

RULE PROPOSALS

INTERESTED PERSONS

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

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

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

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Classification, Services, and Compensation

Proposed Readoption with Amendments: N.J.A.C. 4A:3

Authorized By: Civil Service Commission, Robert M. Czech,
Chairperson.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11(h), 11A:3-1 through 7,
and 11A:6-24; 29 U.S.C. §§ 201 et seq.; and Executive Order No.
70 (1992).

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

Proposal Number: PRN 2016-207.

A **public hearing** concerning the rules proposed for re-adoption with
amendments will be held on:

January 18, 2017, at 3:00 P.M.
Civil Service Commission Room
44 South Clinton Avenue
Trenton, New Jersey

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

Submit written comments by February 17, 2017, to:

Walker Ristau
Division of Appeals and Regulatory Affairs
Civil Service Commission
PO Box 312
Trenton, New Jersey 08625-0312

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

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 4A:3 was scheduled to expire on November 18, 2016. As the Civil Service Commission (Commission) filed this notice of re-adoption with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to May 17, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Commission has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:3 was last re-adopted in 2009, various amendments have been adopted pursuant to Commission review of the rules.

Subchapter 1 concerns allocations between the career and unclassified services, as well as allocations between the competitive and noncompetitive divisions of the career service.

Subchapter 2 contains rules governing the Senior Executive Service (SES). This subchapter defines the SES (N.J.A.C. 4A:3-2.1); provides for the designation of SES positions (N.J.A.C. 4A:3-2.2); regulates SES appointments, performance evaluations, compensation, and benefits (N.J.A.C. 4A:3-2.3 through 2.6); and governs an employee's separation from the SES (N.J.A.C. 4A:3-2.9). It is noted that N.J.A.C. 4A:3-2.7 and 2.8 are reserved for future use.

Subchapter 3, Classification, concerns all aspects of the civil service classification system. N.J.A.C. 4A:3-3.1 includes basic classification principles. N.J.A.C. 4A:3-3.2 concerns the establishment of classification plans, while N.J.A.C. 4A:3-3.3 concerns the administration of classification plans. N.J.A.C. 4A:3-3.4 requires that a title be appropriate to the duties performed. N.J.A.C. 4A:3-3.5 governs the reclassification of positions. N.J.A.C. 4A:3-3.6 provides the procedures for the creation of new titles. Unique categories of titles have their own rules: trainee titles (N.J.A.C. 4A:3-3.7), Police Assistant titles in local service (N.J.A.C. 4A:3-3.7A), and intermittent titles (N.J.A.C. 4A:3-3.8). The classification appeal procedure is set forth in N.J.A.C. 4A:3-3.9.

Subchapter 4 concerns compensation matters. N.J.A.C. 4A:3-4.1 establishes general compensation principles applicable to both State and local service. The remaining rules in Subchapter 4 regulate compensation in State service. N.J.A.C. 4A:3-4.2 provides for job evaluations, while N.J.A.C. 4A:3-4.3 provides for job reevaluation requests and appeals. Salary rates for initial appointments are provided for in N.J.A.C. 4A:3-4.4. Procedures regarding the setting of anniversary dates and the interaction between anniversary dates and levels of compensation are set forth in N.J.A.C. 4A:3-4.5, Anniversary dates; 4.6, Anniversary date change when employee is in non-pay status, 4.17, Salaries and anniversary dates for employees appointed from a special reemployment list, and 4.18, Salaries and anniversary dates for employees appointed from a regular reemployment list. It is proposed that the example in N.J.A.C. 4A:3-4.5(a) be amended to reflect more contemporary dates. The dates in the current form of the rule are nearly 30 years old.

Various types of pay adjustments are provided for in N.J.A.C. 4A:3-4.7, Determining types of pay adjustments, 4.8, Lateral pay adjustments, 4.9, Advancement pay adjustments, 4.10, Demotional pay adjustments, 4.11, Downward title reevaluation pay adjustments, and 4.12, Movement of employees from no-range or single rate titles to titles having salary ranges. It is proposed that the example in N.J.A.C. 4A:3-4.8 be amended to reflect contemporary dates and salaries.

