Attorney General

Barbara Lindsey Sims
Special Assistant
Attorney General

June 5, 1978

Lee E. Sheehy
Special Assistant
Attorney General

Department of Personnel - Proposed Temporary Rules Amendments and Repeals to 2 MCAR §§ 2.044, 2.048, 2.064, 2.084, and 2.087

As we discussed, I have approved the proposed temporary rules amendments and repeals submitted with one exception. The new language proposed for the last sentence of 2 MCAR § 2.048 is not approved because the Department has failed to establish its statutory authority for such a temporary rule.

LES:mb



Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED TEMPORARY RULES GOVERNING EXAMINATION AND REFERRAL OF CANDIDATES FOR CLASSIFIED POSITIONS IN STATE CIVIL SERVICE AND EMERGENCY APPOINTMENTS TO CLASSIFIED POSITIONS

ORDER ADOPTING TEMPORARY RULES

Notice of intent to adopt temporary rules amending 2 MCAR §§ 2.044, 2.048, 2.064, 2.084 and 2.087 and inviting all interested persons to comment was duly published in the State Register on May 1, 1978 at 2 S.R. 1954 as required by Minn. Stat. § 15.0412, subd. 5 (1977 Supp.) and authorized by Laws of 1978, Ch. 734.

After affording interested persons an opportunity to present written data, statements and arguments, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW THEREFORE, IT IS ORDERED that these temporary rules identified as Amendments to Existing Personnel Rules 2 MCAR §§ 2.048, 2.084 and 2.087 as published at 2 S.R. 1954 and 2 MCAR §§ 2.044 and 2.064 as amended pursuant to comments received from interested persons are adopted this 26th of May, 1978, pursuant to authority vested in me by Minn. Stat. §§ 43.05, subd. 2(2) (1976), 15.0412, subd. 5 (1977 Supp.) and Laws of 1978, Ch. 734.

STATE OF MINNESOTA
DEPARTMENT OF PERSONNEL

Clarence E. Harris
Commissioner of Personnel

MINNESOTA STATE EMPLOYEES UNION

AFFILIATED WITH
THE AMERICAN FEDERATION OF STATE
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

COUNCIL NO. 6
236 EAST PLATO BOULEVARD
SAINT PAUL, MINNESOTA 55107

AREA CODE 612
TELEPHONE 291-1020

May 17, 1978

TO: Julie Vikmanis
Department of Personnel

FROM: Pete Benner PB

The Minnesota State Employees Union, AFSCME Council No. 6, AFL-CIO, has reviewed the proposed temporary rules published in the State Register on May 1, 1978. Our comments are as follows:

1) 2MCAR 2.044

a) The bar to repeat examinations should not apply to experience and training ratings. Substantive changes can occur in an applicants experience and training which should be recognized by the testing procedure. Lifting the bar in this case would not threaten the security of the testing process.

b) The language regarding the transfer of scores on initial screening devices from open competitive to promotional exams should: 1) define what is included under the term "initial screening device" and; 2) clearly state that the transfer of the score is at the option of the applicant.

2) 2MCAR 2.064

With eligible lists for classes for which continuous or frequent testing is conducted, the Commissioner should inform candidates at the time. Their name is placed on the list the minimum length their name shall be on the list.

PB/dh

ADMIN 1000 (REV. 4/77)

STATE OF MINNESOTA

DEPARTMENT of Corrections

Office Memorandum

TO : Julie Vikmanis, Manager
Examining & Referral

DATE: 5/15/78

FROM : Ted Spencer
Personnel Director

PHONE:

SUBJECT: Comment on Proposed temporary rules governing examination and referral of candidates for classified positions in state civil service

In reviewing the proposed temporary rules regarding the duration of eligible list (2MCAR 2.064), I note that the considerations made when determining whether to cancel or merge an eligible list include the number of anticipated vacancies, the frequency of previous examination administration, continued candidate availability, and changes in the selection process. I note further that the considerations to be taken into account when determining the length of eligible list for classes for which continuous or frequent testing is conducted are limited to the number of anticipated vacancies and "average length of candidate availability". I would suggest that here too, consideration be given to changes in the selection process, particularly so with promotional examinations where a rating of candidate efficiency is conducted by the operating agency and where performance can be expected to have changes significantly over a period of time which could be considerably less than than the maximum three year eligibility period even if candidates continue to be eligible throughout that time. I therefore suggest that the rules regarding duration of eligible lists for classes with continuous or frequent testing be amended to parallel very closely the suggested wording regarding the disposition of eligible lists in general. Specifically, I would suggest that the last sentence of the proposed rules be changed to read as follows: "With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of their name on the eligible lists and continue for a period established by the Commissioner taking into consideration the number of anticipated vacancies, continued candidate availability, and changes in the selection process".

