THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE
HUMAN RESOURCES DIVISION
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Chief Human Resources Officer

November 24, 2009

To: Members of the General Court
Mayors of Cities
Selectmen of Towns Employing Civil Service Personnel
City and Town Clerks
State Appointing Authorities

Fr: Paul Dietl, Chief Human Resources Officer PD

Subject: Notice of Hearing Amendments to Personnel Administration Rules

Massachusetts General Laws Chapter 31§4 requires that copies of this notice be posted by the Clerks in city or town halls and other conspicuous places. No less than three copies of the notice must be posted by the clerk, not less that one per ward in each city.

The Human Resources Division (HRD) will hold a public hearing on December 14, 2009 at 2:00 p.m. at One Ashburton Place, 10th Floor, pursuant to MGL c. 31 §§ 3, 4. The subject of the hearing is proposed amendments to the Personnel Administration Rules. The purpose of the hearing is to take information from the public. HRD will consider all testimony (both oral and written) during its review of the proposed rule changes. Attached for your convenience are a summary of the proposed rule changes as well as the proposed amendments. All persons desiring to review the proposed amendments to the Personnel Administration Rules may view them at www.Mass.gov/hrd or in person at Human Resources Division, One Ashburton Place, Room 301, Boston, MA. Seating may be limited. To ensure all issues are covered during the hearing we ask any groups attending the hearing to nominate one representative to present issues it wishes HRD to consider during its deliberations.

SUMMARY PROPOSED PERSONNEL ADMINISTRATION RULE CHANGES

PAR .05 – Examination Fees

- Codifies the existing practice of non-refundable exam fees.

PAR .06 – Examinations

- Codifies the existing practice of voiding exam results if an individual was ineligible to take the exam.

PAR .07 – Civil Service Eligible Lists

- Amended to remove applicants' names from eligibility list once appointed from the list. Prior rule allowed applicants to petition to be returned to the eligibility list if they left their position during their probationary period.

- Amended to allow the Administrator the discretion to band scores based upon a statistical measurement of reliability.

PAR .08 – Civil Service Requisitions and Certifications

- Amended to allow the Administrator the discretion to establish eligibility lists in score bands.
- Codifies the practice that if the time limits for a certification are not extended prior to expiration, the certification will be void.
- Codifies the practice that a certification list will not be issued if a new eligibility list is to be established within the time periods identified in the section.
- Codifies the practice that the appointing authority can provide negative reasons for bypass.
- Amends the rule to state that a selection from within a band will not be considered a bypass.
- Amends the rule to acknowledge an applicant's right to request an investigation of a selection from within band under section 2(a) to the Civil Service Commission.

PAR .09 – Civil Service Appointments

- Amended to allow the Administrator the discretion to establish eligibility lists in score bands.
- Amended to state that a bypass will occur when an applicant from a lower band is selected and candidates remain in the higher band.

PAR .11 – Temporary Appointments

- Codifying the practice that "acting" time in a position will not be recognized without a "Temporary Appointment".

PAR .14 – Civil Service Promotions

- Codifying the practice of only allowing a total of two preference points for veterans' preference and twenty five years of service if an individual qualifies for both.

PAR .22 – Delegation of Official Service Functions

- Clarifying that the Personnel Administrator can delegate official functions without a delegation agreement.

PROPOSED PAR RULE AMENDMENTS
Disseminated: November 24, 2009
Hearing: December 14, 2009

PAR.05 EXAMINATION FEES

(1) Time of Payment.

Applications for open competitive and open continuous examinations shall be accompanied by payment of the fee stated on the examination poster.

(2) Form of Payment.

Payment in the form of bank (cashier's) check, money order or major credit card will be accepted.

(3) Waiver of Examination Fee.

Examination fee is waived for applicants who are receiving public assistance, either state or federal. An applicant seeking waiver of fee shall indicate in the space provided on the application form the information required to establish eligibility for waiver. Waiver requests must be accompanied by evidence of eligibility for waiver at the time of application. Once an examination fee has been processed, the fee is non-refundable.

PAR.06 EXAMINATIONS

(1) Procedure

(a) The administrator shall establish procedures for competitive and other examinations to test the practical fitness of applicants.

(b) The grading of the subject of training and experience as a part of a promotional examination shall be based on a schedule approved by the administrator which shall include credits for elements of training and experience related to the position for which the examination is held.

(c) The grading of the subject of employment or experience as a part of an entry-level examination shall be based on a schedule approved by the administrator which shall include credits for elements of employment or experience related to the title for which the examination is held.

