

CHAPTER 3920

DEPARTMENT OF EMPLOYEE RELATIONS

LOCAL GOVERNMENT PAY EQUITY

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3920.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Benefits.** "Benefits" means health insurance or health self-insurance programs to which a jurisdiction contributes on behalf of an employee or an employee plus dependents. Benefits does not include pensions, life insurance, dental insurance, disability insurance, or other insurance programs.

Subp. 3. **Compensation.** "Compensation" consists of salary, exceptional service pay, and benefits. Compensation does not include overtime pay, shift differentials, or uniform allowances, as defined in items A to C. Compensation also excludes any other payments not defined as salary, benefits, or exceptional service pay.

A. "Overtime pay" means payment to employees for services performed in excess of the normal work period, and when the payments are required by applicable state and federal overtime laws, by an applicable collective bargaining agreement, or by written personnel policies.

B. "Shift differential" means payment to employees for working other than the standard daytime weekday shift.

C. "Uniform allowance" means payment to employees for purchasing a specified, required uniform.

Subp. 4. **Department.** "Department" means the Minnesota Department of Employee Relations.

Subp. 5. **Employee.** "Employee" means a public employee as defined by Minnesota Statutes, section 179A.03, subdivision 14, except that employee also includes employees of charitable hospitals as defined by Minnesota Statutes, section 179.35, subdivision 3. Employee does not include employees of charitable hospitals who would be excluded under Minnesota Statutes, section 179A.03, subdivision 14, paragraphs (a) to (f).

Subp. 6. **Exceptional service pay.** "Exceptional service pay" means longevity pay or performance pay, as defined in items A and B.

A. "Longevity pay" means payment above the salary range maximum to employees with specified years of service or seniority.

B. "Performance pay" means payment above the salary range maximum to employees who meet specified performance or production standards.

Subp. 7. **In compliance, not in compliance.** "In compliance" means that the jurisdiction has established equitable compensation relationships and met the reporting requirements of Minnesota Statutes, sections 471.991 to 471.999, and this chapter. "Not in compliance" means that the jurisdiction has not established equitable compensation relationships, or has not met reporting requirements under the statute or rules.

Subp. 8. **Job evaluation system.** "Job evaluation system" means the system used to measure the comparable work value of work performed by each class of employees.

Subp. 9. **Jurisdiction.** "Jurisdiction" means a political subdivision, governmental subdivision, or public employer responsible for achieving equitable compensation relationships under Minnesota Statutes, sections 471.991 to 471.999. For purposes of pay equity compliance, jurisdiction means a public employer as defined by Minnesota Statutes, section 179A.03, subdivision 15, clause (c), except that jurisdiction may also include charitable hospitals as defined by Minnesota Statutes, section 179.35, subdivision 2.

If a charitable hospital does not have final budgetary approval authority for employees in the hospital, the jurisdiction for purposes of parts 3920.0100 to 3920.1300 is defined as the public employer with final budgetary approval authority for employees in that hospital. If the governing board of a joint powers agency does not have final budgetary approval authority for employees in the joint powers agency, the jurisdiction for purposes of parts 3920.0100 to 3920.1300 is defined as the public employer with final budgetary approval authority for employees in that joint powers agency.

Subp. 10. **Salary.** "Salary" consists of wages and additional cash compensation, as defined in items A and B.

A. "Wages" means all regular payments for routinely scheduled labor or services made by a jurisdiction to a class of employees, whether these payments are made on an hourly, monthly, or annual basis, except for payments defined as exceptional service pay, and except for payments excluded from the definition of compensation. Wages refers to the maximum monthly payment for a job class if there is an established payment range for the class, or to the highest actual monthly wage paid to any member of a class if there is no established payment range for that class.

B. "Additional cash compensation" means all payments made by a jurisdiction to a class of employees when the payments are made to all employees in the class and when the payments exceed the maximum of an established payment range. Additional cash compensation includes lump sum payments and bonus payments except as provided in subitems (1) and (2).

