

PROPOSAL SECTION

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Notice of Proposed Substantial Changes upon Adoption to Proposed New Rule and Proposed Rule Amendments

Proposed Change to Proposed New Rule: N.J.A.C. 4A:3-3.2A

Proposed Changes to Proposed Amendments: N.J.A.C. 4A:3-3.5 and 3.9; and 4A:4-2.4 and 7.1A

Proposed Amendment: N.J.A.C. 4A:7-3.2

Job Banding Program

Proposed: March 18, 2013, at 45 N.J.R. 500(a).

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

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-1 et seq.; and P.L. 2008, c. 29.

A **public hearing** concerning the proposed substantial changes upon adoption will be held on:

Wednesday, February 26, 2014, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by April 4, 2014, to:

Henry Maurer, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

Take notice that the Civil Service Commission proposed new rule N.J.A.C. 4A:3-3.2A and amendments to N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1; 4A:8-1.1 and 2.2; and 4A:10-1.1 on March 18, 2013, at 45 N.J.R. 500(a), to provide for the establishment of job bands in State and local civil service. A public hearing was held on April 10, 2013, at 3:00 P.M. in the Civil Service Commission Room at 44 South Clinton Avenue, Trenton, New Jersey. The public comment period closed on May 17, 2013.

The Commission is now proposing a substantial change to the proposed new rule, as well as to the proposed amendments to N.J.A.C. 4A:3-3.5 and 3.9, 4A:4-2.4, and 4A:4-7.1A. This notice of proposed substantial changes also includes a proposed amendment to N.J.A.C. 4A:7-3.2, and is published pursuant to N.J.S.A. 52:14B-4.10. Changes are proposed in three areas:

1) Clarifying that veterans shall receive the same preference in advancements within the band as they receive in promotional situations;

2) Limiting the scope of job banding to State service, excluding law enforcement and public safety job titles, and clarifying that the new job banding rule will not affect existing job banding programs approved by this agency outside of the Executive Branch of State government; and

3) Clarifying that if a State employee complains of discrimination in the advancement process, the employee retains the right to pursue a complaint under the State Policy Prohibiting Discrimination in Employment, including the right to seek Civil Service Commission review of a departmental decision.

Veterans Preference

With respect to proposed new rule N.J.A.C. 4A:3-3.2A, the proposed substantial change is, in part, a response to Assembly Concurrent Resolution 199 (ACR 199), transmitted to the Commission by the Legislature on December 4, 2013. ACR 199 asserts that the proposed new rule is not consistent with the legislative intent that whenever a veteran ranks highest on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shall show cause before the Commission why a veteran should not receive such promotion. The proposed change is also in response to comments received concerning veterans preference. A summary of the comments regarding veterans preference and the agency response to the comments is provided below.

Comments regarding veterans preference were received from Beth Schroder Buonsante, Associate Director of Government Relations, New Jersey Education Association; The Honorable Bonnie Watson Coleman, Assemblywoman, District 15; Comment Group C (approximately 11,000 members of the Communications Workers of America (CWA) and the New Jersey American Federation of Labor-Congress of Industrial Organizations (NJ AFL-CIO)); The Honorable Wayne DeAngelo, Assemblyman, District 14; Michael Deutsch; Carol E. Gay, President, New Jersey State Industrial Union Council; The Honorable Linda R. Greenstein, New Jersey State Senator, District 14; Ralph Lee, CWA Local 1036; John Menshon, President, Transport Workers Union, Local 225, Branch 4; Rose V. Patterson; Hetty Rosenstein, CWA New Jersey Director; The Honorable Troy Singleton, Assemblyman, 7th District; and Fred Vineyard, AmVets Post 911 New Jersey. (In accordance with N.J.S.A. 52:14B-7(c), the Office of Administrative Law has determined not to publish the names of the commenters in Comment Group C in this notice. A list of the commenters' names may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey, by contacting (609) 689-4015, and will be retained by the Office of Administrative Law as part of the permanent file on this rulemaking.)

COMMENT: State Senator Greenstein and Comment Group C stated that the current civil service system properly incorporates veterans preference. Assemblywoman Coleman; Assemblyman DeAngelo; State Senator Greenstein; Assemblyman Singleton; Mses. Buonsante, Gay, Patterson, and Rosenstein; and

Messrs. Lee, Menshon, and Vineyard commented that job banding would override veterans preference. Ms. Rosenstein commented that veterans suffer from 25 percent unemployment and homelessness. Assemblyman Singleton, Ms. Patterson, and Mr. Vineyard stated that veterans have earned favored treatment in the public sector due to the sacrifices they have made on behalf of their country. However, Mr. Deutsch commented in favor of eliminating veterans preference because it promotes unfairness and forces appointing authorities to dismiss experienced employees in favor of unknown and untried individuals.

