

11/5/90

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ANN WYNIA  
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

THE COMPENSATION PLAN

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. 62. (1)

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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 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. 256.012, 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. (2) Collectively, the resulting programs are referred to as the "Minnesota Merit System".

5. Pursuant to such statutory authority those state agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit System. (3)

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. (4) State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et. al., 239 Minn. 407, 420, 58 N.W. 2d 882, (1953). The court stated:

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

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

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

.....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.

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.61 - 179A.77).

II. The justifications establishing the need for and the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, are as follows:

A. Compensation Plan

Minnesota Rules, parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100

Amendments proposed to these rule parts specifically propose adjustments to the current minimum and maximum salaries for all Merit System classes of positions included in the Human Services, Health and Public Safety Merit System compensation plan rules. The amendments being proposed now to Merit System minimum and maximum salaries shall, by rule, be effective on January 1, 1991, or, for those agencies on a biweekly or four week payroll period, on the beginning date of the first payroll period after January 1, 1991. Merit System rules require that Merit System compensation plans be adjusted annually to reflect changes in the level of salary rates in business and government for similar and competing types of employment and to achieve equitable compensation relationships between classes of positions based on their comparable work value. Amendments to these parts are necessary to provide Merit System agencies with salary ranges for all of their classes that are competitive in terms of salary rates being offered for comparable work by competing employers elsewhere in the public and private sector and also to comply with the provisions of Minn. Stat. section 471.991-471.999 requiring the establishment of equitable compensation relationships between classes of positions based on their comparable work value as determined by a formal job evaluation system.

The Merit System reviewed current compensation plans for competing public employers such as the State of Minnesota and the counties of Hennepin, Ramsey, St. Louis, Dakota, Blue Earth, Olmsted, Scott, Washington and Itasca to compare their salary ranges with those for comparable positions in the Merit System. Those ranges were definitely considered in proposing amendments to minimum and maximum

salaries for Merit System comparable classifications for 1991. In addition, the Merit System conducted a salary survey of salaries paid by counties to their clerical employees not covered by the Merit System. Understandably, counterparts for many Merit System classes of positions are found in the employ of other public jurisdictions rather than private employers. It is critical that Merit System agencies have competitive salary ranges in order to attract high quality job applicants from essentially the same applicant pool used by other public employers with their own personnel systems, including their own compensation plans. Those salaries offered by competing employers become the labor market and, as such, a practical consideration which must be recognized in maintaining the Merit System compensation structure.

The second reason for the proposed amendments to minimum and maximum salaries originated with the passage by the 1984 Legislature of Minn. Stat. sections 471.991 to 471.999 known as the Local Government Pay Equity Act. It required every political subdivision and the Merit System, where applicable, to ensure that equitable compensation relationships between classes of positions be established based on the comparable work value of positions as determined by a job evaluation system. Since the act was passed the Merit System has annually made comparable work value adjustments to minimum and maximum salaries for many Merit System classes. Amendments adjusting minimum and maximum salaries are both reasonable and necessary to maintain competitive compensation levels as required by our own Merit System rules and to reach the objective of complete pay equity as required by the Local Government Pay Equity Act. It is reasonable that adjustments necessary to achieve pay equity be phased in gradually over a period of time. When the Local Government Pay Equity Act was passed, the Legislature did not provide for an appropriation to assist counties, including those that were and still are economically depressed, with the cost of implementing pay equity. Given those circumstances, it was and is prudent to plan and implement pay equity gradually over time. A comparison can be made to pay equity in the state personnel system. When the Legislature passed a bill calling for pay equity in the state personnel system, it also provided an appropriation to assist in its implementation. Even with the appropriation, the state implemented its pay equity system over the course of four years. The Merit System is proposing comparable worth, or pay equity, adjustments for 1991.

An important point to mention is that, under Merit System rules, Merit System compensation plan adjustments to minimum and maximum salaries do not apply to employees in a formally recognized bargaining unit. There are 41 Merit System county agencies where most agency employees are covered by a collective bargaining agreement and employee compensation is the product of negotiation between the appointing authority and the employee's exclusive representative. In those agencies, the only employees subject to Merit System compensation plans are those in positions that are excluded from the bargaining unit by virtue of being supervisory or confidential in nature. A second point is that the only salary increases that agencies are required to make as a result of Merit System compensation plan adjustments are those necessary to bring the salaries of individual employees up to the new minimum salary rate for their classification.