(1) Additional cash compensation does not include retroactive adjustments to wages when those adjustments do not exceed the reported wage maximum, and does not include retroactive contributions to benefits when those contributions do not exceed the reported benefits contribution limits.

(2) Additional cash compensation does not include payments defined as exceptional service pay, and does not include payments excluded from the definition of compensation.

Subp. 11. **Submit, submitted by, or submitted within.** To "submit" means to provide the department with the information specified. When this chapter requires that information be submitted by a specified date, "submitted by ..." or "submitted within ..." means postmarked on or before the specified date, or hand carried to the department and received by the department on or before the specified date. Hand carried materials will be accepted by the department only during regular business hours, from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. The department's address is Second Floor Centennial Building, 658 Cedar Street, Saint Paul, Minnesota, 55155.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0200 JURISDICTION DETERMINATION.

Subpart 1. **Scope.** This part explains how the department will proceed when there is a question or dispute about the jurisdiction responsible for establishing equitable compensation relationships and for meeting reporting requirements under Minnesota Statutes, sections 471.991 to 471.999, and this chapter.

Subp. 2. **Requesting a determination.** A person or entity may request a determination of the responsible jurisdiction by writing to the department. The request must specify the employee classes in question, and must identify the jurisdiction which the requester believes may be the responsible jurisdiction. In response to a request, the department must decide that a request is without merit and that no review of documents is necessary, or that the request may have merit and a review of documents is necessary, as explained in subpart 3.

In addition, the department may initiate a review of the responsible jurisdiction for the purpose of ensuring that a jurisdiction's implementation report has included all classes for which that jurisdiction is responsible and has not included any classes for which the jurisdiction is not responsible.

Subp. 3. **Documents to support determination.** If the department decides that the request may have merit, or if the department initiates a review, the department must determine

the responsible jurisdiction for the employee classes specified by the requesters or the department, based on the documents listed in items A to D. The department may require the requesters, or one or more jurisdictions, to submit this information within a reasonable time set by the department as needed to make a jurisdiction determination.

A. Documents such as enabling legislation, ordinances, or resolutions which demonstrate that a particular jurisdiction has final budgetary approval authority for one or more employee classes.

B. Documents which demonstrate that a different jurisdiction has final budgetary approval authority for one or more employee classes.

C. Documents which identify how a jurisdiction's budget is established and how its budget is adopted.

D. Any other documents which identify the responsible jurisdiction as defined in part 3920.0100, subpart 9.

Subp. 4. Notice to jurisdictions. If the department undertakes a review of the responsible jurisdiction, it must send a written notice to the jurisdictions which may be affected by the review, and must provide an opportunity for those jurisdictions to submit any of the documents listed in subpart 3, within a reasonable time set by the department. When the department makes a jurisdiction determination, it must send a written notice to the affected jurisdictions and to the requester, if any.

Subp. 5. Impact on compliance determination. The department must follow the procedure explained in items A and B. Any jurisdiction found not in compliance as the result of a jurisdiction determination may request reconsideration as explained in part 3920.0900. If a jurisdiction is subject to a penalty, the jurisdiction may submit a request for suspension of penalty as explained in part 3920.1100, or a contested case appeal as explained in part 3920.1200, or both.

A. If the department determines that a jurisdiction is the responsible jurisdiction for one or more employee classes which were not included in the jurisdiction's implementation report, that report will be considered an incomplete report. Inaccurate and incomplete reports are subject to part 3920.0700, subpart 2.

B. If the department determines that a jurisdiction reported on one or more employee classes for which it is not the responsible jurisdiction, that report will be considered an inaccurate report. Inaccurate and incomplete reports are subject to part 3920.0700, subpart 2.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0300 IMPLEMENTATION REPORTS.

Subpart 1. Report required. Each jurisdiction must submit a pay equity implementation report as provided by Minnesota Statutes, section 471.9981, subdivision 5a. The report must be submitted to the department by January 31, 1992. The report must be based on the jurisdiction's payroll as of December 31, 1991, except as otherwise provided in subpart 5, and it must include all of the information listed in subparts 3 to 8.

