
Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation**

EMERGENCY AMENDMENT

1 CSR 20-3.030 Certification and Appointment. The board is deleting sections (1), (2), and (6) and amending existing sections (3)–(5).

PURPOSE: This amendment revises this rule pursuant to changes to Chapter 36, RSMo made by Senate Bill 1007 (2018).

EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the law effected by Senate Bill 1007 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to Chapter 36, RSMo made by Senate Bill 1007 (2018) across the departments and agencies of the executive branch of Missouri state government. Provisions of the existing rule are inconsistent with the provisions of Chapter 36, RSMo, effective August 28, 2018, and must be amended to avoid confusion or improper application, avoid potential liabilities, and ensure consistent implementation of Senate Bill 1007 (2018). A proposed amendment which covers the same material will be filed at a later date to be published in the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 17, 2018, becomes effective August 28, 2018, and expires February 28, 2019.

[(1) Request for Certification. All vacancies in part-time or full-time positions in the classified service shall be filled as provided in the law and these rules. Whenever an appointing authority proposes to fill one (1) or more vacancies in a class of positions subject to the law, the appointing authority shall submit to the director, as far in advance of the desired appointment date as possible, a requisition for the certification of eligible persons from an appropriate register. The requisition shall contain a statement showing the title and number of the positions to be filled and other information as may be required by the director. The appointing authority shall anticipate these actions sufficiently in advance of the desired appointment date to provide for allocation, certification, appointment, and necessary payroll changes (see section 36.240, RSMo).

(2) Method of Filling Vacancies. Upon receipt of a request from an appointing authority for certification of eligibles, the director shall certify the proper number of names from the appropriate register or combination of registers. When sufficient names cannot be certified, the director may authorize a provisional appointment in accordance with the provisions of these rules. The order of precedence of registers from which eligibles are certified shall be as follows: 1) an appropriate reinstatement register; 2) an appropriate promotional register; and 3) an appropriate register of eligibles.

(A) When vacancies to be filled in a class occur in a division of service from which employees in the class have been laid off, or demoted in lieu of layoff, certification from the reinstatement register first shall be limited to previous

employees of the division of service until all the available employees have been reinstated in order of rank on reinstatement register.

(B) When a register of eligibles or a promotional register contains the names of persons who are employed in the division in which the vacancy occurs, the appointing authority may request that the director certify those names in their order ahead of the names on the register. All the names on any of those registers shall be certified before any name on the register next in order of precedence, but the last names on a register may be combined with the first names on the register next in precedence in filling a requisition.

(C) If an appointing authority wishes to fill an advanced technical, scientific, or professional position for which, in his/her judgment, appointment from a promotional register is not in the best interests of the service, s/he may request in writing that the personnel director give precedence to certification from a register of eligibles rather than from the promotional register. This request should specify in detail the reasons why the position cannot be satisfactorily filled by promotion. If the director, upon review, approves the request, s/he may authorize certification from the register of eligibles for the class involved.]

[(3)](1) Certification of eligibles shall be designed to provide the appointing authorities with a viable tool for efficient selection of an effective work force and shall be governed by the following provisions:

[(A) Order of Names Certified. Names shall be certified in order of standing on the register from which certification is made. In filling a vacancy in a permanent position subject to this law, the appointing authority first shall reinstate in rank order from the reinstatement register all previous employees of the division of service who have been laid off or demoted in lieu of layoff, and after that shall be entitled to choose from among the top fifteen (15) ranking available eligibles or the names of available eligibles comprising the top ranking fifteen percent (15%) of available eligibles, whichever is greater, plus such additional eligibles as have a final rating equal to the last eligible in the selection group. Upon request of the appointing authority, the director may also certify, for each additional vacancy to be filled from the same certification, the next five (5) ranking available eligibles plus such additional eligibles as have a final rating equal to that of the last eligible in this expanded selection group. If an eligible has been certified from a register and considered in connection with three (3) appointments by the same appointing authority and personally interviewed by that division of service at least one (1) time, the appointing authority may request that the eligible not be certified in the future from the register involved. However, exclusion shall not affect eligibility for certification to other divisions of service or from other registers. If special requirements of domicile or the possession of special skills are specified by the appointing authority in a requisition and the director finds that these requirements would contribute substantially to the effective performance of the duties involved, certification may be limited to persons on the appropriate register who meet these requirements;

(B) Order of Certification. Eligibles may be certified concurrently for vacancies occurring in the same class in different divisions of service with due regard for the rights of eligibles standing highest on the list and requirements of appointing authorities. The name of an eligible need not be included on a certification if his/her name has been included on a certification made concurrently for vacancies in the same class in another division of service, if the director finds

Emergency Rules

that this action would serve to hinder the actual availability and supply of candidates certified to any one (1) appointing authority;]