(d) At the discretion of the administrator, an applicant may be allowed to take an examination subject to later review to determine if he or she meets the eligibility requirements. If it is determined that an applicant does not meet the eligibility requirements, as set forth on the poster for the office or position, he or she shall be

declared ineligible by the administrator. If an applicant is deemed ineligible by the administrator pursuant to this section, the applicant's exam result shall be voided.

(e) Applications of persons for whom requisitions for employment have been made in accordance with the provisions of the fourth paragraph of section 26 of Chapter 31 of the General Laws shall be in the same form as required for all other applicants for positions for which employment is requested.

(2) Content of Examinations

(a) All selection procedures shall be practical in character and shall relate directly to those matters which fairly determine the relative ranking of the persons examined based on the knowledge, abilities and skills required to perform the primary duties (critical and frequent tasks) of the position title or occupational group as determined by reliable and representative job information available to the administrator. Examinations may be assembled or unassembled and may include written, oral, practical or performance tests, training and experience rating, assessment centers, other generally accepted selection procedures, or combinations of these, which, in the discretion and judgment of the administrator, are appropriate for the position title or occupational group being tested.

(b) The administrator shall, on a yearly basis, notify representatives of labor whose members are in the occupational fields to be tested of a proposed examination schedule. If the representatives of labor whose members are in an occupational field to be tested request, in writing, the opportunity to consult with the administrator concerning the subject matter to be tested on a particular examination within thirty (30) days of the notification of the proposed examination schedule, the administrator shall so consult, either through meetings or written submissions, with the representatives of labor prior to making a final determination concerning the form, method and content of an examination. The administrator shall afford professionals in occupational fields to be tested an opportunity to consult on the subject matter of examinations. The final determination as to form, method and content of an examination shall be within the discretion and judgment of the administrator.

(3) Examination Results

The passing mark for each examination shall be established by the administrator in accordance with generally accepted selection procedures.

PAR.07 CIVIL SERVICE ELIGIBLE LISTS

(1) The examination papers of persons examined for appointment and promotion shall be marked and graded, and the results recorded. Separate eligible lists may be kept of those seeking to enter any part of the service in which special qualifications are required.

(2) Once an applicant has been appointed from an original permanent full time certification, the applicant's name will be removed from the eligible list for that title.
(3) When eligible lists for the same position are established as the result of open competitive and promotional examinations, names shall be certified first from the promotional examination, second from the reemployment list if the administrator has established such a list pursuant to M.G.L. c. 31, §40, third from the list established from the open competitive examination.

(4) The examination marks shall be presented on eligible lists in whole numbers.

(5) At the discretion of the Administrator, marks may be issued as score bands. The score band shall serve as the examination mark and will be based on a statistical measurement of reliability of the exam performance of the candidates.

PAR.08 CIVIL SERVICE REQUISITION AND CERTIFICATION

(1) Whenever any appointing authority shall make requisition to fill a position, the Personnel Administrator shall, if a suitable eligible list exists, certify the names standing highest on such list in order of their place on such list, except as otherwise provided by law or civil service rule. At the Administrator's discretion, names will appear in bands pursuant to P.A.R. 07.5 and will be certified according to band. Insofar as possible, sufficient names shall be certified to enable such appointing authority to make appointments from among the number specified in PAR.09.

(2) Unless an appointing authority shall, within the time periods set forth in this paragraph, make and notify the administrator of an appointment from the names certified, the certification shall become void. An extension of the time period may be permitted by the administrator upon written request from the appointing authority, stating sound and sufficient reasons as to why the appointments can not be made during the time periods set forth. The time periods are as follows:

(a) within three weeks of any certification of names to the appointing authority by the administrator from any eligible list established as the result of a promotional examination;

(b) within six weeks of any certification of names to the appointing authority by the administrator from any eligible list established as the result of an open competitive non-public safety examination;

(c) within twelve weeks of any certification of names to the appointing authority by the Administrator from any eligible list established as the result of an open competitive public safety examination.

(d) In the event that an eligibility list will expire within the time periods listed in (a) – (c) above, the Administrator will decline to issue a certification from the list.

