

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #578

Permanent Rule_____

Temporary Rule__X__

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 3/3/80 DUE DATE 3/10/80

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State_____
b. Approved 3/10/80 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_____
   Sufficiency_____

6. Secretary of State's List_____(one copy only)

7. Certificate of Acquisition of
   Secretary of State's List_____

8. Secretary of State's Certification of Delivery
   of Secretary of State's List to Agency_____

9. Affidavit of Mailing_____
   At least 30 days prior to hearing_____

10. Publication in State Register_____
    At least 30 days prior to hearing_____

11. Statement of Need and Evidence_____

12. Hearing Examiner's Report_____

13. Agency's Findings of Fact_____

14. Certificate of Board's Resolution
    Adopting Rules, where applicable_____

15. Order Adopting_____

16. Report of Chief Hearing Examiner_____

17. Order Approving Incorporation by Reference,
    where applicable_____

18. Certificate of Compliance with Rulemaking Procedures_____

19. Copy of Notice of Intent to Solicit Outside Opinion,
    where applicable_____

20. Petition by Public, where applicable_____

ADMIN 1000 (Rev. 1/78)
SF-00006-01

Our File: 578

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : BARBARA C. SUNDQUIST
Commissioner of Personnel

DATE: March 10, 1980

Attn: ANDREA KIRCHER

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Repeal of the Temporary Rules Governing the Band Width Certification Program

The above-captioned temporary rules have been approved by this office.

While the statute does not require it, this office recommends that an Order of Adoption and a copy of the Rules as Adopted be filed with the Secretary of State. It is the department's responsibility to comply with the Notice provisions of Minn. Stat. § 15.0412, Subd. 5.

In the future this office requests that you provide at least one copy of all temporary rule documents for our files.

If you have any questions, do not hesitate to contact me.

JEH/bw
cc: Duane Harves
Susan Robertson

~~2 MCAR § 2.300 Conduct of band-width certification experiment. Pursuant to Minn. Laws 1978, ch. 734, § 17, the commissioner has authority to temporarily adopt band-width certification procedures based on the reliability of selection processes in order to determine the appropriateness of permanently adopting such procedures for all certifications which would otherwise be made under the provisions of Minn. Stat. § 43.18. This experiment will be conducted in accordance with the following rules.~~

~~2 MCAR § 2.301 Selection of job classes. The commissioner shall designate at least ten classifications for inclusion in the experimental band-width certification program. The classifications to be included shall be selected to make the experiment as representative of actual conditions as possible to determine the utility, practicality, and overall effect of band-width certification procedures for filling classified positions. In making the selection of classes to be included in the experiment the commissioner shall consider the following factors:~~

~~1. The number of incumbents in the classification with emphasis on large classes.~~

~~2. The number of anticipated appointments to be made from competitive eligible lists with emphasis on frequently filled classes.~~

~~3. The number of anticipated applicants with emphasis on classes eliciting high levels of competition.~~

~~4. The range of different selection processes used alone or in combination to screen candidates including one each of classes where selection is based on written test only, experience and training rating only, written test combined with oral examination, and experience and training rating combined with oral examination.~~

5. The number of departments and the number of appointing authorities utilizing the classification with emphasis on classes widely dispersed throughout the state service.

6. Selection of at least one class in each of the A, B, and C salary schedules.

7. Selection of at least one class used in departments governed by collective bargaining agreements and at least one class used in departments not governed by collective bargaining agreements.

8. Selection of at least one class used in departments governed by United States Civil Service Merit System Standards.

2 MCAR § 2.302 Public notice. The commissioner shall give public notice of the classes selected for the band-width certification experiment by including a list of those classes to which band-width certification procedures shall apply in the bi-monthly announcement of openings of competitive examinations published by the Department of Personnel and shall include a brief explanation of the program when announcing individual classes included in the program as open to competition.

2 MCAR § 2.303 Determination of the width of the band to be certified for each class. The commissioner shall determine the band-width to apply to certifications for each class selected for the experiment basing that determination upon the statistical reliability of the selection instruments used for the classes. Reliability calculations shall be based upon scientifically accepted statistical methods.

2 MCAR § 2.304 Certification procedures. The following certification procedures will apply to certifications made for the selected classes from competitive eligible lists and shall supersede the certification requirements

of Minn. Stat. § 43.18, but shall not apply where the provisions of Minn. Stat. § 43.15, subd. 5 expand the appointment list beyond the number which application of these procedures would provide.