Subp. 2. Report form. The report must be submitted on a form provided by the department. In addition to the form, jurisdictions may submit all or part of the information on a computer diskette, in a format specified by the department.

Subp. 3. Notice to employees. The report must include a statement signed by the chief elected official verifying that employees have been notified, as provided in this subpart, that the report is public data under the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13. If there is no chief elected official, the statement must be signed by the chief appointed official of the jurisdiction.

The jurisdiction must send the notice to each exclusive representative, if any, for the jurisdiction. In addition, the jurisdiction must post the notice in a prominent location accessible to all employees, and make a copy available in the public library. The notices must be sent and posted before the report is submitted to the department. Posted notices must remain posted for at least 90 days after the report is submitted to the department.

The written and posted notices must include the following information:

A. a statement that the jurisdiction has submitted its implementation report to the department as required by the Local Government Pay Equity Act; and

B. a statement that the report is public information available to anyone requesting this information.

Subp. 4. **Verifications.** The report must include a statement signed by the chief elected official or, if none, the chief appointed official of the jurisdiction verifying that:

A. all information in the report is accurate and complete to the best of the jurisdiction's knowledge;

B. the governing body of the jurisdiction has reviewed and approved the report;

C. the job evaluation system used by the jurisdiction meets the criteria in subitems (1) and (2):

(1) the job evaluation system is based on the skill, effort, responsibility, and working conditions normally required in the performance of the work; and

(2) the same job evaluation system is used for determining comparable work value for all classes of employees in the jurisdiction; and

D. the report includes all classes of employees over which the jurisdiction has final budgetary approval authority.

Subp. 5. **Job class information.** The jurisdiction must submit the information listed in items A to H for each job class which had employees at any time in calendar year 1991, unless the class was abolished on or before December 31, 1991.

The information provided must be as of December 31, 1991, except that for classes which were vacant on that date the information must be as of the most recent date when the class was occupied, as specified in items B, C, D, and F.

A. **Class title.** If the jurisdiction has a two-tier pay system, and there were employees in both tiers on December 31, 1991, the jurisdiction must report each tier as a separate class. The information in items B to H must be reported separately for each tier.

"Two-tier pay system" means a pay practice in which two classes with the same duties, responsibilities, and general qualifications have different pay range minimums or maximums, or in which more recently-hired employees progress through the pay range at a different rate than less recently-hired employees.

B. **Male employees.** For classes which were vacant on December 31, 1991, the jurisdiction must report the number of male employees as of the most recent date when the class was occupied.

C. **Female employees.** For classes which were vacant on December 31, 1991, the jurisdiction must report the number of female employees as of the most recent date when the class was occupied.

D. **Class type.** The jurisdiction must identify the class type (male-dominated, female-dominated, or balanced) as defined by Minnesota Statutes, section 471.991. For classes which were vacant on December 31, 1991, the class type must be as of the most recent date when the class was occupied.

E. **Comparable work value.** The jurisdiction must report the job evaluation rating (comparable work value) of the class as determined by the job evaluation system.

F. **Salary.** The jurisdiction must report the minimum and maximum monthly salary, as determined by subitems (1) to (4). If there is no salary range for the class, the jurisdiction must note that information in the space provided on the form.

(1) For classes with an established hourly wage, jurisdictions must multiply the minimum and maximum hourly wages by 173.3 to determine the minimum and maximum monthly wage. When there is no established hourly wage, and there is only an annual wage, jurisdictions must divide the minimum and maximum annual wages by the number of months worked to determine the minimum and maximum monthly wages.

If the wage is for a class in which all employees work less than full-time equivalents, the minimum and maximum monthly wages must be adjusted to represent the full-time equivalent wage. The jurisdiction must make the adjustment by determining the minimum and maximum hourly wage and multiplying that amount by 173.3.

(2) If any employee in the class is paid less than the minimum of the wage range, or if no wage range exists, the jurisdiction must list the lowest wage actually paid any employee in the class as the minimum monthly salary. For classes which were vacant on December 31, 1991, and for which no wage range exists, the jurisdiction must list the lowest wage actually paid any employee in the class as of the most recent date when the class was occupied.