(3) The Administrator may, before or after an appointment has been made, cancel a certification if he finds that the certification was made in error, or that any person certified was placed on the eligible list through mistake or fraud; and, if a person has been appointed from such certification, the Administrator may revoke the appointment and order the person's discharge. No person, however, shall be deemed to have been appointed or promoted to any position requiring certification by the Administrator from an eligible list unless the appointing authority, prior to the date of expiration of such eligible list and without regard to the time periods for certifying set forth in this paragraph, shall have notified the Administrator in writing that such person has been so appointed or promoted, or that the appointing authority has notified the Administrator of its intent to appoint or promote such person, if the appointment or promotion must be delayed due to the scheduling of any training required by statute, or municipal ordinance or by-law, or departmental rule.

(4) Upon determining that any candidate on a certification is to be bypassed, as defined in Personnel Administration Rule .02, an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator, in writing, a full and complete statement of the reason or reasons for bypassing a person or persons more highly ranked, or of the reason or reasons for selecting another person or persons, lower in score or preference category. Such statement shall indicate all positive reasons for selection and/or negative reasons for bypass on which the appointing authority intends to rely or might, in the future, rely, to justify the bypass or selection of a candidate or candidates. No reasons that are known or reasonably discoverable by the appointing authority, and which have not been disclosed to the Personnel Administrator, shall later be admissible as reasons for selection or bypass in any proceeding before the Personnel Administrator or the Civil Service Commission. A selection made from within the same score band will be considered a tie and not a bypass. However, nothing in these rules will preclude an applicant from seeking an investigation by the Civil Service Commission pursuant to MGL c. 31, § 2(a) into whether a selection was the result of political consideration(s), favoritism, and/or bias.

The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass.

(5) Applicants

The Personnel Administrator shall, within fifteen days of receiving reasons for selection or bypass, review the reasons submitted and inform the appointing authority of approval or disapproval of the reasons for selection or bypass. The appointing authority shall be granted a hearing, as necessary, with the Personnel Administrator, or the Administrator's designee, during the fifteen-day review period to explain, clarify or justify reasons for selection or bypass. If the Personnel Administrator disapproves any reason or reasons for selection or bypass, he shall immediately notify the appointing authority, with clear and specific reasons for the rejection. If the Personnel Administrator accepts the reasons, he shall forthwith notify the appointing authority and the bypassed candidate or candidates,

who may then appeal the decision to the Civil Service Commission pursuant to M.G.L. Chapter 31, §2(b).

Candidates for appointment shall not be permitted to assume the duties associated with their proposed appointments until said appointments have been approved by the Personnel Administrator. Appointments and promotions made in violation of this Rule shall be void if the Administrator deems them to be a violation of this Rule, and may be subject to issuance of stop-pay orders pursuant to M.G.L. Chapter 31, §73.

All time periods in this section shall include Saturdays, Sundays, and holidays.

(6) If a requisition is made calling for persons having special qualifications in addition to the general qualifications tested by an examination, the administrator may issue a selective certification of the names of such persons from the appropriate eligible list.

(7) If a requisition is made to fill vacancies in a title for which no eligible list exists, the administrator may certify from a suitable list established to fill positions in a different title with similar specifications.

(8) The administrator shall place on the eligible list below the names of disabled veterans as defined in M.G.L. Chapter 31, §1, the names of blind persons for employment by any state department, board or commission in the office or offices of which dictating machines are used by typists to take dictation solely from such machines and shall certify the names of such persons upon receipt of requisition. The administrator may require appointing authorities to identify those requisitions filed to fill positions in accordance with M.G.L. c. 31, §3(g).

(9) Upon receipt of a requisition for full-time service, the names of intermittent, recurrent, part-time and reserve employees appointed on a permanent basis shall be certified, in accordance with these rules regarding certification, to a position with the same title in the same department or division of a department. The basis of certification shall be the order of appointment to the permanent intermittent, permanent part-time or permanent reserve position with the same title in the department or division of a department for which requisition is made; provided that any person so appointed shall serve a full probationary period after appointment to a full-time position.

PAR.09 CIVIL SERVICE APPOINTMENTS

(1) BANDED LISTS:

(a) Scores may be banded at the discretion of the Administrator.

(b) Individuals ranked on the eligibility list will be certified to the appointing authority in designated bands. An appointing authority may make its selection decision from within the band. Once an appointing authority has exhausted all applicants within a band, and further appointments remain, the appointing authority may continue to the next band certified by the administrator. In the event an applicant is not selected from a band

but selections are made from the next band, the bypass procedures and requirements in PAR .08 shall be followed. If necessary, the administrator may include multiple bands in a single certification.

(2) NON-BANDED LISTS:

(a) When the Administrator determines score banding is not appropriate, marks will be issued according to the raw score obtained on the exam, plus any preference points.