The commissioner shall prepare appointment lists for vacant positions in the selected classes consisting of all eligibles within the reliability based certification band, randomly ordered. In determining which eligibles fall within the band, the commissioner shall select the highest final score on the eligible list without veteran's preference points and subtract from it the number derived by the calculation of the band-width to determine the lowest score to be certified. The names of all eligibles with final scores including veteran's preference points equal to or higher than that lowest score shall be included on the appointment list. Standard considerations of candidate location and employment condition availability will prevail. If the number of eligibles placed on the appointment list in accordance with the above is less than ten, as many additional names as necessary will be added from the eligible list in the order established by 2 MCAR § 2.048 and certified for appointment to bring the total number of eligibles on the appointment list to ten. In such instances all candidates with scores tied with the tenth name so selected will also be certified. In all cases the names of all eligibles certified will be randomly ordered.

If contact with the eligibles on the appointment list shows one or more candidates to be no longer available for employment, the appointing authority may contact the certification unit of the Department of Personnel to determine whether the unavailability of that candidate or candidates would result in an appointment list with additional candidates. If so, and the appointing authority desires a new appointment list from a band-width certification based on the scores of the remaining available candidates, or if fewer than ten candidates are determined to be available, the appointing authority may return the initial appointment list to secure a new appointment list to be certified under the procedures outlined above.

2 MCAR § 2.305 Record keeping and evaluation of band-width experimental program.

A. Record keeping. The commissioner shall maintain a record of the results of the reliability-based band-width certification experiment, which shall include the following:

1. The statistical reliability of all selection instruments used for the classes included in the experiment.

2. The band-width determination for each class based upon the statistical reliability and the calculations outlined in 2 MCAR § 2.303.

3. An anlysis of all certifications made to classes selected for the experimental program showing the number of eligibles who would have been certified under the provisions of Minn. Stat. § 43.18, the number of eligibles who would have been certified using only the band-width calculation, the number of eligibles who would have been certified using the band-width calculation and the requirement to expand to at least ten candidates and those tied with the tenth score, the number which would have been certified under Minn. Stat. § 43.15, subd. 5 and the number who were actually certified under which applicable statute or procedure.

4. A list of all appointments made under the band-width experiomental procedures and the rank of the appointees on the eligible list at the time the appointment was made.

B. Program evaluation. The commissioner shall require the appointing authority to complete an evaluation of the band-width certification procedure when making an appointment to a vacancy in one of the selected classes from a certification prepared under the band-width procedures. Such an evaluation shall include an explanation of factors considered in determining which candidates to contact for interviews and which candidate to appoint to the position. The evaluation shall also include comments about the utility, practicality and overall effectiveness of the program based on the use of the

~~certification report made under the program. A summary of such evaluations and of comments and evaluations presented by applicants and others who may be effected by the program shall be included with the Personnel Commissioner's report to the Legislature about the program.~~

APPROVED AS TO FORM AND LEGALITY

MAR 1 0 1980 19

WARREN CHAMBERS, ATTORNEY GENERAL

BY Joanne Hinderdler

SPECIAL ASSISTANT ATTORNEY GENERAL

~~all other well or unexposed domestic animals and to thereafter continue to have each such animal isolated, as aforesaid, on the premises of the owner of such animals or of the person in charge thereof until such time as the State Livestock Sanitary Board, its Executive Officer or duly authorized agent or officer of said Board, shall certify in writing to such owner or attendant that such animals are free from any such disease, or that there is no longer any reasonable necessity to keep such animals quarantined and isolated from other domestic animals.~~

~~It shall be the duty of local health officers when directed so to do by the Executive Officer of the State Livestock Sanitary Board or any officer or agent thereof, to place in a conspicuous place, or places on the premises where any such animals may be quarantined and isolated, as aforesaid, a placard or notice of the existence of such disease. No person except the owner, attendants or medical advisers shall enter any enclosures where any animal so quarantined and isolated is being kept and upon which a placard shall have been placed, as hereinbefore provided for, during the time such placard is so displayed. No person shall remove, obliterate, mutilate, or destroy any such placard so posted until the Executive Officer or a duly authorized agent or officer of the State Livestock Sanitary Board shall have certified in writing to the owner or attendant that said quarantined and isolated animal or animals referred to in the placard quarantined and isolated from other domestic animals.~~

3 MCAR § 2.061 Isolation and quarantining of livestock and poultry for infectious and dangerous communicable diseases.

A. All livestock and poultry affected with or which shows symptoms of, or has been exposed to a disease determined by the board to be a dangerous, infectious communicable disease, shall be quarantined and isolated from all other unexposed livestock or poultry until the board, its executive officer, or agent shall release the quarantine.

