STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE NATALIE HAAS-STEFFEN
COMMISSIONER OF HUMAN SERVICES

BEFORE MARLENE E. MARSCHALL
COMMISSIONER OF HEALTH

BEFORE ARNE CARLSON
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF

RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS, THE COMPENSATION PLAN, SALARY ADJUSTMENTS AND INCREASES, TEMPORARY APPOINTMENTS, LAYOFF, VACATION LEAVE AND SICK LEAVE

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. 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.

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. Salary Adjustments and Increases

Minnesota Rules, part 9575.0350, 4670.1320 and 7520.0650

An amendment is proposed to parts 9575.0350 subpart 3, 4670.1320 and 7520.0650 subpart 3 providing for a recommended general salary adjustment of 2.25 percent for all non-bargaining unit Merit System employees on Merit System professional, support, clerical and maintenance and trades salary schedules to be effective January 1, 1992. The amendment is necessary not only because it changes the recommended general salary adjustment percentage in these rule parts from that adopted for 1991 but also because there is a need to provide competitive salary adjustments in 1992 for employees covered by the Human Services, Health and Public Safety Merit System rules. The amendment is also reasonable based on a review of adjustments to salary levels by employers with similar and competing types of employment and trends in the Twin City Consumer Price Index.

Merit System rules require that the annual recommended general salary adjustment for employees be based on salary adjustments granted by employers with similar and competing types of employment and trends in the Twin City Consumer Price Index. Obviously, for the Merit System, employers with similar and competing types of employment means other public employers. Traditionally, other employers the Merit System has looked to in developing a recommended general salary adjustment are the State of Minnesota and other counties with their own county personnel systems which are separate and apart from the Merit System.

The State of Minnesota has negotiated a contract with AFSCME Council 6 representing approximately 18,000 state employees providing across-the-board salary adjustments of 2% effective July 1, 1991, and another .5%

effective January 1, 1992. The state has also negotiated a contract with MAPE representing 6,866 professional employees providing across-the-board adjustments of 1.25% effective July 1, 1991, and another 1.25% effective January 1, 1992. Thirdly, the state has negotiated a contract with supervisory employees (Middle Management Association) also providing for across-the-board adjustments of 2% effective July 1, 1991, and .5% on January 1, 1992. Several other jurisdictions have settled for 1992. Blue Earth County has settled for a 3% across-the-board salary adjustment for all employees effective January 1, 1992. Scott County has settled for 4% effective January 1, 1992 and Itasca County has settled for 4% for 1992 and for 4% in 1993 as part of a three year contract. Anoka County, whose social service employees are not covered by the terms of a collective bargaining agreement, will be granting a 2% general salary adjustment to employees on January 1, 1992.

As indicated previously, proposed annual employee salary adjustments must also be based on the trends in the Twin City Consumer Price Index. The United States Department of Labor's Bureau of Labor Statistics calculates changes in the index for all urban consumers (covering approximately 80% of the total population) twice a year. For the period July, 1990 through July, 1991, the index increased 3.1%. The Bureau also calculated changes in the Consumer Price Index for all urban consumers in the North Central Region which includes the State of Minnesota. For the period July, 1990, to July 1991, the index increased 4.3%.

Given the information available to date regarding across-the-board salary adjustments agreed to by competing employees for 1991 and 1992 as well as other measures of salary progression and increases in various consumer price indices as indicated, it is reasonable to recommend that salaries of Merit System employees not covered by the terms and conditions of a collective bargaining agreement be increased by 2.25% effective January 1, 1992, or on the beginning date of the first payroll period following January 1, 1992, for those agencies on a biweekly or four-week payroll period.

It should be emphasized that the recommended general salary adjustment of 2.25% is simply that, a recommendation. It lacks the binding effect of a negotiated collective bargaining agreement. Agencies, even those where there is no collective bargaining agreement, are not required to adopt the Merit System recommended general adjustment but have the flexibility, under Merit System rules, to adopt a different salary adjustment (or no adjustment at all) for agency employees. Under whatever salary adjustment is finally adopted by an agency, the only salary increases that agencies are required to make are those necessary to bring the salaries of individual employees up to the new minimum salary rate for their classification on the Merit System compensation plan adopted by the agency for that classification.

Another important point to mention is that, under Merit System rules, Merit System compensation plan adjustments do not apply to employees in a formally recognized bargaining unit. There are 44 Merit System agencies where most of the 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 these 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.

B. Definitions - Temporary Appointment

Minnesota Rules, parts 9575.0010 subpart 46, 9575.0680, 4670.0100 subparts 24 and 47, 4670.2530 and 7520.0100 subparts 24 and 47

(Under the provisions of Merit System rules, part 7520.0200 subpart 3, the Department of Human Services rules, parts 9575.0400 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.)