(3) If any employee in the class is paid more than the maximum of the wage range, or if no wage range exists, the jurisdiction must list the highest wage actually paid any employee in the class as the maximum. For classes which were vacant on December 31, 1991, and for which no wage range exists, the jurisdiction must list the highest wage actually paid any employee in the class as of the most recent date when the class was occupied.

(4) If any class received additional cash compensation at any time from July 1, 1991 through December 31, 1991, and if that payment resulted in pay above the wage range maximum, that payment must be prorated to determine a monthly equivalent. The prorated amount must be added to the wage range maximum in calculating the maximum monthly salary.

G. Years to maximum. The jurisdiction must report the number of years required to qualify for the maximum monthly salary. If no salary range exists, the jurisdiction must report the number of years of service in the class for the employee with the highest actual monthly salary.

H. Exceptional service pay. The jurisdiction must report the type of exceptional service pay received, if any employee in the class was receiving longevity or performance payments which resulted in pay above the salary range maximum.

Subp. 6. **Benefits.** The jurisdiction must report whether or not eligibility for benefits, or the jurisdiction's contribution limit for benefits, is different for any male-dominated and female-dominated classes of comparable work value. Classes are of comparable work value for purposes of this subpart if their job evaluation ratings are within a range of ratings equal to ten percent of the total range of evaluation ratings in the jurisdiction.

The total range of evaluation ratings is determined by subtracting the lowest rating assigned to any class in the jurisdiction from the highest rating assigned to any class in the jurisdiction. The rating corresponding to ten percent of that amount is determined by dividing the total range of evaluation ratings by ten.

To determine whether differences exist, jurisdictions must compare benefits eligibility and contribution limits for each female-dominated class to benefits eligibility and contribution limits for each male-dominated class within an evaluation range extending from ten percent of the total range of evaluation ratings below the female-dominated class to ten percent of the total range of evaluation ratings above the female-dominated class.

If differences exist, and if the differences represent a lower contribution limit or more limited eligibility for any female-dominated class, the jurisdiction must report the following information for all classes:

A. eligibility or lack of eligibility for each benefit program; and

B. the amount of the employer's contribution limit for each benefit program, prorated to determine monthly value.

Subp. 7. **Performance differences.** If a jurisdiction without salary ranges for any of its classes wants the department to consider documented performance differences which may explain compensation differences between male-dominated and female-dominated classes, as explained in part 3920.0600, subpart 7, the jurisdiction's report must so indicate. In addition, the report must include a statement that documentation about performance differences is available at the department's request.

Subp. 8. **Total payroll.** The jurisdiction must state the amount of its total actual annual payroll for the year ending December 31, 1991.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0400 COMPLIANCE REVIEW.

Subpart 1. **Compliance requirements.** This part identifies the tests a jurisdiction must pass to be found in compliance. If a jurisdiction fails any of the tests which apply to that jurisdiction, as described in items A to D, the department must find the jurisdiction not in compliance.

A. A jurisdiction with six or more male-dominated classes and one or more salary ranges must pass the statistical analysis test described in part 3920.0500.

B. A jurisdiction with four or five male-dominated classes and one or more salary ranges, and a jurisdiction with more than three male-dominated classes and no salary ranges, must pass the statistical analysis test described in part 3920.0500 or, if that test is not passed, the alternative analysis test described in part 3920.0600.

C. A jurisdiction with three or fewer male-dominated classes must pass the alternative analysis test described in part 3920.0600.

D. All jurisdictions must pass all the other tests described in part 3920.0700.

Subp. 2. **Basis for analysis.** The statistical analysis test and the alternative analysis test are based on the maximum monthly salaries and on the job evaluation ratings listed in the jurisdiction's implementation report, except as provided in items A and B.

