

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Readoption

Special Hearing Rules

Hearings Before the Public Employment Relations Appeal Board

Readoption: N.J.A.C. 1:20

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Authorized By: Laura Sanders, Acting Director, Office of
Administrative Law.

Effective Date: October 16, 2014.

New Expiration Date: October 16, 2021.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the Special Hearing Rules for Public Employment Relations Appeal Board cases, N.J.A.C. 1:20, will expire on November 20, 2014. These rules provide procedures for filing petitions, answers, evidence, and guidance for oral argument on exceptions and motions to reopen.

The Office of Administrative Law has reviewed these rules and found them to be necessary, reasonable, and proper for the purposes in which they were originally promulgated, as required by Executive Order No. 66 (1978). Therefore, in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

CIVIL SERVICE

(b)

CIVIL SERVICE COMMISSION

Job Banding: State Service

Adopted Amendment: N.J.A.C. 4A:3-3.2A

Proposed: August 18, 2014, at 46 N.J.R. 1765(a).

Adopted: October 22, 2014, by the Civil Service Commission, Robert
M. Czech, Chair/CEO.

Filed: October 22, 2014, as R.2014 d.173, **without change**.

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-1.

Effective Date: November 17, 2014.

Expiration Date: November 18, 2016.

Summary of Hearing Officer Recommendations and Agency

Responses:

A public hearing on the notice of proposal was held on September 24, 2014, in Trenton, New Jersey. Elizabeth Rosenthal served as hearing officer. **No comments were received at that time.** Three written comments were received. The hearing officer recommended adoption of the proposed amendment without change. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Summary of Public Comments and Agency Responses:

COMMENT: William F. Lowry, IV, President, International Brotherhood of Electrical Workers (IBEW), Local 30; and Stanley V. Cach, President, Public Sector Managers' Association (PSMA) represent managers in State government service. They object to job banding in general and point out that the New Jersey Legislature has voted twice that the establishment of a job banding program is not authorized by the Civil

Service Act. The commenters believe that a program such as job banding may only be enacted by the Legislature.

The commenters continue that, while they favor relying on previous job performance and relying less on testing in making promotional selections, they also believe that such changes should be the result of a dialogue between the Civil Service Commission and the unions and other organizations that represent State employees. The commenters further state that job banding permits too much discretion on the part of management, thereby reducing protections for employees and increasing liability for managers. Finally, the commenters recommend changes reducing the amount of discretion that the Executive Branch has in hiring employees in such titles as "Government Service Representative," which the commenters believe violates the "intent and spirit" of the Civil Service Act.

RESPONSE: The Constitutional and statutory mandate to select and advance employees on the basis of their relative knowledge, skills, and abilities in a competitive testing situation does not require that a formal examination be administered for every position. Moreover, the Commission is authorized to administer ranked and unranked evaluations of education and experience (referred to as "E&E" for education and experience). See N.J.S.A. 11A:4-1.a and N.J.A.C. 4A:4-2.2(a)5. It is also noted that thousands of State and local employees have been advanced from Trainee to Primary titles "without the usual promotional examination procedures" as provided in N.J.A.C. 4A:3-3.7(j). The Commission finds, therefore, that the law allows for selection methods other than formal competitive examinations. With job banding, however, the Commission has introduced a methodology with standards, which provides for a much more competitive situation than one will find with the methods described above.

The adopted amendment, which provides further standards and procedures for appointing authorities to utilize in the advancement appointment selection process, actually addresses concerns of the commenters that job banding does not adequately curb the potential for management abuse or preserve employee protections. Furthermore, in response to SCR 116, the adopted amendment clearly expresses the merit-based aspects of job banding in the advancement appointment selection process, and also emphasizes that veterans' preference would continue to be recognized and protected as required under State law. The commenters' statement concerning the "Government Services Representative" is not relevant to this adopted amendment or to job banding in general.