Proposed amendments to parts 9575.1500, 4670.4200 to 4670.4240 and 7520.1000 to 7520.1100 adjust the minimum and maximum salaries for many, but not all, Merit System classes by 4%, the same percentage adjustment as the general salary adjustment for employees in all Merit System classifications for 1991. That kind of adjustment provides that employees will remain on the same salary step in their new range as they were on in their previous salary range. This is reasonable in terms of the practice in other public jurisdictions of adjusting salary ranges by the same percentage amount as the general salary adjustment granted to all employees of the jurisdiction. They are reasonable in light of the Merit System review of not only current salary ranges but agreed to salary adjustments for 1991 for comparable kinds of work in other public jurisdictions and by changes in general economic growth factors. They are adjustments necessary in order to maintain a competitive compensation plan providing equitable and adequate compensation for employees in Merit System agencies.

The Merit System rules (Minnesota Rules, parts 9575.0320 subpart 3a, 4670.1200 subpart 3a and 7520.0620 subpart 3a) require that, annually, the Merit System recommend a general salary adjustment for all employees not covered by a collective bargaining agreement based on a review of adjustments to salary levels by employees with similar and competing types of employment and trends in the Twin City Consumer Price Index. The recommended percentage increase is contained in rule language (Minnesota Rules, parts 9575.0350 subpart 3, 4670.1320 and 7520.0650 subpart 3) and, for 1990, was 4%. That language is not being amended since it was determined that 4% is a reasonable salary adjustment for 1991. However, since the 4% increase in minimum and maximum salaries for most Merit System classes is based on the 4% general salary adjustment for 1991, it is important to provide justification that a 4% general salary adjustment is reasonable rather than some other percentage adjustment. For the period July, 1989, through June, 1990, the Twin City Consumer Price Index for all urban consumers increased 4.3%. In practice, the Merit System also considers other appropriate consumer price indices such as the North Central region (which includes the state of Minnesota) and the U.S. cities average (which includes the cities of Minneapolis and St. Paul). For the period July, 1989, through June, 1990, the Consumer Price Index for the North Central region rose 4.0% and, for the same period, the Consumer Price Index for the U.S. city average rose 4.8%. Another index that is reviewed is the Employment Cost Index. It is published quarterly by the Bureau of Labor Statistics and measures, on a nationwide basis, increases in wages and salaries only for specific groups of employees. One such group of employees is state and local employees. For the period July, 1989, through June, 1990, the Employment Cost Index for wages and salaries only for state and local employees rose 5.7%. As far as adjustments to salary levels by employers with similar and competing types of employment are concerned, the state of Minnesota granted across the board increases of 5% to some 30,000 employees in five different bargaining units effective July 1, 1990. The counties of Ramsey, Scott and Itasca have agreed to 4% increases for both their organized and non-organized employees effective January 1, 1991. The counties of Hennepin and Washington have agreed to 4% increases for their organized employees effective January 1, 1991 but have not settled yet with their non-organized employees. Given the circumstances, it will be extremely difficult for them to offer less than 4% to the non-organized employees. In summary, considering increases in the appropriate

consumer price indices and adjustments to wages and salaries granted by competing employers, a 4% general salary adjustment for Merit System employees is eminently reasonable.

Some proposed amendments to parts 9575.1500, 4670.4200 to 4670.4240 and 7520.1000 to 7520.1100 do not propose a 4% adjustment to the minimum and maximum salaries for certain classes of positions. These adjustments relate to classes of positions where a 4% adjustment is inappropriate because of a need to establish equitable compensation relationships between classes of positions based on their comparable work value or where labor market data would indicate an adjustment of something other than 4% to be proper. Subsequent to passage of Minn. Stat., sections 471.991 to 471.999, the Merit System conducted a formal job evaluation study which determined the comparable work value of all Merit System classes of positions. A basic principle of pay equity is that classes with identical or similar work values should have identical or similar salary ranges. The results of the study revealed a large number of situations where classes of positions with similar comparable work values had very disparate salary ranges. These situations represented compensation inequities and, since the study, the Merit System proposed and had adopted a significant number of comparability adjustments to either equalize or reduce the differences between salary ranges for classes with identical or similar comparable work values. It is both reasonable and necessary to continue this process in 1991 to attain the statutorily-mandated requirements to establish equitable compensation relationships between all classes of positions. Practically all of the proposed salary adjustments varying from 4% are based on attaining the objective of having an internally consistent Merit System compensation plan with reasonable compensation relationships existing between classes of positions based on their comparable work value which is obviously consistent with the objective of the Local Government Pay Equity Act.