TS:cjr

MAY 19 2 57 PM '78
STATE OF MINNESOTA
DEPT. OF PERSONNEL

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Personnel Recruitment and Selection Division

Proposed Temporary Rule Governing Examination and Referral of Candidates for Classified Positions in State Civil Service and Emergency Appointments to Classified Positions

Notice is hereby given that the following amendments to 2 MCAR §§ 2.044, 2.048, 2.064, 2.084, and 2.087 governing the examination and referral of candidates for classified positions in the state civil service and emergency appointments to classified positions are proposed for adoption as temporary rules as authorized by Minn. Stat. § 15.0412, subd. 5 (1977 Supp.), and Laws of 1978, ch. 734, pending completion of a full hearing and adoption of permanent rules.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed amendments for 20 days immediately following publication of this material in the *State Register* by writing to Julie Vikmanis, Manager of the Examining and Referral Division, Department of Personnel, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of comments received.

Clarence E. Harris
Acting Commissioner

April 17, 1978

Temporary Rule as Proposed

2 MCAR § 2.044 Conduct of selection processes. Any or all parts of the selection processes shall be held at such times and places as in the judgment of the Commissioner most nearly meet the convenience of the applicants, practicability of administration, and needs of the service. The selection process shall be conducted either by the Commissioner or persons designated by the Commissioner. No person whose application has been accepted shall be entitled to take any part of the selection process on a date, time or place other than those determined by the Commissioner. The Commissioner may prohibit applicants from repeating an examination within a six month period from the date of the administration of the previous examination in order to protect the security of examinations and provide a reasonable period between selection process administrations. Where classes are open to competition on both a competitive and promotional basis within a six month period and the initial screening device in both processes is similar, provision shall be made for eligible employees to use the score obtained in the initial screening device of the selection process in which they first participated for the alternate process.

2 MCAR § 2.048 Order of names on eligible list. Names of eligibles shall be placed on the eligible list in the order of their final earned rating plus preference credit provided that the earned rating was a passing grade. In the case of a tie between a veteran and a non-veteran, the name of the veteran shall be placed ahead of a non-veteran. ~~In case of other ties in final ratings, names shall be placed on the list in order of rating earned on the part of the selection process given the greatest weight. Any remaining ties shall be broken by arranging names on the basis of the last four digits of the Social Security number using a random point of origin.~~ In other cases where two or more candidates have identical final scores their names shall be placed on the eligible list in random order.

2 MCAR § 2.064 Duration of eligible lists. The Commissioner shall determine the period during which promotional or open competitive eligible lists shall remain in effect. However, this period shall not be less than six months for open competitive lists or one year for layoff, reemployment or promotional lists, nor more than three years for any list, except for layoff lists, where the eligibility of a candidate shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years. If an eligible list exists for any class and the Commissioner deems it necessary to establish another such list for the same class, the existing list ~~shall ordinarily~~ may, at the discretion of the Commissioner, taking into consideration the number of anticipated vacancies, frequency of previous examination administration, continued candidate availability, and changes in the selection process, be cancelled. At the discretion of

the Commissioner, an existing list may be combined with the new list by placing names of eligibles in order of final ratings as provided in these rules. The eligibility of individuals placed on such combined lists shall expire at the end of the period established by the Commissioner, but at the discretion of the Commissioner, such eligibility may be extended for an additional period or periods not to exceed three years. ~~, except for persons on layoff lists, whose eligibility shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years.~~ With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of their name on the eligible list and continue for a period established by the Commissioner taking into consideration the number of anticipated vancancies and average length of candidate availability.

2 MCAR § 2.084 Certification of eligibles.

A. Order of certification. The one name highest on the layoff list shall be certified for one vacancy. In the case of competitive eligible lists, upon initial entry into the state service, the Commissioner shall certify the first ten names, when avaialble, on such list, together with any additional names of persons having the same score as the tenth name so certified. In the case of promotional eligible lists, the first three names on such lists shall be certified, together with any additional names of persons having examination ratings within three points of the person on the list with the highest examination ratings, and with any additional names of persons having the same score as the last name certified in accordance with the above.

Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except when the Commissioner is satisfied that the facts and reasons specified by the appointing authority warrant such action, certification may be limited to the eligibles possessing the special qualifications.