[(C)](A) *[Less Than Required Number of Eligibles.] In the absence of an established register or [W]whenver there are not sufficient names on a register [to make a complete certification], the director may [augment] supplement those names [by a sufficient number of] with names from other appropriate registers [to make a complete certification].*

[(D) Certification From Appropriate Registers. In the absence of a register established for the class, the director may certify from registers for higher classes to vacancies occurring in lower classes or from registers for one (1) class to vacancies in another class where s/he determines that the reasonably conducted examination measures the ability of the eligible to perform the duties in the class to which certification is made;

(E) *Withdrawal of Certification. In the event appointment is not reported within ninety (90) days of the date of certification, the director may withdraw the certification and shall certify the names of eligibles included in the certification on the next requisition received for the appropriate class of employment;*

(F) *Waiver of Certification. Eligibles who are not available for appointment when offered certification shall be granted a waiver of certification for appointment for a stated period of time, at or below a specified salary, for a specific location, or for other specified reasons. Eligibles who do not respond within seven (7) working days after the notice of certification at the discretion of the director may be dropped from the eligible register (see section 36.240, RSMo);*

(G) *Alternative Certification Procedures. If the director finds that selection from the normal number of eligibles certified in accordance with subsection (3)(A) does not provide a reasonable range of competitive selection for a given class of position because of deficiencies in the examination process, the diverse types of positions included in the class and the large numbers of eligibles or a combination of these and related reasons, the director may adopt alternative procedures for certification and selection. These may include certification by broad category of examination rating or within a specified range of scores designed to include eligibles with broadly comparable qualifications. The use of alternative procedures and the reasons in each instance shall be reported to the board and entered into its records and those of the Division of Personnel; and*

(H) *Noncompetitive Certification. The director shall adopt appropriate procedures for noncompetitive certification of the names of eligible applicants for classes for which competitive examination has been waived. The director also shall adopt appropriate procedures for the review and approval of noncompetitive appointments and promotions in other classes not subject to the competitive certification process.]*

[(4)](2) The following types of appointment may be made [in the classified service] for those positions under section 36.030.1, RSMo:

(A) *Appointment From a Register. [Except as otherwise authorized by the law and these rules, a]Appointments to vacancies in the classified service [shall] may be made following certification from an appropriate register in accordance with the provisions of the law and these rules[. An appointment shall be effective on the date stated by the appointing authority on a written report of appointment submitted to the director];*

(B) *[Provisional Appointment. When an appointing authority finds it essential to fill a vacancy in a position subject to these rules, and with at least thirty (30) days' notice of the*

vacancy the director is unable to certify the names of at least ten (10) available eligibles, the director may authorize the appointing authority to fill the vacancy by means of a provisional appointment. The appointing authority shall submit a statement containing the name of the person nominated by the appointing authority for provisional appointment to the position, this statement shall contain a description of the qualifications of training and experience possessed by that person and the other information as may be required by the director and in a form as the director shall prescribe. If the nominee is found by the director to possess experience and training which meet the qualifications for the position, the director may approve the provisional appointment. No provisional appointment shall be made without the approval of the director. The duration of a provisional appointment shall be the same as the duration of the probationary period established for the position. A provisional appointee who successfully completes the working test of the probationary period may receive a regular appointment without examination;] Direct Appointment. After appropriate public notice, an appointing authority may appoint any applicant meeting the minimum qualifications for a particular position within the appointing authority's division of service. This type of appointment may be made regardless of whether or not the applicant was added to a register or whether or not the applicant applied through any central statewide application process or system; and

[(C) Emergency Appointments. When an emergency makes it necessary to fill a position immediately in order to prevent stoppage of public business or loss, hazard, or serious inconvenience to the public, and it is impracticable to fill the position under any other provisions of the law, an appointing authority or a properly authorized subordinate employee may appoint any qualified person to that position without prior approval of the director. Any such person shall be employed only during that emergency and any emergency appointment shall expire automatically ninety (90) calendar days from the date of appointment. The appointing authority shall report each emergency appointment to the director as soon as possible after the date of emergency appointment and the report shall contain the name of the person appointed, the date of appointment, and the reasons which made the appointment necessary. No individual may be given more than one (1) emergency appointment in any twelve (12)-month period in the same division of service (see section 36.270, RSMo); and]

[(D)](C) *Temporary Appointments. [When a position in divisions of the service subject to the law is limited in duration, certification may be limited to the highest ranking eligible(s) who will accept employment under those conditions.] No temporary appointment shall be made for more than a total of six (6) months, either continuously or intermittently, in any twelve- (12-)[-] month period. Successive temporary appointments to the same position shall not exceed a total of six (6) months in any twelve- (12-)[-] month period. [A temporary appointment shall be made only after a statement describing the nature of the position and its estimated duration is submitted by the appointing authority and approved by the director. If a temporary position is limited to less than ninety (90) calendar days' duration, the appointing authority may fill the position by temporary appointment in the same manner as provided in these rules for emergency appointments. These appointments will be designated as limited temporary appointments. No individual may be given more than one (1) limited temporary appointment in any twelve (12)-month period in the same division of service, nor shall this appointment be made in succession with an emergency appointment in the same division of service in any twelve (12)-month period (see section 36.240,*