Some recommended adjustments involve the reduction of present minimum salaries, maximum salaries or, in some cases, both minimum and maximum salaries for some classes. Given the results of the Merit System's comparable worth study and the need to achieve pay equity, such adjustments are reasonable and necessary but not easy to propose. It would be far easier to recommend some sort of adjustment or a more significant adjustment for these classes. However, that would have been wrong for the following reasons: it would have continued already existing compensation inequities making additional and greater compensation adjustments in the future; it would have the effect of ignoring the results of the Merit System's own pay equity study which was a valid study; it would conflict with the basic objective contained in the Local Government Pay Equity Act of achieving equitable compensation relationships between classes based on their comparable work value as determined by a job evaluation system and, last but not least, it would be a fiscally irresponsible decision in terms of its impact on local appointing authorities. All of these reasons were given consideration in preparing these adjustments.

One point of clarification should be made here. These adjustments to minimum and maximum salaries have no relationship to the 4% general salary adjustment for all employees to be effective January 1, 1991. All employees are entitled to the 4% salary increase regardless of the adjustment proposed to their salary range minimum and maximum salaries.

Minnesota Rules, part 9575.1500 includes the Department of Human Services Merit System compensation plan. The plan contains salary schedules for professional, support, clerical and maintenance and trades classes of positions. Adjustments proposed to minimum and maximum salaries for Human Services Merit System professional classifications are 4% with the following exceptions:

1. Assistant Welfare Director and Welfare Director V minimum and maximum salaries are adjusted approximately 6.5%.
2. Chemical Dependency Coordinator, Community Health Services Supervisor and Psychologist III minimum salaries are adjusted 4% and maximum salaries are reduced approximately 1%.
3. Adult Day Care Center Supervisor, County Agency Social Worker, County Agency Social Worker (Child Protection Specialist), County Agency Social Worker (Licensing Specialist), Fiscal Supervisor I, Methods and Procedures Analyst, Nutrition Project Assistant Director, Registered Dietician, Sanitarian, Social Services Supervisor II, Staff Development Specialist and Volunteer Services Coordinator minimum salaries are adjusted approximately 8% and maximum salaries are adjusted 4%.
4. Director of Business Management II, Director of Financial Assistance, Director of Planning and Director of Social Services minimum salaries are adjusted approximately 14% and maximum salaries are adjusted 4%.
5. Public Health Educator minimum and maximum salary is reduced approximately 1%.
6. Welfare Director I minimum salary is adjusted approximately 1.5% and maximum salary is adjusted approximately 6.5%.
7. Contract Services Representative, Mental Health Worker, Planner and Support Services and Accounting Supervisor minimum salaries are reduced approximately 1% and maximum salaries are increased 4%.
8. Fiscal Officer minimum salary is adjusted 4% and maximum salary is reduced approximately 4%.
9. Financial Assistance Supervisor III and Fiscal Manager minimum salaries are adjusted 4% and maximum salaries are adjusted approximately 8%.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System support classifications are 4% with the following exceptions:

1. Child Support Officer I, Coordinator of Aging, Family Service Aide I, Family Service/Home Health Aide and Home Health Aide minimum salaries are adjusted approximately 8% and maximum salaries are adjusted 4%.
2. Computer Operations Specialist and Welfare Fraud Investigator minimum salaries are reduced approximately 1% and maximum salaries are increased 4%.