Setting salaries in special circumstances is provided for in N.J.A.C. 4A:3-4.13, Salaries of employees whose annual salaries are not on a step in their salary range, 4.14, Movement of employees to trainee titles from titles having higher pay rates, 4.15, Salaries for employees appointed to tentative title positions, and 4.16, Salaries of employees on military leave during a trainee period. Other compensation issues are regulated in N.J.A.C. 4A:3-4.19, Other forms of compensation, 4.20, Retroactive pay, and 4.21, Salary overpayments. It is proposed that N.J.A.C. 4A:3-4.17 be amended to reflect contemporary dates and pay periods.

Subchapter 5, Overtime compensation, includes general provisions applicable to both State and local service (N.J.A.C. 4A:3-5.1). The remainder of the overtime rules pertain only to State service. The remaining rules include N.J.A.C. 4A:3-5.2, Definitions, 5.3, 40 hours or less in a workweek, 5.4, Criteria for exemption from Fair Labor Standards Act (FLSA), 5.5, Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40, and NE titles, 5.6, Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL, and N4 titles, 5.7, Special circumstances, which pertains to such issues as on-call employees, training time, travel, exceptional emergencies, and special project rate compensation; N.J.A.C. 4A:3-5.8, Holiday pay, 5.9, Appointing authority responsibilities, which requires appointing authorities to develop procedures for administering overtime; and N.J.A.C. 4A:3-5.10, Appeal procedures. In addition, N.J.A.C. 4A:3 Appendix A includes a chart regarding overtime eligibility and compensation.

Technical amendments are proposed pursuant to P.L. 2008, c. 29. Throughout the chapter, references to the "Department of Personnel" or the "Department" are proposed to be changed to the "Civil Service Commission," "Chairperson or designee," "a representative of the Civil Service Commission," or "Civil Service Commission staff," as appropriate. Similarly, references to the "Commissioner of Personnel" or "Commissioner" are proposed to be changed to the "Chairperson" or "Chairperson or designee," as appropriate. References to the "Chairperson of the Civil Service Commission or designee" or "Chair/CEO" are proposed to be changed to the "Chairperson or designee." References to the "Merit System Board," "Commissioner or Board," or "Board" are proposed to be changed to the "Civil Service Commission."

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

Social Impact

The proposed readoption with amendments of N.J.A.C. 4A:3 will continue to provide a clear, regulatory framework for vital activities of the Civil Service Commission concerning classification and compensation. These rules have a substantial impact upon thousands of civil service employees and hundreds of State and local appointing authorities. In the absence of readoption of this chapter, these individuals and government agencies would have no guidance on matters involving classification and compensation of personnel, other than the provisions of Title 11A, New Jersey Statutes.

Generally, these rules codify current practice. The differentiation between the career and unclassified services in Subchapter 1 will continue to help ensure the proper allocation of titles between the two services. The readoption of this chapter will also ensure the appropriate allocation of career service titles between the competitive and noncompetitive divisions.

The rules regarding the Senior Executive Service (SES) in Subchapter 2 will continue to provide fair, equitable, and clear provisions regarding the creation and filling of high-level, managerial positions.

Subchapters 3 and 4 ensure that job duties and, in State service, pay scales, are in accordance with predictable formulas. These subchapters will, upon readoption, continue to reduce duplication and overlap of responsibilities in the area of personnel management. In particular, State agencies will retain their responsibilities, as appointing authorities, to make job assignments and to exercise overall managerial control over their workforce. Meanwhile, the Civil Service Commission will exercise its statutory responsibility to classify positions and, in State service, assign appropriate compensation to job titles. Subchapters 3 and 4 will further preclude an adversarial relationship between State agencies and the Civil Service Commission in the areas of classification and compensation. However, employees and their union representatives will retain the right to appeal adverse determinations in these matters. Local appointing authorities will also retain the right to appeal classification determinations. It is noted that N.J.A.C. 4A:3-3.3(f), concerning notice of certain classification actions to union representatives in State service, will continue to increase awareness by collective negotiations representatives about substantial changes affecting their members.

The provisions of Subchapter 5 regarding overtime compensation will continue to ensure that State employees with fixed workweeks receive appropriate compensation for work beyond the normal workweek.