Amendments proposed to these rules change the definition of a temporary employee, clarify when a temporary appointment is available, provide for an alternate way for county agencies to hire temporary employees and lengthen the time that an employee may serve in a temporary appointment.

Revisions to parts 9575.0680 and 4670.2530 clarify when a temporary appointment should be made. At the present time, there is some confusion among agencies as to when to use an "emergency appointment" as provided in the rules (parts 9575.8670 and 4670.2520) and when to use a "temporary appointment." Emergency appointments are to be used only when there is an urgent need to supplement or fill positions held by current staff for a very short period of time, usually for a period of 45 working days. The language proposed will clarify that temporary appointments should be used when filling a vacancy funded for six months or less, when filling a vacancy created by an approved leave of absence, when filling a vacancy in a temporary project not anticipated to last more than six months or in an unusual instance, when an appointing authority asks to make a temporary appointment of six months or less to a position otherwise authorized for more than six months. It is necessary to clarify the distinctions between an emergency appointment and temporary appointment, since individuals on temporary appointments receive some benefits that individuals who are on emergency appointments do not receive, such as accrual of sick leave and vacation leave accrual after six months of service.

Proposed revisions to these rules also will allow an appointing authority, in absence of an eligible register, the option of hiring an individual who meets the Merit System minimum qualifications in a temporary position. Parts 9575.0780 and 4670.2530 currently require that agencies select temporary employees from the eligible register and that the length of employment cannot exceed six months. Quite frequently, the applicants on the eligible register for a particular classification are not available for temporary employment. This has created an undue hardship for counties and local agencies who usually must hire an individual quickly. Once the agency determines that no one is available, it must recruit and all applicants must be tested. This has often meant that the agency must wait an unreasonable period of time before it can fill a temporary position. These amendments will considerably decrease the amount of time necessary to fill a temporary position and yet will ensure that persons with the proper qualifications are hired to do the work.

Other revisions to parts 9575.0780 and 4670.2530 provide that county and local agencies may request an extension of the temporary appointment for up to one year. This is reasonable in view of the fact that many special projects and many leaves of absence granted last for longer than six months. The extension of an additional six months provided in the rules will allow counties and local agencies to have the same individual in the temporary position for the entire period of time that the position is needed, which will ensure some continuity in the position. The rule amendments provide that a temporary employee's term of employment may not

exceed a total of 12 months in any 24 month period in any one agency and that successive temporary appointments to the same position may not be made. This provision ensures that temporary appointments will not be used to fill permanent positions.

In addition to these amendments, amendments to parts 9575.0010 subpart 46, 4670.0100 subpart 47 and 7520.0100 subpart 47 are proposed which clarify the definition of "temporary employee" and make it consistent with the language in parts 9575.0680 and 4670.2530. Deletion of 7520.0100 subpart 24 and 4670.0100 subpart 24 is proposed since the continued use of "limited term appointment" will no longer be necessary because of the expansion and clarification of the definition of "temporary employee."

C. Lay-Off

Minnesota Rules, parts 9575.0930 and 4670.2930

(Under the provisions of Merit System rules, part 7520.0200, subpart 3, the Department of Human Services rules, parts 9575.0400 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.)

Revisions to 9575.0930 subpart 6 and 4670.2930 subpart 4 provide new language addressing when a laid off employee shall be removed from the lay off list. Currently, when a position is eliminated in an agency and an employee is laid off, that employee is placed on the lay-off list for that classification and agency. When that agency has another vacancy in that same classification, the name of the laid off employee is the only name referred to the vacancy. The proposed amendments provide that if, after the employee is contacted by the agency, it is determined that the employee is not interested in the vacancy, the employee will be removed from the lay-off list for the classification and the agency. The effect of this proposal is that when the employee declines the position, the agency will then be able to receive a referral from the regular eligible list and will be able to consider candidates other than that employee. The current rule provides no means for an appointing authority to receive additional names of individuals available for employment once the former employee on the lay-off list declines an appointment. This amendment will allow agencies to receive a referral of individuals on the eligible list who are available for employment but only after the laid off employee declines. Proposed amendments provide that the employee may remain on the reemployment list as outlined in parts 9575.0980 and 4670.2980.

Minor revisions to 9575.0930 subpart 1 and 4670.2930 subpart 1 delete the outdated term "limited-term" and replace it with "temporary", which is which is the correct and currently used term.

