

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE SANDRA S. GARDEBRING  
COMMISSIONER OF HUMAN SERVICES

BEFORE SISTER MARY MADONNA ASHTON  
COMMISSIONER OF HEALTH

BEFORE RUDY PERPICH  
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF  
RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING  
CERTIFICATION METHODS

STATEMENT OF NEED  
AND REASONABLENESS

I. The following considerations constitute the regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive grant-in-aid funds for its various human services, public health and public safety programs, it must establish and maintain a merit system for personnel administration. See, e.g. 42 USC Ch. <sup>1/</sup>62.

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1/ Also see sections of the United States Code and Code of Federal regulations cited herein where the following programs have statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis:

Aid to Families With Dependent Children - "AFDC" [42 USC sec. 602 (a) (5)]  
Food Stamps [7 USC sec. 2020 (e) (B) ]  
Medical Assistance - "MA" [42 USC sec. 1396 (a) (4) (A)]  
Aid to the Blind [42 USC sec. 1202 (a) (5) (A)]  
Aid to the Permanently and Totally Disabled [42 USC sec. 1352 (a) (5) (A)]  
Aid to the Aged, Blind or Disabled [42 USC sec. 1382 (a) (5) (A)]  
State and Community Programs on Aging [42 USC sec. 3027 (a) (4)]  
Adoption Assistance and Foster Care [42 USC 671 (a) (5)]  
Old-Age Assistance [42 USC 302 (a) (5) (A)]  
National Health Planning and Resources Development, Public Health, Service Act [42 USC 300m-1 (b) (4) (B)]  
Child Welfare Services [45 CFR 1392.49 (c)]  
Emergency Management Assistance [44 CFR 302.5]

2. Pursuant to such congressional action the Office of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred on January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration 48 Fed. Reg. 9209-9212 (March 4, 1983), codified at 5 CFR Part 900, Subpart F, which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs. (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal programs and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monies are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program, current classification and compensation plans, training, retention on the basis of performance, and fair nondiscriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (48 Fed. Reg. 9211 (March 4, 1983), codified at 5 CFR sec. 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn Stat. sec. 12.22 Subd. 3, sec. 144.071 and sec. 256.01<sup>2/</sup>2, which respectively authorize the Governor, the Commissioner of Health, and the Commissioner of Human Services to adopt necessary methods of personnel administration for implementing merit systems within their individual agencies. Collectively, the resulting programs are referred to as the "Minnesota Merit System".

5. Pursua to such statutory authority the state agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit <sup>3/</sup> System.

6. The Minnesota Supreme Court has upheld the Authority of the Commissioner of Human Services and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations. The Court quashed a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in attempting to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare. <sup>4/</sup> State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et. al., 239 Minn. 407, 420, 58 N.A. 2d 882, (1953). The court stated:

.....It is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that plan so adopted was binding upon all county welfare boards within the state .....In our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

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<sup>2/</sup> See also Minn. Stat. secs. 393.07 (5), 256.01 (4), 393.07 (3) and 256.011.

<sup>3/</sup> Minnesota Rules parts 9575.0010 - 9575.1580, parts 7520.0100 - 7520.1200, and parts 4670.0100 - 4670.4300.

<sup>4/</sup> "Director of Social Welfare" was the former title of the Commissioner of Human Services.

7. The above cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employment Labor Relations Act (Minn. Stat. secs. 179A.01 - 179A.25).

II. The justification establishing the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, is as follows:

A. Certification Methods

Minnesota Rules, parts 9575.0620 and 4670.2300 (Under the provisions of 7520.0150 Subpart 1, the Department of Human Services rules, parts 9575.0300 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.) Minor amendments are proposed to the titles of Subpart 1 of these two rules substituting the word "competitive" for "entrance." The Merit System needs, whenever practicable, to maintain consistent language throughout its rules. Other references in the rules regarding eligible registers refer to them as competitive or promotional registers. In practice, registers are also commonly referred to as either competitive or promotional registers. Since additional amendments are being proposed to these Subparts, we believe it both reasonable and timely to propose this amendment.

Amendments are proposed to Subpart 1 of these rules increasing the number of available eligibles to be certified from a competitive register from the top seven names plus those with tied scores to the top fifteen names plus those with tied scores. At the time of application, job applicants for Merit System positions are given an opportunity to indicate in what counties they are available for employment, assuming they are placed on the eligible register.

Unfortunately, many applicants are less than realistic and initially designate a much broader availability than they really desire.