Economic Impact

The rules proposed for readoption with amendments will continue to provide a fair and equitable system for classifying positions in State and local service, and for compensating employees in State service. Compensation of employees in local service remains relatively free of central regulatory control. As such, this chapter is beneficial to the economic security of public employees, as well as the interest of the public in having appropriate levels of compensation for governmental employees. Many of the provisions in Chapter 3 clarify current policy, and if readopted, will have no substantial economic impact. Nevertheless, if this chapter is not readopted, there would be a substantial negative economic impact on public employers and employees, as well as the taxpaying public. Since the provisions of N.J.S.A. 11A provide only broad, general guidance on matters of classification and compensation, costly litigation would be needed to resolve disputes concerning the application of these statutory provisions.

Federal Standards Statement

With the exception of N.J.A.C. 4A:3-5, Overtime Compensation, N.J.A.C. 4A:3 is not subject to any Federal requirements or standards. The rules proposed for readoption with amendments meet, but do not exceed, the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) standards relevant to determining an employee's accumulated work hours for purposes of the Federal Labor Standards Act (FLSA) eligibility.

Therefore, a Federal standards analysis is not necessary.

Jobs Impact

N.J.A.C. 4A:3 has not caused the generation or loss of jobs, nor is it anticipated that any jobs will be generated or lost if N.J.A.C. 4A:3 is readopted. N.J.A.C. 4A:3 governs the existing classification and compensation program in the civil service system.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption with amendments would have any agriculture industry impact. N.J.A.C. 4A:3 concerns job classification and compensation under the civil service.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption at N.J.A.C. 4A:3 with amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the rules proposed for readoption at N.J.A.C. 4A:3 with amendments concern job classification and compensation under the civil service, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the rules proposed for readoption at N.J.A.C. 4A:3 with amendments concern job classification and compensation under the civil service, 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.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:3.

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

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.1 Career service

(a) All job titles shall be allocated to the career service, except for those job titles allocated by the [Board] **Civil Service Commission** to the unclassified service as provided in N.J.A.C. 4A:3-1.3 and those positions in State service allocated by the [Board] **Civil Service**

Commission to the Senior Executive Service as provided in N.J.A.C. 4A:3-2.

(b) Before a title in the career service is reallocated to the unclassified service, the [Board] **Civil Service Commission** shall hold a public hearing to solicit comment with respect to the criteria set forth in N.J.A.C. 4A:3-1.3.

(c) When a title is reallocated from the career service to the unclassified service by the [Board] **Civil Service Commission** or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title. When a permanent incumbent is appointed to a different, unclassified title, the employee shall retain only those rights to a [Merit System Board] **Civil Service Commission** hearing available to career service employees upon separation from government service for disciplinary reasons (see N.J.A.C. 4A:2-2) or due to layoff (see N.J.A.C. 4A:8).

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the [Board] **Civil Service Commission** to the unclassified service when:

1.-4. (No change.)

5. The [Board] **Civil Service Commission** determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) (No change.)

(c) In local service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the [Merit System Board] **Civil Service Commission**.

(d) (No change.)

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) (No change.)

(b) Requests for such unclassified appointments shall be made to the [Commissioner] **Chairperson**, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1.-2. (No change.)

(c) Upon recommendation by the [Commissioner] **Chairperson**, such appointments may thereafter be approved by the [Merit System Board] **Civil Service Commission** and recorded in the [Board] **Civil Service Commission** minutes.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.1 General provisions: State service

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the [Merit System Board] **Civil Service Commission** to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

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

4A:3-2.2 Designation of SES positions: State service

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

(c) The [Commissioner] **Chairperson** shall establish procedures for the submission of executive/senior management plans for each department.

1. Each department head shall submit an executive/senior management plan to the [Commissioner] **Chairperson** which shall include the department's SES position requests.

2. (No change.)

3. The [Commissioner] **Chairperson** may request information about the position necessary to process the SES position request.

4. If the original major functions and responsibilities of a vacant position allocated to the SES change but are not included in the executive/senior management plan of the department, the new functions of the position shall be reviewed by the [Commissioner] **Chairperson** before posting for or filling the position.

(d) At the discretion of a department head, an appointing authority may move an SES member from one position allocated to the SES to another position allocated to the SES. The appointing authority shall review the compensation of the SES member at that time and may recommend a salary adjustment, if appropriate. An appointing authority so moving an SES member shall notify the [Department of Personnel] **Chairperson or designee** of this change.