A. If a jurisdiction has no salary ranges, the analysis is based on the highest actual salary paid for each class.

B. If a jurisdiction provides different benefits to male-dominated and female-dominated classes of comparable work value as explained in part 3920.0300, subpart 6, and if those differences represent a disadvantage to any female-dominated class, the department must add the jurisdiction's benefits contribution limit to the maximum monthly salary or to the highest salary actually paid for each class.

Subp. 3. **Data review.** Before completing the compliance review, the department must mail to each jurisdiction a printout showing the data derived from the jurisdiction's implementation report which will be used in determining compliance for that jurisdiction. The department may not make a compliance decision for a period of 14 days after the date shown on the printout mailed to the jurisdiction. If a jurisdiction submits written notification to the department within the 14-day period that any of those data are in error, the department must review the data and correct any bona fide data entry errors before making a compliance decision.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0500 STATISTICAL ANALYSIS TEST.

Subpart 1. **Scope.** This part applies to a jurisdiction with more than three male-dominated classes.

Subp. 2. **Criteria for statistical analysis test.** To pass this test, analysis of the jurisdiction's implementation report must show:

A. an underpayment ratio of 80.0 percent or more; or

B. an underpayment ratio less than 80.0 percent, and:

(1) for a jurisdiction with six or more male-dominated classes and with one or more salary ranges, an average pay difference which is the same for male-dominated and female-dominated classes or which does not represent a disadvantage for female-dominated classes;

(2) for a jurisdiction with six or more male-dominated classes and with one or more salary ranges, an average pay difference which represents a disadvantage for female-dominated classes, and a determination that the difference is not statistically significant; or

(3) for a jurisdiction with fewer than six male-dominated classes, and for a jurisdiction that has no salary ranges for any of its classes, a determination that the jurisdiction meets the alternative analysis test described in part 3920.0600.

Subp. 3. **Steps in statistical analysis.** For each jurisdiction with more than three male-dominated classes, the department must conduct a statistical analysis. The analysis includes determining and analyzing the following data: predicted pay, underpayment ratio, average

pay difference, and statistical significance of the average pay difference as described in subparts 4 to 9. All operations in this part are based on unrounded data, except when otherwise specified.

Subp. 4. Determining predicted pay. The department must determine predicted pay for each male-dominated and female-dominated class in the jurisdiction. Predicted pay means predicted salary for those jurisdictions which do not have different benefits for male-dominated and female-dominated classes of comparable work value, as described in part 3920.0300, subpart 6. For those jurisdictions which do have different benefits for male-dominated and female-dominated classes of comparable work value, predicted pay means the total predicted amount of salary plus benefits contribution limits.

The department must determine predicted pay by creating a window, drawing a regression line within the window, and identifying a predicted pay point on the regression line. The process described in items A to D is continued until pay has been predicted for each male-dominated and female-dominated class in the jurisdiction.

A. Creating a window. The analysis creates a window around the class. The window defines classes of comparable work value for purposes of the statistical analysis. Except as provided in item B, each window represents 20 percent of the total range of job evaluation ratings in the jurisdiction. The total range of evaluation ratings is determined by subtracting the lowest rating assigned to any class from the highest rating assigned to any class. The result is then multiplied by 20 and divided by 100. In addition, the window must meet the criteria in subitems (1) to (4).

(1) The lower limit of the window is below the evaluation rating of the class being analyzed by ten percent of the total range of evaluation ratings, except when the class being analyzed is in the bottom ten percent or the top ten percent of the total range of evaluation ratings. The upper limit of the window is above the evaluation rating of the class being analyzed by ten percent of the total range of evaluation ratings, except when the class being analyzed is in the top ten percent or the bottom ten percent of the total range of evaluation ratings.

(a) If the evaluation rating of the class being analyzed is in the bottom ten percent of the total range of evaluation ratings, the lower limit of the window is the lowest rating assigned to any class in the jurisdiction and the upper limit of the window is 20 percent above the lower limit.

(b) If the evaluation rating of the class being analyzed is in the top ten percent of the total range of evaluation ratings, the upper limit of the window is the highest rating assigned to any class in the jurisdiction and the lower limit of the window is 20 percent below the upper limit.