RESPONSE: Veterans preference in the civil service system is established by the State Constitution and by statute; this rule proposal does not eliminate or diminish such protections. With absolute veterans preference, qualified veterans are placed at the top of an open competitive employment list ahead of nonveterans, regardless of their scores. N.J.S.A. 11A:5-5. The Commission must emphasize that job banding has no impact on new hires, so the comments about impairing “absolute” veterans preference, which is limited to the initial open competitive hiring process, are misplaced. With regard to the veterans preference as applied to promotions, veterans are placed on promotional lists according to their scores. A veteran has preference over a nonveteran if the veteran heads the list. N.J.S.A. 11A:5-7.

As noted above, this proposal does not nor is it intended to eliminate or diminish veterans preference. Rather, veterans would receive the same preference

in advancement appointments within the band as are applied in promotional situations. However, in order to clarify this important point, the Commission proposes a substantive change to proposed new rule N.J.A.C. 4A:3-3.2A. This change would provide in a new N.J.A.C. 4A:3-3.2A(d)3i that, whenever a veteran ranks at the top of the advancement appointment selection process, a nonveteran shall not be selected unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment. Additionally, a new N.J.A.C. 4A:3-3.2A(d)3ii would provide that, when the advancement appointment selection process results in a tie between a veteran and a nonveteran, the veteran must be offered the advancement appointment. The originally proposed new N.J.A.C. 4A:3-3.2A(d)3i, which permits an employee not selected for an advancement appointment to file a grievance, is proposed for recodification as N.J.A.C. 4A:3-3.2A(d)3iii.

Local Government Issues

The Commission is also proposing substantial changes to the proposed new rule and the proposed amendments to N.J.A.C. 4A:3-3.5 and 3.9 and 4A:4-7.1A to address local government issues in response to ACR 199 and certain comments. ACR 199 expresses concern about the scope of the job banding program, asserting that the proposed new rule would eliminate competitive promotional examinations for “tens of thousands of positions.” A summary of the comments regarding local

government, which prompted the changes, and the agency response to the comments, is provided below.

Comments regarding local government issues were received from Comment Group A (132 individuals, as listed below); Frank M. Crivelli, Esq., representing the new Jersey Law Enforcement Officers Supervisors Association; William G. Dressel, Jr., Executive Director, New Jersey State League of Municipalities; Paul L. Kleinbaum, Esq., representing the New Jersey State Policemen's Benevolent Association; Karl R. Walko, President, Camden County Council No. 10; and Adam Liebttag, President, CWA Local 1036. Comment Group A includes the following individuals:

Eileen Orsini

Michael J. Becker

Michelle K. Orsini

SCO Robert Jones

Rick and Donna Van Dexter

Paulina Richman

SCO Andrew Fisher

Charles Cossaboone

Migdalia Ferrer

A. Lewis

SCO M. Elwell

SCO R. Dooley

Sgt. Gary Lee

B. Mazzeo

SCO J. Allen

SCO E. Aguilar

Sgt. M. Bonham

S. Buczynski

Edward L. Zeller

Ron Butler

Nelson Morales

Yvette C. Nichols

Teresa Gajdos

SCO Laura Colson

Susan M. Davidson

Eric R. Perdomo

Robert Sutton

W. Cabbage

SCO Chris Todd

SCO Vanisha Williams

SCO Michael Lynch

Denise Rivera

Michael Malinowski

Renee Rizzo

Mitch Magpiong

Ricky Urgo

Michelle Magpiong

Albert S. Dooley, Jr.

Trevor Ernst

Matthew Stack

Robert A. Carman, Jr.

Robert Acosta

Adam Kundera

Larry Saul

Michael W. Fardone

Reginald J. Deans

SCO Rigoberto Gonzalez

Donna Piatt

SCO Jimmel Still

Belinda McIver

Jeffrey Saunders

Gregory W. Williams

Richard Kenney

Carl Ayars

Carole M. Scherzer

Gary Jackson

Michael J. Carty

Jasmine T. Govens

Casey Piatt

Imelda Fowler

Lilliam Jackson

Robert P. Caine, Sr.

Billy B. Fowler, Jr.

SCO A. Burnett

SCO William R. Scherzer, Jr.

Patricia A. Green

SCO Charles A. Vest

John Strzemieczny

Barbara Doherty

Duke A. Tyson

J. Brown

G. Griggs

SCO Clarence Street

SCO Heath McCauley

Steve Harris

Nicole Crist

Eugene Bailey

(unintelligible) Wernik

Bridget Sheehan

Brian Heacock

A. Cozazo

Gilde Alvarado

Gloria Melendez

Jerry A. Morales

Felicita Miranda

Brian Gandy

SCO A. Gonzalez

Clarence Tomlin

James Redmond

SCO C. Mount

Heriberto Jimenez

Marie Watson

Caleb Watson

Melinda Vargas

Jose E. Torres

SCO R. Byers

Dean (unintelligible)

Brooke L. Flanagan

Mary V. Flanagan

Kenneth M. Flanagan

C. Kenneth Flanagan

SCO Anisa R. King

Patricia Schemelia

Charles Schemelia

Danielle Resto

Natasha Resto

German Diaz

Kevin O. Street, Sr.