B. No person except the owner, attendants or medical advisers shall enter any enclosures where any livestock or poultry quarantined and isolated are being kept.

Department of Personnel

Proposed Repeal of Temporary Rules Governing the Band Width Certification Program

Request for Public Comment

Notice is hereby given that the Department of Personnel proposes to repeal the following temporary rules under the provisions of Laws of 1978, ch. 734, § 17 and Minn. Stat. § 15.0412, subd. 5 (1978) regarding the band width certification program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed repeal of the rules 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, St. Paul, Minnesota 55101. This proposed action may be delayed on the basis of comments received. Any written material received shall become part of the record in the repeal of the temporary rules.

January 22, 1980

Barbara L. Sundquist
Commissioner of Personnel

Temporary Rules as Proposed

~~**2 MCAR § 2.300 Conduct of band width certification experiment.** Pursuant to Minn. Laws 1978, ch. 734, § 17, the commissioner has authority to temporarily adopt band width certification procedures based on the reliability of selection processes in order to determine the appropriateness of permanently adopting such procedures for all certifications which would otherwise be made under the provisions of Minn. Stat. § 43.18. This experiment will be conducted in accordance with the following rules.~~

~~**2 MCAR § 2.301 Selection of job classes.** The commissioner shall designate at least ten classifications for inclusion in the experimental band width certification program. The classifications to be included shall be selected to make the experiment as representative of actual conditions as possible to determine the utility, practicality, and overall effect of band width certification procedures for filling classified positions. In making the selection of classes to be included in the experiment the commissioner shall consider the following factors:~~

~~A. The number of incumbents in the classification with emphasis on large classes.~~

~~B. The number of anticipated appointments to be made from competitive eligible lists with emphasis on frequently filled classes.~~

~~C. The number of anticipated applicants with emphasis on classes eliciting high levels of competition.~~

~~D. The range of different selection processes used alone or in combination to screen candidates including one each of classes where selection is based on written test only, experience and training rating only, written test combined with oral examination, and experience and training rating combined with oral examination.~~

~~E. The number of departments and the number of appointing~~

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."

authorities utilizing the classification with emphasis on classes widely dispersed throughout the state service.

F. Selection of at least one class in each of the A, B, and C salary schedules.

G. Selection of at least one class used in departments governed by collective bargaining agreements and at least one class used in departments not governed by collective bargaining agreements.

H. Selection of at least one class used in departments governed by United States Civil Service Merit System Standards.

2 MCAR § 2.302 Public notice. The commissioner shall give public notice of the classes selected for the band-width certification experiment by including a list of those classes to which band-width certification procedures shall apply in the bi-monthly announcement of openings of competitive examinations published by the Department of Personnel and shall include a brief explanation of the program when announcing individual classes included in the program as open to competition.

2 MCAR § 2.303 Determination of the width of the band to be certified for each class. The commissioner shall determine the band-width to apply to certifications for each class selected for the experiment basing that determination upon the statistical reliability of the selection instruments used for the classes. Reliability calculations shall be based upon scientifically accepted statistical methods.

2 MCAR § 2.304 Certification procedures. The following certification procedures will apply to certifications made for the selected classes from competitive eligible lists and shall supersede the certification requirements of Minn. Stat. § 43.18, but shall not apply where the provisions of Minn. Stat. § 43.15, subd. 5 expand the appointment list beyond the number which application of these procedures would provide.

The commissioner shall prepare appointment lists for vacant positions in the selected classes consisting of all eligibles within the reliability based certification band, randomly ordered. In determining which eligibles fall within the band, the commissioner shall select the highest final score on the eligible list without veteran's preference points and subtract from it the number derived by the calculation of the band width to determine the lowest score to be certified. The names of all eligibles with final scores including veteran's preference points equal to or higher than that lowest score shall be included on the appointment list. Standard considerations of candidate location and employment condition availability will prevail. If the number of eligibles placed on the appointment list in accordance with the above is less than ten, as many additional names as necessary will be added from the eligible list in the order established by 2 MCAR § 2.048 and certified for appointment to bring the total number of eligibles on the appointment list to ten. In such instances all candidates with scores tied with the tenth name so selected will also be certified. In all cases the names of all eligibles certified will be randomly ordered.

If contact with the eligibles on the appointment list shows one or more candidates to be no longer available for employment, the appointing authority may contact the certification unit of the Department of Personnel to determine whether the unavailability of that candidate or candidates would result in an appointment list with additional candidates. If so, and the appointing authority desires a new appointment list from a band-width certification based on the scores of the remaining available candidates, or if fewer than ten candidates are determined to be available, the appointing authority may return the initial appointment list to secure a new appointment list to be certified under the procedures outlined above.