~~B. Multiple vacancies. If more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy shall be certified.~~

2 MCAR § 2.087 Emergency appointment. An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. The Commissioner shall not approve successive emergency appointments nor shall the Commissioner approve more than three emergency appointments for one person within ~~one calendar year~~ any twelve month period. (Minn. Stat. 43.20, subd. 3.)

DPW 47

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the Commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

When possible, an emergency appointment shall originally be made at the minimum rate for the class to which the position thus filled can be allocated properly. The Commissioner shall allocate the position filled by emergency appointment to the proper class and shall notify the appointing authority of such allocation and the rate of pay applicable thereto. After such notice no payroll reporting a different rate of pay shall be approved.

No seniority shall be gained as a result of an emergency appointment.

Department of Public Welfare
Medical Assistance Division
Proposed Amendment to Rule 47 Governing the Medical Assistance Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155, on June 5, 1978,

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

Department of Personnel

Request for Public Comment

Notice is hereby given that the following amendments to 2 MCAR §§ 2.044, 2.048, 2.064, 2.084, and 2.087 governing the examination and referral of candidates for classified positions in the state civil service and emergency appointments to classified positions are proposed for adoption as temporary rules as authorized by Minn. Stat. § 15.0412, Subd. 5 (1977 Supp.) and Minn. Laws 1978, Ch. 734, pending completion of a full hearing and adoption of permanent rules.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed amendments for 20 days immediately following publication of this material in the State Register by writing to Julie Vikmanis, Manager of the Examining and Referral Division, Department of Personnel, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of comments received.

Dated: April 17, 1978

Clarence E. Harris

Clarence E. Harris
Acting Commissioner of Personnel

ADMIN 1000 (REV. 4/77)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - 307 Space Center
Personnel

Office Memorandum

TO : Mike Miller
Special Assistant Attorney General

Lee Sheehy
Special Assistant Attorney General

DATE: May 26, 1978

FROM : Barbara Lindsey Sims Bonnie Sims
Special Assistant Attorney General

PHONE: 6-4349

RECEIVED
MAY 26 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT: Temporary Rules

Attached for your review and approval are the proposed temporary rules of the Department of Personnel amending 2 MCAR §§ 2.044, 2.048, 2.064, 2.084 and 2.087. The following documents are enclosed:

1. Request for Public Comment,
2. Rules as published in the State Register on May 1, 1978,
3. Public comments received (2),
4. Order adopting temporary rules,
5. Temporary Rules as adopted.

Minn. Laws 1978, Ch. 734 made several amendments to Minn. Stat. Ch. 43, which created a conflict between existing rules and the new statutory language. The amendments to the following rules are necessary to bring the rules into conformity with Minn. Laws 1978, Ch. 734: O.K. to repeal but interview leg.

1. 2 MCAR § 2.048 and 2.084 O.K. are amended as a result of Minn. Laws 1978, Ch. 734 § 6 which increases the number of candidates which may appear on an eligible list and renders tie breaking procedures obsolete.

2. 2 MCAR § 2.087 is amended to conform to Minn. Laws 1978, Ch. 734 § 9.

3. The amendment to 2 MCAR § 2.044 O.K. and 2.064 O.K. are authorized by Minn. Laws 1978, Ch. 734 §§ 2 and 3. Both rules have been amended since publication in the state register based on comments received from AFSCME, Council No. 6 and Ted Spencer of the Department of Corrections. 2 MCAR § 2.044 was amended to apply only to written and oral examinations and therefore permit employees to retake examinations consisting of an experience and training rating more frequently than every six months. The amendments make it unnecessary to define initial screening device. 2 MCAR § 2.064 was amended as suggested by Ted Spencer.

BLS:dag
Attachments

2 MCAR § 2.044 Conduct of selection processes. Any or all parts of the selection processes shall be held at such times and places as in the judgement of the Commissioner most nearly meet the convenience of the applicants, practicability of administration, and needs of the service. The selection process shall be conducted either by Commissioner or persons designated by the Commissioner. No person whose application has been accepted shall be entitled to take any part of the selection process on a date, time or place other than those determined by the Commissioner. In order to protect the security of examinations by providing a reasonable period between test administrations applicants shall be prohibited from participating in the same written or oral tests more than once within a six month period. However, if the same written or oral test is used for more than one classification or if the classification is opened for competition on both a competitive and promotional basis within the six month period, an applicant shall, upon application, be permitted to use scores obtained on the written or oral portion of the initial examination on the subsequent examination.