Gwendolyn Street

Vivian Farrow

Shelton V. Farrow, Sr.

James M. Farrow, Jr.

James Farrow, Sr.

Marrisol Santiago

LaShonda Sultan

William D. (unintelligible)

T. Iver

SCO P. Irsov

Steve (unintelligible)

C. (unintelligible)

SCO A. Beverly

Jacqueline P. Isley

Robert Romanishin

Lucille (unintelligible)

(seven additional unintelligible names)

COMMENT: Comment Group A stated that, today, New Jersey relies increasingly on the law enforcement community due to natural disasters and large-scale criminal activity, but that job banding would undermine law enforcement. They further commented that job banding would eliminate promotional testing in the New Jersey State Department of Corrections if all officers, sergeants, lieutenants, and majors were lumped into one band. They also charged that job banding would result in the elimination of promotional testing for fire personnel, if lieutenants, captains, and battalion fire chiefs were lumped into one band.

Mr. Crivelli stated that, even if job banding is not intended for State supervisory law enforcement titles or other law enforcement titles, he still opposes job banding as a circumvention of the merit system. He continued that, if job banding were to apply to law enforcement, this would be a grave mistake, as the titles in State law enforcement title series are drastically different from one another

in duties, responsibilities, and supervisory authority; moving up in rank is a promotion in every sense of the word. Similarly, Mr. Kleinbaum explained that, in law enforcement, movement into higher-level titles signifies not just the law enforcement officer's ability to handle increasingly difficult levels of work, but also that officer's ability to handle increasingly greater supervisory duties and responsibilities. He added that these considerations make the formal testing process an essential aspect of movement through the ranks. Mr. Kleinbaum urged that the proposal be amended to provide that job banding would not apply to public safety titles generally, and law enforcement titles specifically.

RESPONSE: Job banding is not intended to apply to any law enforcement or public safety titles, whether the jobs are in State or local service. As explained below, a substantive change to N.J.A.C. 4A:3-3.2A is being proposed to limit job banding to State service. Thus, law enforcement and public safety titles in local service would be excluded. Further, the Commission proposes amending N.J.A.C. 4A:3-3.2A(b) to exclude law enforcement and public safety titles in State service as well, defined as titles that are included in the Police and Firemen's Retirement System (PFRS).

COMMENT: Mr. Dressel stated that it is difficult, under the civil service system that exists today, to reward employees or recruit the best qualified individuals, or to cross-train employees to meet the needs of the public. He stated that the civil service system should be leaner and more streamlined. Ideally, he stated, local jurisdictions would be able to "opt out" of civil service.

With regard to the job banding program, he urged that it not add red tape, procedural layers, or further classification efforts to the present system. He was also concerned that proposed new N.J.A.C. 4A:3-3.2A(a) would require municipalities to fill vacancies whether doing so would meet their needs or not.

Mr. Walko commented that the job banding program is not transferable to local government, which is rampant with discrimination, noncompetitive appointments, and politics interfering with appointments. Mr. Walko added that job banding would just exacerbate these problems.

Mr. Liebttag charged that, in advance of the Commission's approval of the job banding pilot program, it solicited no input from local appointing authorities, nor did the job banding pilot program include any titles or title series used in local government.

RESPONSE: The Commission understands the need of local governments for a more efficient, responsive civil service system. However, the Civil Service Act would have to be amended for local jurisdictions to "opt out" of civil service. Nevertheless, the Commission has decided that proposed substantial changes are necessary to the rule proposal to limit job banding to State service. This is because job banding has been tested within the Executive Branch of State government. See *In the Matter of Job Banding for Human Resource Consultant, Personnel and Labor Analyst, State Budget Specialist, and Test Development Specialist Title Series Pilot Program* (Civil Service Commission, decided 5/6/12). Moreover, this agency

approved job banding in the Judicial Branch in 1998, and the program has been successfully applied since that time, with over 4,000 Judiciary employees in banded titles. It should be pointed out, moreover, that the Commission has regulatory authority over the personnel practices governing the Judiciary's career service employees, so that the experience gleaned by the personnel practices of the Judiciary, including their experience with job banding, can be considered instructive for all of State service. The Judicial Unification Act, at N.J.S.A. 2B:11-5, ensured that those career service employees coming to State service from the counties would continue to be subject to N.J.S.A. 11A, the Civil Service Act, and the then Department of Personnel (now Civil Service Commission). "...[The Judicial Unification Act] preserves the judiciary's unquestioned right to create unclassified positions within the judiciary and to appoint individuals to fill those positions pursuant to Rule 1:33-4.... Other positions within the judiciary, however, were then, and continue today to be, filled pursuant to Civil Service guidelines...." *Thurber v. City of Burlington*, 191 N.J. 487, 498 (2007).

A comment concerning the impact of the proposed job banding program on the Judiciary's existing job banding program was received from Janet Share Zatz, Assistant Director, Human Resources, Administrative Office of the Courts.

