for the title exists in the jurisdiction. Significantly, as all entry-level law enforcement titles are career service titles, new N.J.A.C. 4A:4-3.12(c) would advise both appointing authorities and appointees that individuals appointed under this program must successfully complete a 12-month working test period for the appointment to be considered permanent.

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

Social Impact

The proposed new rules essentially mirror, or are necessitated by, Chapter 7. The proposed new rules are expected to have a positive social impact as they ensure that any appointments made under this program are properly recorded with the Commission. Recording an appointment to career service titles is the basis upon which other civil service tenure rights for individuals in career service titles are

established. Moreover, a positive social impact is anticipated as the proposed new rules are intended to further the goal of increasing diversity in the State's various police departments. The proposed new rules may have a negative impact on individuals who have established disabled veterans and veteran's preference since appointments would be made at the discretion of an appointing authority, rather than in accordance with an examination granting preference to those individuals. Under regular selection and appointment procedures utilizing eligible lists developed from competitive examinations, the Commission ensures veterans rights are considered in the appointment process as eligibles with the preference are clearly identified and are placed at the top of the eligible list; under Chapter 7, the Commission's responsibility is to record appointments made at the discretion of the appointing authority and to ensure that on completing the probationary period, those appointees are ensured access to civil service rights.

Economic Impact

No appreciable economic impact is anticipated from the proposed new rules. The Commission's role under Chapter 7 is to ensure the proper recording of appointments to entry-level law enforcement titles in the career service. Because the Commission records thousands of various appointment transactions a year, the recording of appointments under this program will not have a significant economic impact. However, Chapter 7 could decrease the number of applicants filing for the entry-level law enforcement examination, which could result in a reduction of revenue to the Commission.

Federal Standards Statement

The proposed new rules are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that any jobs will be generated or lost if the proposed new rules are adopted. The proposed new rules concern an alternative methodology for selecting entry-level career service law enforcement officers and how those appointments, that would otherwise have been made under existing rules, are to be processed for recording.

Agriculture Industry Impact

It is not anticipated that there will be any agriculture industry impact as the proposed new rules concern an alternative methodology for selecting entry-level career service law enforcement officers and details how those appointments to a career service title are to be processed for recording.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rules will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules will regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the proposed new rules concern an alternative methodology because appointments to a career service title are to be processed for recording, they would

have no impact on the number of housing units or the affordability of the same, or the average costs associated with housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed new rules concern an alternative methodology for selecting entry-level career service law enforcement officers and how those appointments to a career service title are to be processed for recording, they would have no impact on smart growth or on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Civil Service Commission has evaluated these proposed new rules and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.11 Certain entry-level law enforcement appointments; exemption from entry level law enforcement examination

- (a) The appointing authority of a county or municipality that, pursuant to N.J.S.A. 40A:14-106, in the case of a county, or N.J.S.A. 40A:14-118, in the case of a municipality, has established or maintains a police force may appoint to the title of Police Officer or County Police Officer any person who has successfully completed the full Basic Course for Police Officers at a school

approved and authorized by the New Jersey Police Training Commission. Such persons may be appointed, notwithstanding that they have not taken or passed the entry-level law enforcement examination for those titles.

- (b) State appointing authorities that have established, or maintain, a police force may appoint to the title of Campus Police Officer Recruit, Police Officer Palisades Interstate Park, Police Officer Recruit Human Services, and State Park Police Officer Trainee, any person who has successfully completed the full Basic Course for Police Officers at a school approved and authorized by the New Jersey Police Training Commission.
- (c) Individuals appointed pursuant to (a) or (b) above do not need to have taken and passed the entry level law enforcement examination.
- (d) Individuals who are not selected by an appointing authority for an appointment under this process shall not have the right to appeal appointment decisions made pursuant to this section to the Civil Service Commission. ‘
- (e) Individuals who are appointed may appeal any major disciplinary action that occurs during their working test period or their release at the end of the working test period to the Civil Service Commission.

4A:4-3.12 Procedures for certain entry-level law enforcement appointments who are exempted from entry level law enforcement examinations

- (a) An appointment made pursuant to N.J.A.C. 4A:4-3.11(a) shall be reported by the appointing authority to the Chairperson, or designee, and include the name, gender,

race, and ethnicity of the individual permanently appointed, the effective date of the regular appointment, the appointee's salary, a copy of the ordinance or resolution, including the conflict of interest and nepotism policy, adopted by the governing body authorizing such hiring by the police department, and a copy of the appointee's certificate of completion of the full Basic Course for Police Officers at a school approved and authorized by the New Jersey Police Training Commission.

1. An appointment made pursuant to an open-competitive or regular reemployment list need not have priority over an appointment made pursuant to N.J.A.C. 4A:4-3.11, but an appointment shall not be made pursuant to N.J.A.C. 4A:4-3.11 if a special reemployment list exists for the title in the county or municipality making the appointment.

(b) An appointment made pursuant to N.J.A.C. 4A:4-3.11(b) shall be reported by the appointing authority to the Chairperson or designee, and include the name, gender, race, and ethnicity of the individual permanently appointed, the effective date of the regular appointment, the appointee's salary, and a copy of the appointee's certificate of completion of the full Basic Course for Police Officers at a school approved and authorized by the New Jersey Police Training Commission.

1. An appointment made pursuant to an open-competitive or regular reemployment list need not have priority over an appointment made pursuant to N.J.A.C. 4A:4-3.11, but an appointment shall not be made pursuant to N.J.A.C. 4A:4-3.11 if a special reemployment list exists for the title in the State department making the appointment.

(c) A person appointed under this program shall be subject to, and must successfully complete, a 12-month working test period as required at N.J.A.C. 4A:4-5.1(d).