(e) An appointing authority may move an SES member to cover an emergency assignment or other emergent need for six months or less, at the discretion of the department head. The appointing authority need not notify the [Department of Personnel] **Chairperson or designee** of such movement.

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

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

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

2.-6. (No change.)

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

4A:3-2.4 SES performance evaluation: State service

The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the [Commissioner] **Chairperson or designee**.

4A:3-2.5 SES compensation: State service

(a) Positions allocated to the SES shall be designated as no-range, which means that no class code is designated for the position. However, salary payments for SES positions are subject to restrictions established by the [Commissioner] **Chairperson** and the Director, [Division of] **Management and Budget** [and Accounting], under their legal authority.

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

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

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

(b) (No change.)

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

1.-6. (No change.)

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

i.-ii. (No change.)

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

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

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.1 Classification of positions

(a) Each position in the career and unclassified services shall be assigned by the [Department of Personnel] **Civil Service Commission** to a job title.

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

4A:3-3.3 Administration of classification plans

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

1.-4. (No change.)

(b)-(f) (No change.)

4A:3-3.5 Reclassification of positions

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

1.-3. (No change.)

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

(c) (No change.)

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

(a)-(g) (No change.)

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

1.-2. (No change.)

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

1.-3. (No change.)

(j)-(k) (No change.)

4A:3-3.8 Intermittent titles

(a) In State service and in local service upon approval of the [Commissioner of Personnel] **Chairperson or designee**, the designation "intermittent" shall be used for those titles in the career service where work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular, year-round, full-time or part-time assignments. State employees who hold full-time primary employment in State service are not eligible to serve in an intermittent title.

(b) In State service, employees may be subject to furlough when, due to managerial needs, the employee cannot be scheduled for work within the next week.

1. (No change.)

2. Furloughing shall be done in the inverse order of seniority in the designated work unit based on official records at the end of the last pay period. Prior to use by the appointing authority, designated work units must be submitted to and approved by the [Department of Personnel] **Chairperson or designee**.

3.-5. (No change.)

6. Additional furlough procedures may be set by the [Commissioner] **Chairperson or designee**.

(c) Records for intermittent employees, including hours worked, recall lists, telephone contact lists and benefit time accumulation, shall be maintained by the appointing authority in a manner acceptable to, and subject to audit by, the [Department of Personnel] **Civil Service Commission**. If the [Department's] audit of a title demonstrates that the intermittent designation is inappropriate, the [Department] **Chairperson or designee** shall convert the title to a regular, year-round, full-time or part-time career service title. An incumbent in the converted title shall receive a provisional appointment to the title, subject to competitive testing and certification procedures. See N.J.A.C. 4A:4.

(d) (No change.)

(e) In local service, an appointing authority may request that the [Commissioner] **Chairperson or designee** establish intermittent titles.

1. The local appointing authority shall submit to the [Commissioner] **Chairperson or designee** a proposal, which shall specify:

i.-iv. (No change.)

2. The local appointing authority shall not make intermittent appointments unless the intermittent titles have been approved by the [Commissioner] **Chairperson or designee**. Such appointments shall be made in accordance with procedures on appointments made to career

service positions within the noncompetitive division. See N.J.A.C. 4A:3-1.2.

3. The local appointing authority shall retain all records concerning intermittent employment, subject to [Department of Personnel] **a representative of the Civil Service Commission's** audit, and submit to the [Department] **Chairperson or designee** on an annual basis a report identifying all intermittent appointments made during the year, the intermittent employees' length of employment and the titles utilized for these intermittent appointments.

(f) (No change.)

SUBCHAPTER 4. COMPENSATION

4A:3-4.2 Job evaluation: State service

(a) Each new job title shall be evaluated, and existing job titles reevaluated, based upon the New Jersey Job Content Evaluation System as approved by the [Commissioner] **Chairperson or designee**. Class codes shall be designated for job titles through this evaluation process. However, the [Commissioner] **Chairperson or designee** may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.

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

4A:3-4.3 Job evaluation requests and appeals: State service

(a) Appointing authorities may request a reevaluation by the [Department of Personnel] **Chairperson or designee** of a job title to determine its proper class code. The request, which shall be submitted through the agency representative, must include a brief rationale for the request, an organization chart, and the requested new salary level. The [Department of Personnel] **Chairperson or designee** may require additional information to be submitted in a manner and form as determined by the [Commissioner] **Chairperson or designee**.