3. Accounting Technician, Crisis Center Resource Aide and Family Service Aide II minimum salaries are adjusted approximately 6.5% and maximum salaries are adjusted approximately 2%.
4. Collection Services Supervisor I minimum salary is adjusted 4% and maximum salary is reduced approximately 1%.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System clerical classifications are 4% with the following exceptions:

1. Administrative Secretary and Clerk Typist III minimum salaries are adjusted approximately 5.5% and maximum salaries are adjusted approximately 1%.
2. Clerk III and Legal Secretary minimum salaries are adjusted approximately 5% and maximum salaries are adjusted approximately 3%.
3. Clerk I, Clerk Typist I, Data Entry Operator and Switchboard Operator minimum and maximum salaries are adjusted approximately 5%.
4. Clerk II, Clerk Steno, Clerk Typist II and Information Systems Specialist minimum salaries are adjusted approximately 7% and maximum salaries are adjusted approximately 3%.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System maintenance and trades classifications are 4% with the following exceptions:

1. Automobile/Van Driver minimum salary is adjusted approximately 1% and the maximum salary is adjusted approximately 5%.
2. Bus Driver minimum salary is adjusted approximately .2% and the maximum salary is adjusted approximately 3%.
3. Maintenance Worker minimum salary is adjusted approximately 5% and the maximum salary is adjusted approximately 3%.

Minnesota Rules, parts 4670.4200 to 4670.4240 includes the Department of Health Merit System compensation plan. It contains salary schedules for professional, support, clerical and building maintenance classes of positions.

Adjustments proposed to minimum and maximum salaries for Health Merit System professional classes are 4% with the following exceptions:

1. Public Health Educator minimum and maximum salaries are reduced approximately 1%.
2. Sanitarian minimum salary is adjusted approximately 8% and the maximum salary is adjusted 4%.

Adjustments proposed to minimum and maximum salaries for Health Merit System support classifications are 4% with the following exception:

1. Home Health Aide minimum salary is adjusted approximately 8% and the maximum salary is adjusted 4%.



Adjustments proposed to minimum and maximum salaries for Health Merit System clerical classifications are 4% with the following exceptions:

1. Clerk Typist III minimum salary is adjusted approximately 5.5% and the maximum salary is adjusted approximately 1%.
2. Clerk III minimum salary is adjusted approximately 5% and the maximum salary is adjusted approximately 3%.
3. Clerk I, Clerk Typist I and Switchboard Operator minimum and maximum salaries are adjusted approximately 5%.
4. Clerk II, Clerk Steno and Clerk Typist II minimum salaries are adjusted approximately 7% and maximum salaries are adjusted approximately 3%.

Minnesota Rules, parts 7520.100-7520.1100 includes the Emergency Services Merit System compensation plan. It contains separate salary schedules for professional and clerical classes of positions.

Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System professional classifications are 4% with the following exception:

1. Assistant Emergency Management Director minimum salary is adjusted approximately 8% and the maximum salary is adjusted 4%.

Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System clerical classifications are as follows:

1. Clerk Typist III minimum salary is adjusted approximately 5.5% and maximum salary is adjusted approximately 1%.
2. Clerk III minimum salary is adjusted approximately 5% and the minimum salary is adjusted approximately 3%.
3. Clerk I and Clerk Typist I minimum and maximum salaries are adjusted approximately 5%.
4. Clerk II, Clerk Steno and Clerk Typist II minimum salaries are adjusted approximately 7% and maximum salaries are adjusted approximately 3%.

Amendments are proposed to Minnesota Rules, part 9575.1500 providing for class titles and minimum and maximum salaries for two new classes entitled Staff Attorney and SILS Program Coordinator established in response to a legitimate need for the classes in Merit System agencies. These amendments are both necessary and reasonable to ensure that the Human Services Merit System compensation plan reflects appropriate class titles and salary ranges that are current.

Amendments are proposed to Minnesota Rules, parts 9575.1500 and 4670.4210 deleting the class titles and minimum and maximum salaries for the following classes that have been abolished because there are no employees in them and the employing agencies no longer intend to use the classes: Assistant Human Services Director, Day Care Center Teacher, Resident Activity Coordinator and Senior Public Health Nurse.

This amendment is both necessary and reasonable to ensure that Human Services and Health Merit System compensation plans properly reflect current class titles and salaries that are reflective of functions actually being performed by Merit System employees.

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

If this rule goes to public hearing, it is anticipated that there will be no expert witnesses called to testify on behalf of the agency. The small business considerations in rulemaking, Minnesota Statutes, Section 14.115, do not apply to this rule amendment.



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Ralph W. Corey  
Merit System Supervisor

Dated: 10/22/90