2 MCAR § 2.305 Record keeping and evaluation of band-width experimental program.

A. Record keeping. The commissioner shall maintain a record of the results of the reliability based band-width certification experiment, which shall include the following:

1. The statistical reliability of all selection instruments used for the classes included in the experiment.

2. The band-width determination for each class based upon the statistical reliability and the calculations outlined in 2 MCAR § 2.303.

3. An analysis of all certifications made to classes selected for the experimental program showing the number of eligibles who would have been certified under the provisions of Minn. Stat. § 43.18, the number of eligibles who would have been certified using only the band-width calculation, the number of eligibles who would have been certified using the band-width calculation and the requirement to expand to at least ten candidates and those tied with the tenth score, the number which would have been certified under Minn. Stat. § 43.15, subd. 5 and the number who were actually certified under which applicable statute or procedure;

4. A list of all appointments made under the band-width experimental procedures and the rank of the appointees on the eligible list at the time the appointment was made.

B. Program evaluation. The commissioner shall require the appointing authority to complete an evaluation of the band-width certification procedure when making an appointment to a vacancy in one of the selected classes from a certification prepared under the band-width procedures. Such an evaluation shall include an explanation of factors considered in determining which candidates to contact for interviews and which candidate to appoint to the position. The evaluation shall also include comments about the utility, practicality and overall effectiveness of the program based on the use of the certification report made under the program. A summary of such evaluations and of comments and evaluations presented by applicants and others who may be affected by the program shall be included with the Personnel Commissioner's report to the Legislature about the program.

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Space Center

Office Memorandum

TO : Joanne Hinderaker
Special Assistant Attorney General

DATE: February 29, 1980

FROM : Andrea Kircher AMK
Special Assistant Attorney General

PHONE: 296-7960

SUBJECT: Proposed Repeal of Temporary Rules Governing the Band Width Certification Program

Attached for your review and approval are the documents to repeal the temporary rules of the Department of Personnel, 2 MCAR §§ 2.300 - 2.305, governing the bandwidth certification program. The following documents are enclosed:

1. Request for Public Comment,
2. Rules as published in the State Register on February 11, 1980 at 4 S.R. 1253,
3. Order Repealing temporary rules,
4. Laws of 1978 Ch. 734 § 17.

The rules as repealed are identical to the rules proposed to be repealed and as published at 4 S.R. 1253.

Laws of 1978, Ch. 734, § 17 established an experimental bandwidth certification program and directed the Commissioner of Personnel to adopt temporary procedural rules to implement the program. The temporary program has come to an end and these rules are repealed accordingly.

AMK:jh
Enclosures

PRINTED ON RECYCLED PAPER

Department of Personnel

Proposed Repeal of Temporary Rules
Governing the Band Width
Certification Program

Request for Public Comment

Notice is hereby given that the Department of Personnel proposes to repeal the following temporary rules under the provisions of Minn. Laws 1978, ch. 734, § 17 and Minn. Stat. § 15.0412, subd. 5 (1978) regarding the band width certification program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed repeal of the rules 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, St. Paul, Minnesota 55101. This proposed action may be delayed on the basis of comments received. Any written material received shall become part of the record in the repeal of the temporary rules.

Barbara L. Sundquist
Commissioner of Personnel

January 22, 1980

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

In the Matter of the Proposed Repeal
of the Temporary Rules Governing
The Band Width Certification Program

ORDER REPEALING
TEMPORARY RULES

Notice of intent to repeal temporary rules 2 MCAR §§ 2.300-2.305 and inviting all interested persons to comment was duly published in the State Register on February 11, 1980 at 4 S.R. 1253 as required by Minn. Stat. § 15.0412, subd. 5 (1978) and authorized by Minn. Laws 1978, Ch. 734 § 17.

After affording interested persons an opportunity to present written data, statements and arguments, having considered all the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria,

NOW, THEREFORE, IT IS ORDERED that these temporary rules identified as 2 MCAR §§ 2.300-2.305 as published at 4 S.R. 1253 are repealed this 29th day of February, 1980 pursuant to authority vested in me by Minn. Stat. §§ 43.05, subd. 2 (2) (1976), 15.0412, subd. 5 (1978) and Laws of 1978, Ch. 734 § 17.