(b) An appeal by an employee or authorized employee representative for a reevaluation shall be submitted, in writing, to the agency representative. The appeal must identify and explain the areas of substantive change in job content or other change in job evaluation factors through written narrative and a revised job specification, which shall be marked to indicate changes, and include evidence that the change in job content affects all employees in the title. [The Department of Personnel] **A representative of the Civil Service Commission** may require additional information to be submitted in a manner and form as determined by the [Commissioner] **Chairperson or designee**.

1. The agency representative shall review the appeal and ensure that the information set forth in (b) above has been included. Within 10 days of receipt of the appeal, the appointing authority representative shall either notify the appellant that specific additional information is required, or shall forward the appeal to the [Department of Personnel] **Civil Service Commission** and so notify the appellant, and may indicate a recommended approval or rejection of the appeal for specified reasons. If additional information is required, the agency representative shall forward the appeal to the [Department of Personnel] **Civil Service Commission** within 10 days of receipt of the appellant's response to the request for additional information.

(c) A representative of the [Department of Personnel] **Civil Service Commission** shall review the request or appeal and render a written decision. A written decision on evaluation appeals shall be rendered within 60 days of receipt of all required information. The decision letter shall include a notice of appeal rights to the [Commissioner] **Commission** in the case of an appeal by an employee or authorized employee representative.

(d) Any affected employee or authorized employee representative may appeal the determination to the [Commissioner] **Civil Service Commission** within 20 days of its receipt. The appeal shall contain all information which was presented to the prior level, a statement identifying the specific portions of the prior level determination being contested, and the basis for appeal. The appellant shall provide copies to all parties.

(e) The [Commissioner] **Civil Service Commission** may render a decision based on the written record or appoint an independent salary reviewer. All parties, either personally, through counsel or authorized

union representative, shall have the opportunity to present argument. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. If a salary reviewer is appointed, he or she shall submit a report and recommendation to the [Commissioner] **Civil Service Commission** within 30 days after the review.

2. (No change.)

(f) A decision by the [Commissioner] **Civil Service Commission** is the final administrative determination.

(g) If a title is approved for reevaluation, the effective date of the reevaluation shall be the first full pay period following the receipt by the [Department of Personnel] **Civil Service Commission** of a fully documented request for reevaluation under (a) above or a fully documented appeal under (b) above.

4A:3-4.4 Salary rates for initial appointments: State service

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

(c) An authorized hiring rate (AHR) is the set salary for initial appointments to particular job titles as established by the [Commissioner] **Chairperson**. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR, and current employees in such titles whose salaries are the same as the AHR may be advanced by the [Commissioner] **Chairperson**.

4A:3-4.5 Anniversary dates: State service

(a) An anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase.

1. An employee's anniversary date shall be assigned upon initial appointment to the first pay period following the completion of 26 full pay periods after appointment. In years which contain 27 pay periods, anniversary dates shall be determined in accordance with a schedule issued by the [Department of Personnel] **Civil Service Commission**.

EXAMPLE: An employee is appointed to a position on Monday, August [16] 17, [1993] 2016. The first full pay period following the date of appointment is pay period [18] 19, which begins on August [21] 20, [1993] 2016. The employee's anniversary date is pay period 18 in calendar year [1994] 2017, expressed as [18/94] 18/17.

2.-3. (No change.)

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

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

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

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the [Department of Personnel] **Chairperson or designee** and the employee in writing that the anniversary date is to be changed. If an alternate workweek plan has been established, consideration of the adjusted hours per day must be made when counting the number of work days in non-pay status.

(d) (No change.)

4A:3-4.8 Lateral pay adjustments: State service

(a) (No change.)

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary range of the former title. The employee's anniversary date shall not be changed.

EXAMPLE: An employee currently on step four, salary range A10 ([15,800.94] \$35,949.31), in a 35-hour workweek title (class code 11), is appointed to a 40-hour workweek title in class code 11. The new salary range will be A12, and the employee will be placed on step four ([17,415.44] \$39,218.13). NOTE: Salaries effective [September] July 12, [1987] 2014.

(c) (No change.)

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

(a) (No change.)

(b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determinations. (See (g) below). This subsection shall apply when the following conditions are met:

1.-3. (No change.)