COMMENT: Charles Wowkanech, President, and Laurel Brennan, Secretary-Treasurer, New Jersey State AFL-CIO, express opposition to the proposed amendment, stating that the amended rule, N.J.A.C. 4A:3-3.2A, would take a "significant step backwards" in preventing promotions based on favoritism. They contend that the proposed amendment would afford management "wide latitude" in selecting employees for an advancement appointment and would eliminate "test-based" promotions.

Darnell Hardwick, Chair, New Jersey State Conference of the National Association for the Advancement of Colored People (NAACP) Labor and Industry Committee, similarly comments that "politics" must be removed from the civil service system and that job banding does not serve this end, as it frees "management from rules and limits." Mr. Hardwick states that affording an appointing authority the opportunity to select and appoint individuals is not a "reasonable ground to waive examinations." He cites what he describes as the waiver of civil service law and rules in the recent Camden County Police Department Pilot Program and the alleged lack of updated affirmative action plans in State service as examples of politics impacting the civil service employment process.

Mr. Wowkanech and Ms. Brennan state that the proposed amendment does not answer questions that have been posed concerning the criteria to

be used in developing job bands, and how promotional testing and employees would be impacted.

RESPONSE: The Commission disagrees that the proposed amendment to N.J.A.C. 4A:3-3.2A would promote favoritism or permit the entry of politics into the civil service selection and appointment process. As noted in the Response to the prior Comment, the amendment would provide a more detailed process than the current rule sets forth for appointing authorities to follow in making advancement appointments. In particular, the amendment would require that an appointing authority rank candidates for advancement appointment according to criteria previously approved by the Commission. The amendment also emphasizes that veterans' preference would be honored.

Moreover, the Commission believes that there is and would continue to be adequate protection from arbitrary or improper employer actions under the job banding program. These protections include the right to grieve non-selection for advancement, the right to pursue a discrimination complaint, and the right to challenge minor and major disciplinary actions. The Commission believes that as a competency-based human resources process, job banding strongly advances the merit and fitness principles of the civil service system and does not foster cronyism or nepotism in civil service employment. The job banding program is similar to the system that has been successfully used in the Judiciary for nearly 15 years. Through job banding, only those employees who demonstrate the established competencies needed to successfully perform at the higher level will be eligible for an advancement appointment. Also, as noted in the Response to the prior Comment, due to the prevalence of methods other than formal competitive examinations, such as promotional examination waivers in the promotional appointment process and the use of E&Es in close to 60 percent of promotions, job banding has and will continue to improve competitive standards in advancing employees from one level to another.

As to concerns that standards for placing titles or title series in job bands have not yet been defined, the Commission notes that the standards have been specifically set forth in N.J.A.C. 4A:3-3.2A(b)1. Determinations in this regard are expected to proceed slowly and carefully, in accordance with merit-based principles set forth in the New Jersey State Constitution and in the Civil Service Act. Finally, it is noted that references to the Camden County Police Department Pilot Program and the need for updated affirmative action programs in State service are not relevant to job banding. Accordingly, the Commission has decided to adopt the proposed amendment without change.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendment sets forth the requirement that the Chairperson or designee approve the selection process utilized for advancement appointment in a job band in State service and that the appointing authority document the advancement appointment selection, taking into account veterans' preference, where applicable. This amendment is not subject to any Federal standards or requirements.

Full text of the adoption follows:

SUBCHAPTER 3. CLASSIFICATION

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

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

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

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

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

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

4. Any job banding program approved prior to June 2, 2014, pursuant to the Commission's authority under the law, such as the Judiciary's job banding program, can continue without adopting the changes provided in Title 4A.