COMMENT: Janet Share Zatz noted that the Judiciary has operated under a banding system since its 1995 Statewide unification. She asked for a formal clarification that the proposal is not intended to modify the Judiciary's banding program.

RESPONSE: To clarify this issue, the Commission proposes to substantially change N.J.A.C. 4A:3-3.2A(b) to state that any job banding program already approved by the Commission, such as the one in Judiciary, can continue without adopting the changes set forth in the new job banding rule.

Accordingly, the following discussion describes the proposed substantial changes to the rule proposal on job banding to limit its applicability to State service, clarify that titles subject to PFRS would not be affected by job banding, and ensure that any job banding program in effect outside of the Executive Branch would not be affected by the new job banding rule.

The heading of proposed new rule N.J.A.C. 4A:3-3.2A would be changed from “Job banding” to “Job banding: State service.” Therefore, the entire section would be understood to apply only to State service. N.J.A.C. 4A:3-3.2A(b) would also be changed so that only State titles and State titles series could be subject to job banding. A new paragraph (b)3 would provide that job banding will not affect titles included in PFRS, while a new paragraph (b)4 would state that any existing job banding program outside of the Executive Branch would not be affected by the new rule. A substantial change to the proposed amendment to N.J.A.C. 4A:3-3.5, Reclassification of positions, is also proposed. Paragraph (c)2, the amendment language referring to grievances regarding an employee’s title level within the job band, would be substantially changed to refer only to State service and to delete a cross-reference to grievances in local service.

A proposed amendment to N.J.A.C. 4A:3-3.9, Classification appeals, is also proposed to remove references to job bands and title levels in local service. Proposed new subsection (d), referring to a title level complaint in local service, is proposed for deletion. Current subsection (d), originally proposed for recodification as subsection (e), and which now addresses classification appeals in local service, was originally proposed for amendment to add language excluding the title level in a local employee's job band from the classification appeal process. This language would now be deleted. Other subsections of the rule would be recodified accordingly.

One portion of the proposed amendment to N.J.A.C. 4A:4-2.4, Promotional title scope: local service, would also be substantially changed to conform to the change to the rule proposal restricting job banding to State service. The change to this section would be to delete proposed new paragraph (c)5, which concerns promotional title scopes in local service involving noncompetitive to competitive division promotions where the employee may be serving in a job band. Additionally, in light of the change to subsection (c), subsection (d) would be changed to return the language to the current cross-reference to paragraphs (c)2 through 4 rather than to proposed paragraphs (c)2 through 5.

Since job banding would only apply to State service, the proposed amendment to N.J.A.C. 4A:4-7.1A, Intergovernmental transfers, would have to be changed at subsection (e). The original proposed amendment states that, for purposes of the intergovernmental transfers rule, where a position is within a job band, "title"

means the entire job band. The proposed subsection, as amended, adds the phrase “in State service” to clarify that any job band involved in an intergovernmental transfer could only be in State service.

Equal Employment Opportunity

Finally, with regard to the issue of equal employment opportunity, the Commission proposes substantial changes to the proposed new rule and to a section not affected in the original rule proposal, N.J.A.C. 4A:7-3.2, Model procedures for internal complaints alleging discrimination in the workplace. These changes respond to the portion of ACR 199 which asserts that the new rule is not consistent with the public policy of the State of ensuring equal employment opportunity at all levels of public service. The changes also respond to certain comments regarding unlawful discrimination and job banding.

Comments regarding discrimination were received from Katrina and Nicholas Angarone; Kathleen D. Albano; Comment Group A; Comment Group B (77 individuals, as listed below); Comment Group C; Carol E. Gay, President, New Jersey State Industrial Union Council; Marci Durant; Anil Desai, President, Branch 5, CWA Local 1032; Ethan Ellis, President, Next Step; Christian Estevez, Executive Vice President, Latino Action Network; Louis Hall, Vice President/Treasurer, New Jersey Superior Officers Association; Thomas Helmstetter, Communications Director, Garden State Equality; Ralph Lee, CWA Local 1036; Dominic Marino,

President, Professional Firefighters Association; Maureen McClain; Rex Reid, Legislative Representative for the American Federation of State, County and Municipal Employees, New Jersey Council 1; Eric Richard, Legislative Affairs Coordinator, NJ AFL-CIO; Hetty Rosenstein, CWA NJ Director; Jennifer Sheets; Deborah Spencer, Secretary, Local 195, International Federation of Professional and Technical Engineers; Norman J. Teufel, Jr.; Karl R. Walko, President, Camden Council No. 10; and Charles Wowkanech, President, and Laurel Brennan, Secretary-Treasurer, NJ AFL-CIO. Comment Group B includes the following individuals:

Jeffrey Heltaway

Janette Sailor

Dorthea Knapp

Lisa Martin-Davis

Beth Afflerbach Ziegenfuss

Donna Wojcik

Jodie Eastlack

Adele Pandorso

Nilsa Maymi

Margaret DiCrescenzo

Phyllis Thompson

Christine Sabetta

Beth Sabetta

Narcissa L. Miller

Tamu Wilson

Beverly Collins

Pamela Martin

Joseph H. Hiles

Michael Sites

Harry Winters, Sr.