Emergency Rules

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[(5)](3) Transfers. [An appointing authority at any time may assign an employee from one (1) position to another position in the same class in the same division except that transfers of employees made because of a layoff or shortage of work or funds which might require a layoff shall be governed by 1 CSR 20-3.070 and the layoff procedures adopted. Upon making this assignment, the appointing authority immediately shall give written notice of the action to the director. A transfer of an employee from a position in one (1) division in the classified service to a position in the same class in another division in the classified service may be made with the approval of the director and of the appointing authorities of both divisions.] **Transfers may be used in accordance with statute and these rules.**

(A) No employee shall be transferred from a position in one (1) class to a position in another class with a higher rank or for which there are substantially dissimilar requirements for appointment unless appointed to a latter position in accordance with the provisions of the law and these rules.

(B) Any change of an employee from a position in one (1) class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure provided in 1 CSR 20-3.070(4). An employee demoted shall have the right of appeal to the Administrative Hearing Commission. Transfers from one (1) class to another class of comparable rank shall be subject to review and approval of the director.

(C) An employee who has successfully served at least one (1) year in a position covered by the uniform classification and pay system as described in section 36.031, RSMo, but not by the Merit System service as described in section 36.030.1, RSMo, may be transferred to a position in the Merit System service in the same class with the approval of the director and of the appointing authorities of both divisions, provided the employee possesses the qualifications and has successfully completed a noncompetitive examination for the position involved.

(D) Change of Station. When a certification is made on an area basis, a change of station shall not be made during the probationary period, except with the approval of the director

(E) In the case of a permanent, involuntary transfer from one (1) geographical area to another, the appointing authority shall give written notice of the action to the director and to the employee thirty (30) days prior to the effective date of the action. This notice will indicate the reason for the transfer. If the employee requests a personal explanation, the appropriate supervisor or manager, as determined by the appointing authority, will grant the affected employee a personal interview, will explain the reasons for the transfer, and will provide the employee with an opportunity to ask questions. Geographical areas will be those prescribed by the director in accordance with 1 CSR 20-3.070(1)(E) Area Layoff. The affected employee may make a written request to the director asking for review of the action on the basis that the action, in the employee's opinion, was for arbitrary, capricious, or punitive reasons and not for the good of the service. The director shall conduct an appropriate investigation and shall approve or disapprove the transfer taking into consideration information received from both the employee and the appointing authority. Both the employee and the appointing authority will be notified of the director's action.

(6) Reemployment. Any person who has obtained regular status in a classified position within the Merit System service as defined in section 36.030.1, RSMo, and who has

resigned from state service in good standing may be reemployed without competitive certification in the same or comparable class at the discretion of any appointing authority who wishes to reemploy this person. Any person who has successfully served at least one (1) year in a covered position in the uniform classification and pay service as defined by section 36.031, RSMo, and who has resigned from state service in good standing or who has accepted demotion or transfer for personal reasons may be reemployed in a Merit Service agency without competitive certification in the same or comparable class at the discretion of the appointing authority provided the employee possesses the qualifications and has successfully completed an examination for the class involved. For purposes of this rule, a lower class for which a person qualifies in the same general occupation or job family may be approved by the director as a comparable class for purposes of reemployment. A regular employee who has been separated in good standing from a position by class transfer, promotion, long-term disability, retirement, or layoff shall be considered as having resigned in good standing for the purpose of reemployment. Prior to reemployment, the appointing authority shall notify the personnel director of his/her intention to do so and provide information as may be required by the director to establish eligibility for reemployment. The director also shall determine comparability of classes and appropriate qualifications of the former employee if reemployment is proposed in a class other than the one in which s/he obtained regular status. Reemployment may be made either to a temporary or a permanent position. Reemployment to a permanent position shall be subject to a probationary period as is provided for in 1 CSR 20-3.040(2). No one shall be reemployed under this section until reinstatement first has been offered to all eligibles on the appropriate reinstatement register(s) for the class and division of service involved. The rate of pay of a former employee upon reemployment shall be governed by 1 CSR 20-2.020(4)(A).]

AUTHORITY: sections 36.060 and 36.070, RSMo Supp. [2010 and section 36.070, RSMo 2000] 2018. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the Missouri Register. A proposed amendment covering this same material will be filed at a later date to be published in the Missouri Register.