(b) When names have been certified to an appointing authority under PAR.08 and the number of appointments or promotional appointments actually to be made is n, the appointing authority may appoint only from among the first 2n + 1 persons named in the certification willing to accept appointment, e.g.,

when the number of appointments to be made is:	the appointing authority may appoint only from among the first
1	3
2	5
3	7
4	9
5	11

persons named in the certification willing to accept; provided that when more than one promotional appointment is being made, the first such promotional appointment shall be made from among the first three persons whose names are certified and who are willing to accept, the second such promotional appointment shall be made from among the first five persons whose names are certified and who are willing to accept, the third such promotional appointment shall be made from among the first seven persons whose names are certified and who are willing to accept, and so forth.

(3) If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator a written statement giving in detail the specific reasons substantiating such a conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position. For the purposes of this section, "appointments" shall include promotions.

(4) The appointing authority shall require all persons appearing for interview from an eligible list established as the result of an open competitive examination to record their education and experience in a form prescribed by the Personnel Administrator. Such education and experience must be recorded as of the date of establishment of the eligible list. Appointing authorities must evaluate such education and experience against the

entrance requirements for the title established by the administrator. The appointing authority must record on the certification that each person selected meets the entrance requirements and must return the original copy of each selected person's record of education and experience with the certification. If an appointing authority makes a finding that a person fails to meet the entrance requirements for a position, the finding must be recorded on the certification and the original copy of the individual's record of education and experience must be returned with the certification. Appointing authorities shall retain on file copies of the education and experience records of all persons selected for appointment and of all persons found not to meet entrance requirements when that finding is the basis for appointing an individual outside the 2n + 1 certification and appointment formula.

(5) No person shall be regarded as appointed to a fulltime position within the requirements of these rules unless he accepts the position and is actually employed within thirty days from the date of receipt of notice by the administrator of appointment; extension will be allowed at the discretion of the administrator for enrollment in a training program required by law.

(6) If additional names are certified to an appointing authority under the provisions of PAR.10, said appointing authority may appoint by selecting from among the number of persons specified in PAR.09(1) and from among a like number of persons whose names have been certified under the provisions of said PAR.10.

PAR.11 TEMPORARY APPOINTMENT

(1) Temporary appointments may be made only after a requisition for a temporary certification from the Administrator. Time spent by an employee "acting" in a position is not recognized unless such employee was temporarily appointed to the position.

(2) A person certified for temporary employment to a department in which temporary employment is regularly recurrent at stated periods, may within one year from the cessation of such employment or within the next calendar year be again employed in such position.

(3) The acceptance by an eligible of a temporary appointment shall not affect his standing on the eligible list for permanent appointment.

PAR.14 CIVIL SERVICE PROMOTION

(1) The examination process approved by the administrator for establishment of a promotional eligible list of ranked candidates may consist of a written examination, an oral examination, a practical test, a graded performance evaluation, or a graded schedule of seniority of service. A combination of the foregoing or other graded components through a ranking process to determine merit may be proposed by the appointing authority and approved by the administrator. The term seniority of service shall be

interpreted to refer to service after certification in the department for which the examination is held. If training and experience is a component of the promotional ranking process, a schedule of training and experience shall include as experience all relevant work experience whether within or outside the department; such schedule shall include as training all relevant education. Nothing in this rule shall be deemed to limit the authority of the administrator to determine the weight and scope of examinations as provided by law.

(2) In competitive examinations for promotion to any position in the classified official service, the administrator shall add two points to the general average mark obtained by any veteran, as defined in M.G.L. c. 31, §1, provided such veteran has first obtained a passing mark in said examination. A veteran who has also obtained twenty-five years of service shall not receive an additional two points to the general average mark.

(3) No permanent employee shall be regarded as promoted within the requirements of these rules unless he is actually employed in the position to which he is promoted within thirty days from the date of receipt of notice by the administrator of promotion. If, however, his promotion is approved by the administrator while he is serving temporarily in a position of the same or higher grade, he may continue to serve in such position as authorized by the administrator, and his permanent promotion shall not be affected by such temporary employment in a different grade notwithstanding the fact that he is not actually employed in the position to which he has been promoted during said thirty days.

PAR.22 DELEGATION OF OFFICIAL SERVICE FUNCTIONS

The administrator may, to the extent he deems practicable, delegate official service functions to municipalities and state agencies in which official service positions are subject to the civil service law. The administrator will issue delegation procedures outlining the scope of the delegated authority.