2 MCAR § 2.048 Order of names on eligible list. Names of eligibles shall be placed on the eligible list in the order of their final earned rating plus preference credit provided that the earned rating was a passing grade. In the case of a tie between a veteran and a non-veteran, the name of the veteran shall be placed ahead of a non-veteran. ~~In case of other ties in final ratings, names shall be placed on the list in order or rating earned on the part of the selection process given the greatest weight. Any remaining ties shall be broken by arranging names on the basis of the last four digits of the Social Security number using a random point of origin.~~ In other cases where two or more candidates have identical final scores their names shall be placed on the eligible list in random order.

2 MCAR § 2.064 Duration of Eligible Lists. The Commissioner shall determine the period during which promotional or open competitive eligible lists shall remain in effect. However, this period shall not be less than six months for open competitive lists or one year for layoff, reemployment or promotional lists, nor more than three years for any list~~.~~ except for layoff lists, where the eligibility of a candidate shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years. If an eligible list exists for any class and the Commissioner deems it necessary to establish another such list for the same class, the existing list ~~shall ordinarily~~ may, at the discretion of the Commissioner, taking into consideration the number of anticipated vacancies, frequency of previous examination administration, continued candidate availability, and changes in the selection process, be cancelled. At the discretion of the Commissioner, an existing list may be combined with the new list by placing names of eligibles in order of final ratings as provided in these rules. The eligibility of individuals placed on such combined lists shall expire at the end of the period established by the Commissioner, but at the discretion of the Commissioner, such eligibility may be extended for an additional period or periods not to exceed three years~~, except for persons on layoff lists, whose eligibility shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years.~~ With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of their name on the eligible list and continue for a period established by the Commissioner taking into consideration the number of anticipated vacancies, continued candidate availability, and changes in the selection process.

2 MCAR § 2.084 Certification of Eligibles.

A. Order of Certification. The one name highest on the layoff list shall be certified for one vacancy. In the case of competitive eligible lists, upon initial entry into the state service, the Commissioner shall certify the first ten names, when available, on such list~~.~~ together with any additional names of persons having the same score as the tenth name so certified. In the case of promotional eligible lists, the first three names on such lists shall be certified, together with any additional names of persons having examination ratings within three points of the person on the list with the highest examination rating~~.~~ and with any additional names of persons having the same score as the last name certified in accordance with the above.

Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except when the Commissioner is satisfied that the facts and reasons specified by the appointing authority warrant such action, certification may be limited to the eligibles possessing the special qualifications.

~~B. Multiple vacancies.--If more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy shall be certified.~~

2 MCAR § 2.087 Emergency Appointment. An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. The Commissioner shall not approve successive emergency appointments nor shall the Commissioner approve more than three emergency appointments for one person within ~~one calendar year.~~ any twelve month period. (M.S. 43.20, Subd. 3)

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the Commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

When possible, an emergency appointment shall originally be made at the minimum rate for the class to which the position thus filled can be allocated properly. The Commissioner shall allocate the position filled by emergency appointment to the proper class and shall notify the appointing authority of such allocation and the rate of pay applicable thereto. After such notice no payroll reporting a different rate of pay shall be approved.

No seniority shall be gained as a result of an emergency appointment.

(Filed June 28, 1974)

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 5/26 Temporary Rule X

Resubmitted and Received _____

DUE DATE 6/2

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved ✓ Date Sent Back to Agency _____

- -

1. Rules as Adopted _____
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable _____
4. Order for Hearing _____
5. Notice of Hearing _____
   (i) Sufficiency _____
6. Secretary of State's List _____
7. Certificate of Acquisition of Secretary of State's List _____
8. Affidavit of Mailing _____
   (i) At least 30 days prior to hearing _____
9. Statement of Need and Evidence _____
10. Hearing Examiner's Report _____
11. Agency's Findings of Fact _____
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting _____
14. Report of Chief Hearing Examiner _____
    (i) Finding of No Substantial Change _____
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures _____
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

Lincoln w/ B. Sims 6/2/78

2.048

① Since order is now irrelevant since all names, even beyond 10, are certified, its meaningless to have soc. security tie-breaking rule

2.046

ok. as implementation of explicit Temp. rule making auth. est. pres. to 43.13, Sub 4, because it clarifies freq. of testing procedure

2.084

① Amendments implements spec. stat. chgs
② Repeal because spec. stat. chgs. make repealed lang. illegal or unworkable