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

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

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

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

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

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

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

3. Once an appointing authority determines which eligible employees are interested, it shall conduct an advancement appointment selection process approved by the Chairperson or designee and make a determination as to which employee or employees may receive an advancement appointment. The appointing authority shall then rank the candidates for the announced advancement appointment and document same, taking into account the veterans' preference described in (d)3i and ii below, where applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL PROTECTION

(a)

**ENVIRONMENTAL MANAGEMENT
DIVISION OF ENVIRONMENTAL SAFETY AND
HEALTH
Notice of Administrative Corrections
Regulations Governing the Certification of
Laboratories and Environmental Measurements
Environmental Laboratory Personnel Requirements
N.J.A.C. 7:18-2.10**

Take notice that the Department of Environmental Protection discovered errors in N.J.A.C. 7:18-2.10(b)11. As originally adopted, effective July 1, 1996 (see 27 N.J.R. 4761(a) and 28 N.J.R. 3330(c)), the table in paragraph (b)11 was as follows:

Qualification Level	Degree	Years of Chemical Experience Chemical Analysis and/or Training
A	≥ BA/BS ¹	2 ²
B	AA ¹	4 ²
C	None	6 ²

¹ Degree in chemical, radiochemical, radioisotope technology, biological, physical or environmental science from an accredited institution.

² Two years of experience must be in radiochemical analysis.

However, in the notice of proposal containing the subsequent amendment to the paragraph (see 33 N.J.R. 1063(a)), the numbers in the third column of the table, “Years of Experience Chemical Analysis or Training,” which were not proposed for amendment, inadvertently appeared as 1², 3², and 5³, instead of 2², 4², and 6², respectively. These errors persisted in the resulting notice of adoption (see 33 N.J.R. 2284(c)) and, thereafter, in the New Jersey Administrative Code.

Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the correct numbers are restored to the paragraph.

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

7:18-2.10 Environmental laboratory personnel requirements

(a) (No change.)

(b) No environmental laboratory shall be certified to perform analyses in a Category unless the supervisor and operating personnel (where so indicated) meet the following requirements:

1.-10. (No change.)

11. For Category RAP01, Radon/Radon Progeny-in-Air, the supervisor shall meet the requirements of at least one of the qualification levels listed below:

Qualification Level	Degree	Years of Chemical Experience Chemical Analysis and/or Training
A	≥ BA/BS ¹	[1]2 ²
B	AA ¹	[3]4 ²
C	None	[5 ³]6 ²

¹ Degree in chemical, radiochemical, radioisotope technology, biological, physical or environmental science from an accredited institution.

² Two years of experience must be in radiochemical analysis.
12.-14. (No change.)

INSURANCE

(b)

**DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE
Office of the Insurance Claims Ombudsman
Readoption with Amendments: N.J.A.C. 11:25**

Proposed: May 19, 2014, at 46 N.J.R. 837(a).
Adopted: October 10, 2014, by Kenneth E. Kobylowski,
Commissioner, Department of Banking and Insurance.
Filed: October 10, 2014, as R.2014 d.172, **without change**.
Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:29E-1 et seq.
Effective Date: October 10, 2014, Readoption;
November 17, 2014, Amendments.
Expiration Date: October 10, 2021.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) received timely written comments from: Eric M. Goldberg, Vice President of the American Insurance Association; and Debra L. Wentz, PhD, Chief Executive Officer of the New Jersey Association of Mental Health and Addiction Agencies, Inc.

COMMENT: The commenter believes that the Department’s proposed definition of “consumer complaint” is too broad and as a result would capture any number of communications with the Department or Ombudsman that are not intended by consumers to be taken as complaints.

RESPONSE: The Department disagrees with the commenter. The newly added definition of “consumer complaint” is appropriate in scope for use in this subchapter. Pursuant to N.J.S.A. 17:29E-3, the Ombudsman is responsible for both investigating complaints and responding to consumer inquiries. The current text of N.J.A.C. 11:25-1.3 provides that complaints received by the Ombudsman are entered into the data tracking system of the Office of Consumer Protection Services. Upon review of the subchapter, the Department determined that this description was procedurally incomplete because both complaints and inquiries received by the Ombudsman were being entered into data tracking by the Consumer Assistance Unit in the Office of Consumer Protection Services. Thus, for the sake of procedural clarity, the Department, in this readoption with amendments, added a definition of “consumer complaint” to include both inquiries and complaints received