James M. Johnson

Bobbi Franklin

Lois M. Myers

Charles Myers

Janice LaRue

Wendy Carey

Mary Perna

Tina Castelli

Charles Watson

Mark Summerville

Gerri Bagnato

Beverly Goetz

Edward T. Rose

Karen B. Clark

Jessica Lucas

Charles Milligan

Annie Nagler

Paul Esposito

Theresa Ziegler

Linda J. Spencer

Roshonda G. Williams

Minesh Patel

Cynthia Gallagher

Lori Holmes

Shirley Payne

Monica Barron

Christine Jefferson

Shirley Anderson

Amy Jenkins

Alma C. Lee

Stefanie Hasselman

Theresa Taylor

Cecilia Brennan

Priscilla Spenser

Kathleen E. Sharp

Nicole Harris

Kishah Sanders-Zeigler

Nateresia Ramsaran

Christopher Hope

Joanne Ryan

Teresa Hurst

Barbara H. Novick

Anne Abruzzese

Kathleen Hill

Maggie Rodriguez

Donna Adair

Susan Kaminski

Joan Schaubeck

Amy M. Strunk

Sheila Watson

Mary Ann Prospero

Barbara A. Pizzuto

Mary E. Smith

Beth Estberg

Christal R. Williams

(two unintelligible names)

COMMENT: Mses. Albano, Gay, McClain, Rosenstein, and Spencer; Messrs. Brennan, Desai, Ellis, Helmstetter, Lee, Reid, Richard, Walko, and Wowkanech; and Comment Groups A, B, and C expressed concern that job banding would lead to discrimination on the basis of race, ethnicity, disability, sexual preference, gender, religion, nationality, age, and marital status. Mr. Hall commented that, without objective promotional testing, an employee who is not selected for an advancement appointment would have a more difficult time trying to prove discriminatory intent. Ms. Durant stated that everyone should be treated fairly and equally.

Comment Group A asked if N.J.A.C. 4A:4-2.14(b) provides justification for circumventing promotional examinations. They noted that the rule provision permits an examination waiver where an individual's disability would make it impracticable for him or her to undergo testing, but where the disability does not prevent satisfactory performance of duties under conditions of actual service. They added that, if this rule provision provides the justification for job banding, it undermines an important protection for disabled Americans. Mr. Teufel commented that these examination waivers do not show that disabled people are competent to perform their job duties, but only that the disability will not prevent the individual from performing those duties.

Mr. Reid stated that the civil service system now furthers the goal of fair compensation for civil service employees. Mr. Reid and Ms. Rosenstein commented that job banding would threaten equal pay for equal work, particularly in light of the commingling of titles within a band.

Mr. Estevez noted that Latinos historically have been underrepresented in higher level positions, which makes this rule proposal of special concern for them. He also expressed concern that employees serving in bilingual variant titles would be banded together and, therefore, lose promotional opportunities that they otherwise would have had to non-bilingual variant titles.

Mr. Desai stated that it used to be rare for Asian-Americans to receive provisional appointments based on management discretion. He added that promotional examinations have offered Asian-Americans opportunities for upward mobility.

Ms. and Mr. Angarone commented that, in the absence of Competency Assessment Review (CAR) standards set forth by rule, job banding would lead to unequal treatment of employees. Ms. Rosenstein stated that the proposal includes no prohibition on the use of “improper factors” in determining which employees receive an advancement appointment.

Mses. Albano, McClain, and Sheets; Messrs. Hall and Marino; and Comment Group B asserted that job banding would lead to the promotion of less capable individuals.

RESPONSE: With respect to discrimination, it is noted that job banding would not affect or impair the wide range of civil rights and discrimination laws in effect at both the Federal and State level. All civil service employees, whether they are serving inside or outside of job bands, are and would be protected by all such

laws. Among these laws include the following Federal enactments: the Civil Rights Act of 1964 at 42 U.S.C. § 2000a; the Equal Pay Act of 1963 at 29 U.S.C. § 206d; the Age Discrimination in Employment Act at 29 U.S.C. §§ 633 et seq.; and the Americans with Disabilities Act at 42 U.S.C. §§ 12101 et seq. Among the State statutes and policies are the following: The New Jersey Law Against Discrimination at N.J.S.A. 10:5-1 et seq., the Civil Service Act at N.J.S.A. 11A:7-1 et seq., and the Statewide Policy Prohibiting Discrimination in the Workplace. All of the procedures and remedies available through these laws would continue to be in place for all civil service employees, whether the employees are serving in a job band or not. For a more complete list of the laws and policies that protect civil service employees from discrimination, go to:

http://www.state.nj.us/csc/about/about/regulations/discrimination_laws.html.