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

i.-ii. (No change.)

(c)-(h) (No change.)

4A:3-4.10 Demotional pay adjustments: State service

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

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary.

1.-2. (No change.)

3. This adjustment shall be applied only when the employee has served at least 12 months in the higher title and:

i.-ii. (No change.)

iii. The Chairperson [of the Civil Service Commission] or designee finds that service in the higher title provided significant preparation and training for service in the lower title.

4. (No change.)

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

4A:3-4.11 Downward title reevaluation pay adjustments: State service

(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the [Commissioner] **Chairperson or designee**.

2. (No change.)

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the [Commissioner] **Chairperson or designee**, on his or her own initiative or upon the request of affected employees and/or their negotiations representatives, may provide for additional adjustments for affected employees.

4A:3-4.12 Movement of employees from no-range or single rate titles to titles having salary ranges: State service

(a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary shall be adjusted up to the step in the range that is the same or next higher than the salary of the no range or single rate title and the anniversary date assigned based on the pay period the employee would have been eligible for an increase in the no range or single rate title, providing the following two criteria are met:

1. The [Department of Personnel] **Civil Service Commission** finds that service in the no-range title provided the employee with significant experience and training for service in the range title; and

2. (No change.)

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

4A:3-4.13 Salaries of employees whose annual salaries are not on a step in their salary range: State service

Except as otherwise provided by the [Commissioner] **Chairperson**, an employee whose base salary is not on a step in his or her salary range shall remain at his or her current base salary. That part of an employee's salary that is above the nearest lower step in the salary range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the range.

4A:3-4.15 Salaries for employees appointed to tentative title positions: State service

(a) When appointed to positions designated "Tentative Title":

1. New employees, at the discretion of their appointing authority, may be appointed at a salary up to the fourth step of the salary range initially recommended for the title by the [Department of Personnel] **Chairperson or designee** based on the new title request materials submitted by an appointing authority.

2. (No change.)

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

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) (No change.)

(b) The anniversary date of an employee appointed from a special reemployment list shall be determined as follows:

1.-2. (No change.)

3. If at the time of the reduction in force the employee was at the maximum salary step for the title from which displaced, assign the anniversary date that reflects the length of time that the employee had been at the maximum step on the date of the reduction in force.

EXAMPLE: An employee is reappointed from a special reemployment list on [April 3, 1993] **February 7, 2016** (pay period [8/93] **04/16**) to the permanent title from which the employee was laid off on [January 23, 1993] **July 10, 2015** (pay period [3/93] **15/15**). At the time of the layoff the employee was receiving the ninth step of the salary range with an anniversary date of [1/93] **13/15**. When reappointed, the employee will receive an anniversary date of [6/93] **02/16** to show that the employee had been at the maximum step of the salary range for two pay periods.

(c)-(e) (No change.)

4A:3-4.19 Other forms of compensation: State service

The [Commissioner] **Chairperson** shall issue annual updates to the Compensation Plan regarding computing pay for temporary employees, extra compensation on special projects, emergency rates, and other allowances to employees.

4A:3-4.21 Salary overpayments: State service

(a) The [Commissioner] **Civil Service Commission** may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1.-3. (No change.)

(b) (No change.)

SUBCHAPTER 5. OVERTIME COMPENSATION

4A:3-5.3 40 hours or less in a workweek: State service

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

(d) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the appointing authority with the approval of the [Commissioner] **Chairperson** or [his or her] designee for time worked in excess of the regular workweek but not more than 40 hours, except

that such employees participating in an approved alternative workweek program of 70 hours in a 14 day work period shall be so compensated for time worked in excess of 70 hours but not more than 80 hours.

i.-ii. (No change.)

2.-4. (No change.)

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40, and NE titles: State service

(a) Employees in covered positions may be eligible for overtime compensation under this section as follows:

1. Employees in covered fixed workweek titles (35, 40) and covered non-limited titles (NE), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the [Commissioner] **Chairperson** or [his or her representative] **designee** for time worked in excess of 40 hours per week, provided that compensatory time off in lieu of cash overtime compensation is permitted by one of the following agreements:

i.-ii. (No change.)

2. The [Commissioner] **Chairperson** or [his or her] designee may approve an alternate work period and corresponding maximum hour designation for covered law enforcement and fire protection employees as set forth in the table below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours in the work period.