D. Vacation and Sick Leave

Minnesota Rules, parts 9575.1030, 9575.1040, 4670.3030 and 4670.3040

(Under the provisions of Merit System rules, part 7520.0200 subpart 3, the Department of Human Services rules, parts 9575.0400 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.)

Minor revisions are provided to these rules to replace "limited-term" with "temporary", to be consistent with the other rule amendments proposed. The use of "limited-term" is outdated and has been replaced with the term "temporary."

E. Compensation Plan

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

Amendments proposed to these parts specifically recommend adjustments to the 1992 minimum and maximum salaries for all Merit System classes of positions covered by the Human Services, Health and Public Safety Merit System rules to be effective January 1, 1992. 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 classes that are competitive in terms of salary rates being offered by competing employers for comparable work elsewhere in the public and private sector and also to comply with the provisions of Minn. Stat. Sections 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 employers such as the State of Minnesota and the counties of Hennepin, Ramsey, St. Louis, Beltrami, Dakota, Anoka, Blue Earth, Olmsted, Scott, Washington and Itasca to determine their salary levels and consider them in proposing amendments changing the minimum and maximum salaries of Merit System comparable classifications for 1992.

Proposed amendments to parts 9575.1500, 4670.4200-4670.4240 and 7520.1000-7520.1100 adjust the minimum and maximum salaries for many, but not all, Merit System classes by 2.25%, the same percentage adjustment that is being recommended as a general salary adjustment for employees in all Merit System classifications. That kind of adjustment provides that employees will remain on the same salary step in their new salary range as they were on 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 current salary ranges 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 use by Merit System agencies covered by the plan.

Some proposed amendments to 9575.1500 and 4670.4200-4670.4240 do not propose a 2.25% adjustment to the minimum and maximum salaries for certain classes of positions.

These adjustments relate to classes of positions where a 2.25% 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 2.25% to be proper. Subsequent to passage of Minn. Stat. Sections 471.991-471.999, 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 quite disparate salary ranges. These situations represented compensation inequities and, in the past five years, 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 necessary to continue this process to attain the statutorily-mandated requirement to establish equitable compensation relationships between all classes of positions. Practically all of the proposed varying adjustments 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 (Minn. Stat. Sections 471.991-471.999).

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 2.25% with the following exceptions:

1. Administrative Assistant II, Director of Business Management I and Mental Health Program Manager minimum salaries are adjusted approximately 12% and maximum salaries are adjusted 2.25%.

2. Human Services Supervisor II, Social Services Supervisor III and Administrative Assistant III minimum salaries are adjusted approximately 7% and maximum salaries are adjusted 2.25%.

3. Adult Day Care Center Supervisor, Computer Programmer, County Agency Social Worker (Licensing Specialist), Nutrition Project Assistant Director, Registered Dietician, Sanitarian, Staff Development Specialist and Volunteer Services Coordinator I minimum salaries are adjusted 2.25% and maximum salaries are adjusted approximately 7%.

4. Public Health Educator minimum salary is adjusted approximately 7% and maximum salary is adjusted approximately 17%.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System support classifications are 2.25% with the following exceptions:

1. Adult Day Care Center Coordinator and Monitoring and Review Specialist minimum salaries are adjusted approximately 12% and maximum salaries are adjusted 2.25%.

2. Collections Officer minimum salary is adjusted 2.25% and maximum salary is reduced approximately 2%.

Adjustments proposed to minimum and maximum salaries for Human Services Merit System clerical and maintenance and trades classifications are 2.25%.

Minnesota Rules, parts 4570.4200-4670.4240 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 2.25% with the following exceptions:

1. Public Health Educator minimum salary is adjusted 2.25% and maximum salary is adjusted approximately 12%.

2. Sanitarian minimum salary is adjusted 2.25% and maximum salary is adjusted approximately 7%.

Adjustments proposed to minimum and maximum salaries for Health Merit System support, clerical and building maintenance classes are 2.25%.

Minnesota Rules, parts 7520.1000-7520.1100 includes the Emergency Services Merit System compensation plan. It contains salary schedules for professional and clerical classes of positions.

Adjustments proposed to minimum and maximum salaries for Emergency Services Merit System professional and clerical classes are 2.25%.

Additional amendments are proposed to Minnesota Rules, part 9575.1500 providing for class titles and minimum and maximum salaries for new classes entitled Public Health Nursing Supervisor and Executive Assistant 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 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: Auditor, Jobs and Training Supervisor, Methods and Procedures Analyst, Employment Technician, and Office Services Supervisor I.

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 no apply to this rule amendment.

Betty L. Carlson

Betty L. Carlson
Merit System Supervisor

Dated: 10/25/91