Moreover, the negotiated agreements between the State and the unions contain anti-discrimination clauses that prohibit, amongst other things, discrimination based on race, ethnicity, disability, sexual orientation, gender, religion, nationality, age, marital status, and mental and physical disability.

With regard to Mr. Estevez's comment about banding together bilingual variant titles, nothing in the rule proposal would impose such a requirement. Job banding would neither diminish nor increase the opportunities for upward mobility, whether bilingual or not.

Competitive examination waivers in the case of some test candidates with disabilities were not an impetus for the proposed job banding program. This category of examination waivers was only referred to in the notice of proposal to provide an example of instances in the civil service system in which formal testing is not considered practicable. It is further noted that these waivers are granted on a case-by-case basis, based on the criteria set forth in N.J.A.C. 4A:4-2.14(b)1. One of the criteria is that the appointing authority provide a statement that the “individual can satisfactorily perform the duties of that title under actual conditions of service.” See N.J.A.C. 4A:4-2.14(b)1ii.

The current process of administering evaluations of education and experience (E&Es) in almost 60 percent of promotions does not necessarily render the appointee the most capable candidate, as the assessment is essentially limited to a review of education and experience. As the Commission has previously explained, job banding would promote the advancement appointment of the most capable individuals, given the requirement that employees would receive an advancement appointment based, initially, on their CAR ratings, and then on a more focused selection process established by the appointing authority. The proposal defines competency as the “minimum level of training and orientation needed to successfully perform at a particular title level within a job band.” It would be impossible to set forth more specific CAR standards in the rules because the Commission must first approve the request for particular titles to be banded; the competencies would then depend on the title being banded.

However, in response to ACR 199, as well as the commenters' discrimination concerns, the Civil Service Commission is proposing a substantial change to the proposed new rule and a new amendment to N.J.A.C. 4A:7-3.2 to clarify that employees in job bands will retain their rights under the Statewide Policy Prohibiting Discrimination in the Workplace. A description of these substantial changes follows.

Originally proposed N.J.A.C. 4A:3-3.2A(d)3i, concerning an employee filing a grievance regarding a non-selection for an advancement appointment, proposed for substantial change (to be recodified as subparagraph (d)3iii as described above concerning veterans preference) is proposed for a further substantial change related to discrimination. Thus, there would be a cross-reference to new subparagraph (d)3iv to clarify that, where the employee's non-selection is raised by that employee in a discrimination appeal, the model procedures for internal complaints alleging discrimination in the workplace apply. The new subparagraph (d)3iv would further provide that, should the discrimination appeal reach the Civil Service Commission, the Commission will decide the non-selection issues in making a determination.

The substantial changes would include a proposed amendment to N.J.A.C. 4A:7-3.2, Model procedures for internal complaints alleging discrimination in the workplace. A new paragraph (m)2 would provide that, if an appeal filed under N.J.A.C. 4A:7 raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its discrimination determination. Because of proposed new paragraph (m)2, current

paragraphs (m)2 and 3, which concern how the appeal is reviewed and where the burden of proof lies, would be recodified as paragraphs (m)3 and 4.

Finally, the Commission notes that technical amendments are needed to N.J.A.C. 4A:7-3.2 pursuant to P.L. 2008, c. 29, in which the Department of Personnel was abolished and replaced with the Civil Service Commission, a State agency in, but not of, the Department of Labor and Workforce Development. Therefore, all references in this section to the Department of Personnel, the Commissioner of Personnel, and the Merit System Board are proposed for deletion and replacement with the Civil Service Commission. The affected portions of the rule are as follows: N.J.A.C. 4A:7-3.2 (introductory paragraph) and subsections (e), (g), (l), and (m) through (o).

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed new rule, N.J.A.C. 4A:3-3.2A, the proposed amendments to N.J.A.C. 4A:3-3.5 and 3.9 and 4A:4-2.4 and 7.1A, and the new proposed amendment to N.J.A.C. 4A:7-3.2, would not affect the Jobs or Agriculture Industry Impact statements; the Federal Standards Statement; the Regulatory Flexibility Statement; or the Housing Affordability and Smart Growth Development Impact Analyses as published in the original proposal. However, the Social Impact and the Economic Impact would change as a result of this rule proposal.

Revised Social Impact

The positive social impact expected from the original rule proposal would now apply only to State service, with local service and job titles in the Police and Firemen's Retirement System (PFRS) in both State and local service excluded from job banding entirely. Therefore, the discretion afforded appointing authorities in administering the advancement appointment process would not benefit local service or PFRS titles.

However, the potential negative social impact on employees in local service or who serve in PFRS titles from the exercise of greater appointing authority discretion in making advancement appointments and from the limited appeal review of job banding issues would not be present with this notice of proposed substantial changes.

State employees serving in non-PFRS titles would benefit from the proposed change to the proposed new rule N.J.A.C. 4A:3-3.2A, in new subparagraph (c)3iv, clarifying that the Civil Service Commission review job banding issues that occur as part of a discrimination appeal.