Obviously, situations also do change between the time an applicant takes the examination and is subsequently referred to an agency from the register for consideration in filling a vacant position. Applicants seldom inform the Merit System office of any changes in their employment availability. As a consequence of all this, many times agencies find only one or two eligibles from the seven names referred who are still available for an employment interview in that agency. In these situations, agencies will return the certification of names to the Merit System and request additional names of available eligibles on what is known as a supplementary certification. This results in a delay in the hiring process. Several county social service/human service agency directors have expressed concerns from time to time over this delay caused by the non-availability of eligibles. The Merit System has an obligation to not only send agencies qualified eligibles to fill their vacancies but to do so in as timely a manner as possible. The personnel management system administered by the Merit System is statewide in nature covering 78 counties. Some rural county agencies are quite small with as few as ten total staff. Any vacancy in such a small agency represents a significant need and a vacancy for either a social worker or a financial worker, which are the two largest entry level classifications of employees in the Merit System, represents a critical need for the agency. The ability to initially provide agencies with the names of fifteen rather than seven eligibles for consideration in filling vacancies will significantly reduce the number of occasions when agencies must request a supplementary certification of names which, in turn, will significantly reduce the length of time necessary to complete the hiring process.

In summary, there is a demonstrated need to address the issues of supplementary certifications and the time frame necessary to complete the process of notification, interviewing and selection of eligibles to fill vacant positions in county social service agencies. The Merit System has a responsibility to

provide the most efficient and effective personnel services as practicable to agencies. It also has the capability, through the rulemaking process, to address these specific issues. Increasing the number of names certified from the competitive register to fifteen from seven is a reasonable approach to resolving the issue of supplementary certifications leading to delays in the hiring process incurred by county agencies.

Amendments are proposed to Subpart 2 of these rules increasing the number of available eligibles to be certified from a promotional register from the top three names plus those with tied scores to the top seven names plus those with tied scores. The basic rationale for these proposed amendments is the same as for the proposed amendments to Subpart 1 of the rules. Additionally, it should be mentioned that many agencies have a policy of promotion from within wherever it is practicable and many agencies also have been experiencing a growth in their total staff complement. Given that policy and that trend, increasing the number of eligibles certified from a promotional register from three to seven names will allow more current employees the opportunity to be considered for promotional opportunities in many county agencies. Again, it represents a reasonable approach to the matter and furthers a policy of "promotion from within where practicable" which has been adopted by many agencies.

Amendments to Subparts 3 and 5 of these rules merely flow from the proposed amendments to Subparts 1 and 2 of the rules. Obviously, in light of those amendments, it is necessary to change the references in these subparts from seven to fifteen and from three to seven respectively to be consistent with those proposed amendments.

Amendments are proposed to add a new Subpart 7 to parts 9575.0620 and 4670.2300 relating to affirmative action. The Commissioner of the Department of Human Services has recently developed ten departmental priorities, one of which is affirmative action. One of the goals of that priority area is to increase the recruitment and hiring of protected group members. In Minnesota, the welfare system is county administered and state supervised with the supervising agency being the Department of Human Services. Any goals of the department which are shared with counties become goals of the counties as well. The Merit System, which is part of the Department of Human Services, provides personnel management services to county agencies charged with the administration of social service/human service and income maintenance programs. The Department of Human Services has always maintained an Affirmative Action plan applicable to county agencies and to which they must comply. The department has requested the Merit System county agencies to provide information regarding the number of protected group members (women, minorities, Vietnam-era veterans and handicapped) on their respective staffs. The resulting data will be evaluated and a determination made where there is an under-representation of protected group members in the agency's workforce. Those agencies with disparities will be requested to establish hiring goals for protected group members in each of the Merit System disparate job groups (professional, support, clerical and maintenance and trades positions) for a two year period.

The proposed new amendments represent an effort to assist Merit System agencies with disparities in meeting their hiring goals for protected group members. Given the establishment of hiring goals by agencies which represent, for them, a need and the fact that the Merit System exists principally to provide personnel services to agencies, it is not only reasonable but obligatory for the Merit System to provide an appropriate level of assistance to further agency goals in this area.

Several Merit System eligible registers contain the names of protected group members. However, in many instances, they are not high enough on the register to be certified for consideration in filling a vacant position. While the proposed amendments to Subparts 1 and 2 of these rules will, if adopted, provide some relief, it is reasonable to expect that there will still be situations where agencies will not be able to consider a reasonable number of protected group members.

The proposed amendment is self-explanatory and allows, under certain circumstances, for the certification of up to three additional protected group members from each protected group for which a disparity exists in an agency. The order of their certification will be determined by their scores on the examination and they may be considered for appointment on an equal basis with other eligibles certified to the agency. The amendment is patterned after and similar to a provision in the state Department of Employee Relations statute providing for the expanded certification of protected group members to state agencies.

With the establishment of affirmative action hiring goals by Merit System agencies, there is a need for the Merit System to respond in an appropriate manner. These amendments represent a reasonable approach to assisting agencies to meet their affirmative action hiring goals and to further, in general, the consideration of protected group members to fill vacant positions in Merit System agencies. They are also consistent with the state's policy of furthering affirmative action efforts through the expanded certification of protected group members.



The foregoing authorities and comments are submitted in justification of final adoption of the above-cited proposed rule amendments.

Ralph W. Corey

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Merit System Supervisor

Dated: *June 13, 1988*