Maximum Hours in Work Period

(No change in table.)

3. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the [Commissioner] **Chairperson** or [his or her] designee, use a work period of 14 consecutive days for computing overtime compensation for covered employees.

4. (No change.)

(b) Overtime compensation under this section shall be paid as follows:

1. Covered employees (35, 40, or NE titles) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the [Commissioner] **Chairperson** or [his or her] designee for time worked in excess of 40 hours per week as provided in (a)1 above. However, if an alternate work period is adopted pursuant to (a)2 above, overtime compensation shall be paid in accordance with that schedule.

2.-8. (No change.)

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL, and N4 titles: State service

(a) Employees in exempt positions may be eligible for overtime compensation under this section as follows:

1. Employees in exempt fixed workweek titles (3E, 4E) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the [Commissioner] **Chairperson** or [his or her] designee for time worked in excess of 40 hours per week.

2.-3. (No change.)

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the [Commissioner] **Chairperson** or [his or her] designee for time worked in excess of the regular workweek.

i.-ii. (No change.)

2.-3. (No change.)

4A:3-5.7 Special circumstances: State service

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

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. (No change.)

2. An agency head shall file with the [Commissioner] **Chairperson or designee** two reports concerning an exceptional emergency as follows:

i.-ii. (No change.)

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal, or other related work in situations [which] **that** constitute unreasonable safety hazards to the public, employees, other persons, or property of the State. The [Commissioner] **Chairperson or designee** shall establish emergency condition rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional, or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the [Commissioner] **Chairperson or designee**.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the [Commissioner] **Chairperson or designee**.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the [Commissioner or his or her representative] **Chairperson or designee** for review and approval.

4A:3-5.9 Appointing authority responsibilities: State service

(a) (No change.)

(b) A copy of each department's procedures, written interpretations, and any subsequent changes are to be filed with the [Commissioner] **Chairperson** or [his or her] designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the [Commissioner or his or her representative] **Chairperson or designee**.

(d) (No change.)

(e) Upon demand, the appointing authority shall make available to the [Commissioner or his or her representative] **Chairperson or designee** all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Upon demand for reports of compensatory time off or comparable time off, the appointing authority shall make available to the [Commissioner or his or her representative] **Chairperson or designee** the following items:

1.-8. (No change.)

(g) (No change.)

4A:3-5.10 Appeal procedures: State service

(a) (No change.)

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1.-2. (No change.)

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day

for the appointing authority's decision. All second level appeals shall be submitted to the [Department of Personnel] **Civil Service Commission**.

i. (No change.)

4. The appropriate section of the [Department of Personnel] **Civil Service Commission** shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the [Commissioner] **Chairperson or designee**.

5. All appeals to the [Commissioner] **Commission** must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the [Department of Personnel] **Civil Service Commission**.

i. The [Commissioner] **Commission** shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the [Commissioner] **Commission** shall be the final administrative decision.

(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the [Department of Personnel] **Civil Service Commission**.

2. (No change.)

3. An appeal of the first level decision may be filed with the [Commissioner] **Commission** in accordance with (a)5 above.

(d) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

Bond Refundings Meeting Certain Conditions

Proposed Amendment: N.J.A.C. 5:30-2.5

Reproposed New Rule: N.J.A.C. 5:31-8.1

Authorized By: Local Finance Board, Timothy J. Cunningham, Chair.

Authority: N.J.S.A. 18A:24-61.5(b), 40A:2-51(c), and 40A:5A-6.

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

Proposal Number: PRN 2016-206.

Please submit written comments on the notice of proposal by February 17, 2017, via e-mail to dlgs@dca.nj.gov or by regular mail to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
PO Box 803
Trenton, NJ 08625-0803

For comments submitted via e-mail, please include the subject heading "NJAC 5:30-2.5 and 5:31-8.1: Refunding of Bonds Meeting Certain Conditions."

The agency proposal follows:

Summary

At its March 9, 2016, meeting, the Local Finance Board (Board) voted to propose new N.J.A.C. 5:31-8.1, which would allow any local unit subject to the Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.) to issue refunding bonds without prior approval of the Local Finance Board where the issuance of said bonds realizes debt service savings on outstanding obligations and the following conditions are present: 1) the present value savings is at least three percent; 2) the