Finally, a positive social impact is expected from the clarification in the proposed change to the proposed new rule N.J.A.C. 4A:3-3.2A, in a new paragraph (b)4, excluding existing job banding programs approved by the Commission from the proposal. The practical effect of paragraph (b)4 would be to ensure that the instant proposal has no effect on the job banding program in the Judiciary.

Revised Economic Impact

Employees in local service or who serve in PFRS titles would not enjoy the positive economic impact of potentially moving quickly up the pay scale under job banding. Moreover, they would not benefit from the streamlined layoff and special reemployment processes or streamlined intergovernmental transfers.

State employees in non-PFRS titles who have established veterans preference for purposes of civil service employment could see a positive economic impact in the recognition of their veterans preference rights in the advancement appointment process. However, the Civil Service Commission would not enjoy the positive economic impact of reduced testing and streamlined layoffs for local service and PFRS titles. Excluding these groups from job banding would also mean that the Commission would have to handle more appeals than it would under the job banding system.

Full text of the proposed substantial changes to the proposed new rule and rule amendments follows (additions to proposal are indicated in italicized boldface *thus*; deletions from proposal indicated in italicized braces {thus}):

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 (the effective date of this rule) pursuant to the Commission's authority under the law can continue without adopting the changes provided in this section.*

(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 and make a determination as to which employee or employees may receive an advancement appointment.

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.

{i.} 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.

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 [Commissioner] **Chairperson of the Civil Service Commission or designee**, shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) An appointing authority may request a classification review by the [Department of Personnel] **Chairperson of the Commission or designee** in a manner and form as determined by the [Commissioner] **Chairperson or designee**. Such review may be initiated by the [Department of Personnel] **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 reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by [the Commissioner] **an appropriate Commission representative**.

1. Within 30 days of receipt of the reclassification determination, unless extended by the [Commissioner] **Chairperson or designee** in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional, or lateral, shall be effected in accordance with all applicable rules.

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with **a reclassification determination**, an appeal **to the Civil Service Commission** may be filed in

accordance with N.J.A.C. 4A:3-3.9. *{Appeals} In State service, appeals pertaining to an employee's title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6 {(State) and 4A:2-3.1(d) (local)}.*

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal by an employee or union representative shall be made in writing. The appeal shall include a position classification questionnaire completed by the appellant, and shall specify the title which the appellant believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent

on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the appellant's most recent PAR form (see N.J.A.C. 4A:6-5).

4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:

i. The position is properly placed at the existing title level;

ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or

iii. The position should be placed at a different title level.

5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:

i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or

ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.

6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.

i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.

[4.] **7. [The] In the case of an appeal not pertaining to a title level within the employee's particular job band, the** agency representative shall review the appeal, affix to it an organizational chart, and ensure that the information set forth in (c)1 [through], **2, and 3** above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may in writing indicate with the submitted appeal a recommended approval or rejection of the appeal for specified reasons. The agency representative shall notify the appellant of the submission to the Commission representative. If additional information is required of the appellant, the agency representative shall forward the appeal with organizational chart and the additional information to the appropriate representative of the Civil Service

Commission within 10 days of receipt of the appellant's response to the request for additional information.

[5.] **8.** A representative of the Civil Service Commission shall review the appeal **filed pursuant to (c)7 above**, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, and appellant are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

(1) The position is properly classified;

(2) The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in

writing, the immediate removal of inappropriate duties within a specified period of time; or

(3) The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

/(d) In local service, a complaint regarding the employee's title level within the band shall not be subject to the classification appeal process.

1. The appointing authority shall advise the appropriate representative of the Commission of any changes in the title levels of employees for recordkeeping purposes./

[(d)] ~~/(e)~~ **(d)** In local service, an appeal from an employee, union representative, or appointing authority **{not pertaining to a title level within the employee's particular job band}** shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the appeal shall also include a completed position classification questionnaire and an organizational chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt of the questionnaire from the appellant, the appellant may forward the questionnaire to the appropriate representative of the Commission

without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

i. The position is properly classified;

ii. The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

[(e)] ~~{(f)}~~ (e) Appeals from the decision of the Commission representative to the Civil Service Commission **pursuant to (c)7 and 8 or ~~{(e)}~~ (d) above** may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision

letter and include copies of all materials submitted, the determination received from the lower level, [and] statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Civil Service Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commission within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and the recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

[(f)] **3.** If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

[1.] **i.** In State service, the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission; or

[2.] **ii.** In local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

[(g)] **4.** The decision by the Commission is the final administrative determination.

[(h)] ~~[(g)]~~ (f) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commission.

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

(a) If a title which is the subject of a promotional examination is part of a title series, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;

2. The next two lower in-series titles used in the local jurisdiction; or

3. All applicants in the unit scope who meet the open competitive requirements and all applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of [one-year] **one year of** permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;

2. The next two lower in-series noncompetitive titles used in the local jurisdiction;

3. All related noncompetitive titles; [or] *or*

4. Any competitive title[.]. *{; or*

5. Any job band, as appropriate.}

(d) The title scopes described in (a)2[.], **and** 3 and (c)2 through [4] ~~{5}~~ **4** above or any combination of such scopes may be used when a wider title scope is appropriate or

the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Civil Service Commission.