Barbara L. Sundquist
Commissioner of Personnel

S.F.No. 1864
CHAPTER No. 734

AN ACT

Distributed By
Secretary of the SENATE
Room 231, State Capitol
St. Paul, 296-2343

relating to state employees; improving testing procedures; tightening provisions relating to provisional appointments; providing for a pilot reliability-based band width certification program; altering certain requirements for appointment and benefit eligibility; establishing special procedures for filling certain positions; providing for modified reimbursements of costs; providing notification of appeal rights; appropriating money; amending Minnesota Statutes 1976, Sections 43.13, Subdivision 1, and by adding a subdivision; 43.14, Subdivision 1; 43.18; 43.19, Subdivision 1; 43.20, Subdivisions 2, 3, 5, and by adding a subdivision; 43.24, Subdivision 1; 43.32, Subdivision 11; 43.327, Subdivisions 1 and 2; 43.491, by adding a subdivision; and Chapter 43, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 43.13, Subdivision 1, is amended to read:

43.13 [EXAMINATIONS.] Subdivision 1. [FAIR TESTS; RECORDS.] All examinations for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the persons examined to efficiently discharge the duties of the ~~office or employment~~ position sought by them. Each applicant in an oral examination shall be rated individually by each examiner who

participate at his own expense in the hospital benefits coverage and medical benefits coverage provided for other state employees by sections 43.42 to 43.50. The retired employee may also, at his own expense, continue hospital benefits coverage and medical benefits coverage for his dependents who meet the general dependent eligibility requirements for those coverages. The coverage shall be coordinated with relevant health insurance benefits provided through the federally-sponsored medicare program. Within 30 days after the effective date of this section or within 30 days after the effective date of his retirement, whichever day is later, the employee shall notify the commissioner or his designee of his intention to continue the coverage. The commissioner shall establish forms and procedures for exercise of the option provided by this section and for payment of necessary premiums.

Sec. 17. [RELIABILITY-BASED BAND WIDTH CERTIFICATION.]

Subdivision 1. [SELECTION OF CLASSES.] Notwithstanding the provisions of Minnesota Statutes, Section 43.18 or any other law to the contrary, the commissioner of personnel shall designate job classes in the state classified civil service to be filled according to the reliability-based band width certification procedure specified in this section. The commissioner shall designate classes covering a broad spectrum of types of employment and shall designate classes which include positions under the jurisdiction of the greatest possible number of state agencies.

Subd. 2. [DEFINITION.] As used in this section, reliability-based band width certification shall mean a process for the preparation of a list of certified eligibles for filling vacant positions within a job class, based upon the statistical reliability of the examination. The list

shall be composed of those persons who received a passing score and whose scores fell within that top range of scores which the reliability determination reveals to be substantially indistinguishable. In no event shall a list of certified eligibles prepared under the band width certification procedure contain less than ten names unless fewer than ten persons received passing scores, in which case all persons who received passing scores shall be placed on the list. Names of certified eligibles on a list prepared under this section shall be placed in random order and shall not be ranked when delivered to an appointing authority. This section shall not be deemed to be inconsistent with other laws which would expand the size of an eligible list beyond the size provided for in this section.

Subd. 3. [PROCEDURES.] The commissioner shall establish uniform procedures for the implementation of this section. The procedures shall be adopted as temporary rules and, notwithstanding the limitations of Minnesota Statutes, Section 15.0412, shall be effective for the duration of the band width certification program unless superseded, repealed or amended by temporary or other rule. When a list of certified eligibles prepared pursuant to this section is supplied to an appointing authority, the list shall be accompanied by an explanation of the program and a copy or summary of applicable rules.

Subd. 4. [MONITORING; REPORT.] No later than January 1, 1980, the commissioner shall provide the governor and the legislature with a report giving the procedures, results, costs and evaluations of the program and the substance of comments received from affected persons. In the report he shall recommend whether to continue the program and what

changes may be necessary. Periodically throughout the duration of the program he shall advise the governmental operations committees of the senate and the house of representatives and the legislative audit commission on the progress of the program and his evaluation to date.

Sec. 18. [APPROPRIATIONS.] $244,700 is appropriated from the general fund in the state treasury to the commissioner of personnel for the period ending June 30, 1979, to be used for personnel technical services, revision and mailing of job announcements, establishment of a toll free telephone service to assist potential applicants, determination of applicant availability and any other activity authorized by this act.

The authorized complement of the department is increased by ten persons.

Sec. 19. [EFFECTIVE DATE.] This act is effective the day following final enactment. Section 17 expires June 30, 1980. Procedures relating to examinations announced prior to May 1, 1978, shall be completed pursuant to law in effect on the day prior to the effective date of this act. Certifications of eligibles in force on May 1, 1978, shall remain effective pursuant to law in effect on the day prior to the effective date of this act.