(e) In extraordinary circumstances, the Chairperson of the Civil Service Commission may set another appropriate title scope.

(f) The local jurisdiction may be required to provide an appropriate representative of the Civil Service Commission with copies of ordinances, tables of organization, or other evidence of the jurisdiction's use of titles.

4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson of the Civil Service Commission or designee.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8. A transferring employee, other than a police officer or firefighter, who is not a New Jersey resident and transfers to a receiving jurisdiction following a layoff of more than seven days, is subject to the New Jersey residency requirement at P.L. 2011, c. 70.

2. The optional waiver of accumulated sick leave and seniority rights by a law enforcement officer, including a sheriff's officer and a county correction officer, shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Chairperson of the Civil Service Commission or designee.

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

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Chairperson of the Civil Service Commission or designee approve the title, based on the following criteria:

i. The title(s) shall have substantially similar duties and responsibilities;

ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;

iii. There shall be no special skills, licenses, certification, or registration requirements for the new title which are not also mandatory for the former title; and

iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

(e) For purposes of this section, in the case of a position within a job band in State service, “title” shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.

[(e)] (f) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the

priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, [4A:6-]1.3, Sick leave, and [4A:6-]1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

Each State department, commission, State college or university, agency and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the /Department of Personnel/ *Civil Service Commission*, Division of EEO/AA.

"(a) All employees and applicants for employment have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C 4A:7-3.1.

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee).

(c) Every effort should be made to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d) Supervisory employees shall immediately report all alleged violations of the State of New Jersey Policy Prohibiting Discrimination in the Workplace to (Name of Officer), EEO/AA Officer. Such a report shall include both alleged violations reported to a supervisor, and those alleged violations directly observed by the supervisor.

(e) If reporting a complaint to any of the persons set forth in subsections (a) through (d) above presents a conflict of interest, the complaint may be filed directly with the {Department of Personnel} *Civil Service Commission*, Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) In order to facilitate a prompt, thorough and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

(g) Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A copy of all complaints (regardless of the format in which submitted) must be submitted to the {Department of Personnel} *Civil Service Commission*, Division of EEO/AA, by the State agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(j) An investigatory report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include, at a minimum:

1. A summary of the complaint;

2. A summary of the parties' positions;

3. A summary of the facts developed through the investigation; and

4. An analysis of the allegations and the facts. The investigatory report will be submitted to (State agency head) who will issue a final letter of determination to the parties.

(k) The (State agency head or designee) will review the investigatory report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination in the Workplace has been substantiated. If a violation has occurred, the (State agency head or designee) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed,

setting forth the results of the investigation and the right of appeal to the Merit System Board as set forth in subsection (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA, {Department of Personnel} *Civil Service Commission*, shall be furnished with a copy of the final letter of determination.

1. The letter shall include, at a minimum:

- i. A brief summary of the parties' positions;
- ii. A brief summary of the facts developed during the investigation; and
- iii. An explanation of the determination, which shall include whether:

(1) The allegations were either substantiated or not substantiated; and

(2) A violation of the Policy Prohibiting Discrimination in the Workplace did or did not occur.

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances. The State agency head shall

provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(m) A complainant who is in the career, unclassified or senior executive service, or who is an applicant for employment, who disagrees with the determination of the (State agency head or designee), may submit a written appeal, within twenty days of the receipt of the final letter of determination from the (State agency head or designee), to the {Merit System Board} *Civil Service Commission*, PO Box 312, Trenton, NJ 08625. The appeal shall be in writing and include all materials presented by the complainant at the State agency level, the final letter of determination, the reason for the appeal and the specific relief requested.

1. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The {Commissioner} *Commission* may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in this section or a combination of procedures as the {Commissioner} *Commission* deems appropriate. See N.J.A.C. 4A:2-1.7.

2. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the Commission shall decide those issues in the course of its determination.

{2. The Merit System Board} **3. *The Civil Service Commission*** shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

{3.} **4.** The appellant shall have the burden of proof in all discrimination appeals brought before the {Merit System Board} ***Civil Service Commission***.

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the {Merit System Board} ***Civil Service Commission*** at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee.

1. The burden of proof shall be on the appellant.

2. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested.

3. If disciplinary action has been recommended in the final letter of determination, the party(ies) charged may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the {Merit System Board} ***Civil Service Commission*** of decisions on discrimination complaints, regardless of

whether or not the complaint was initially filed directly with the Director of EEO/AA.

(p) Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State agency head or designee.

1. Complaints may be filed with the following external agencies:

i. Division on Civil Rights

N.J. Department of Law & Public Safety

(Within 180 days of the discriminatory act)

ii. US Equal Employment Opportunity Commission (EEOC)

(Within 300 days of the discriminatory act)"