(2) The window must include at least three male-dominated job classes. When analyzing a male-dominated job class, the class being analyzed is counted as one of the three male-dominated job classes.

(3) The window must include at least two male-dominated job classes with different job evaluation ratings. When analyzing a male-dominated job class, the class being analyzed is counted as one of the two male-dominated job classes with different ratings.

(4) The window must include at least 20 percent of all the male-dominated classes in the jurisdiction.

B. Expanding the window. If any of the criteria in item A, subitems (2) to (4) are not met, the window is expanded in increments of five percent of the total range of evaluation ratings on both sides of the previous window, except as provided in subitems (1) and (2). That is, in the first expansion the lower limit becomes the rating level 15 percent below the class being analyzed and the upper limit becomes the rating level 15 percent above the class being analyzed. The window is increased using these five percent increments as many times as necessary until the criteria in item A, subitems (2) to (4) are met.

(1) If the expansion results in a lower limit below the lowest rating assigned to any class in the jurisdiction, then the lower limit is the lowest rating assigned to any class in the jurisdiction. The upper limit is above the lower limit by the total length of the expanded window, that is, 30 percent in the first expansion, 40 percent in the second expansion, and so forth. The window is expanded until the criteria in item A, subitems (2) to (4) are met.

(2) If the expansion results in an upper limit above the highest rating assigned to any class in the jurisdiction, then the upper limit is the highest rating assigned to any class in the jurisdiction. The lower limit is below the upper limit by the total length of the expanded window, that is, 30 percent in the first expansion, 40 percent in the second expansion, and so forth. The window is expanded until the criteria in item A, subitems (2) to (4) are met.

C. Drawing a line. Using conventional statistical regression techniques, the analysis fits a linear regression line to all male-dominated classes in the window. The line is weighted to reflect the number of employees in each male-dominated class. The regression line represents the relationship between job evaluation ratings and salary, or between job evaluation ratings and salary plus benefits in the case of jurisdictions with different benefits for male-dominated and female-dominated classes of comparable work value, as explained in part 3920.0300, subpart 6.

D. Predicting pay. The analysis predicts pay for the class being analyzed by determining the dollar value on the regression line which corresponds to the job evaluation rating of the class being analyzed.

Subp. 5. **Determining underpayment ratio.** The analysis tabulates the number of female-dominated and male-dominated classes which are paid below predicted pay for their job evaluation ratings. The analysis then calculates female-dominated classes paid below predicted pay as a percentage of all female-dominated classes in the jurisdiction, and male-dominated classes paid below predicted pay as a percentage of all male-dominated classes in the jurisdiction, as follows:

A. the number of male-dominated classes which are paid below predicted pay is divided by the total number of male-dominated classes, and the result is multiplied by 100;

B. the number of female-dominated classes which are paid below predicted pay is divided by the total number of female-dominated classes, and the result is multiplied by 100; and

C. the result from item A is divided by the result from item B, and the quotient is multiplied by 100 and rounded to one decimal place. This is the underpayment ratio.

Subp. 6. **Analyzing underpayment ratio.** If the underpayment ratio is 80.0 percent or more, the department must find that the jurisdiction passes the statistical analysis test. If the underpayment ratio is less than 80.0 percent, the department must continue the compliance review as explained in items A to C.

A. If the underpayment ratio is less than 80.0 percent, and the jurisdiction has fewer than six male-dominated classes, the department must use the alternative analysis test described in part 3920.0600. The department must not continue the statistical analysis as described in subparts 7 to 9.

B. If the underpayment ratio is less than 80.0 percent, and the jurisdiction has no salary ranges for any of its classes, the department must use the alternative analysis test described in part 3920.0600. The department must not continue the statistical analysis as described in subparts 7 to 9.

C. If the underpayment ratio is less than 80.0 percent, and the jurisdiction has six or more male-dominated classes and one or more salary ranges, the department must continue the statistical analysis as described in subparts 7 to 9.

Subp. 7. **Determining average pay difference.** For a jurisdiction described in subpart 6, item C, the department must determine and analyze the average pay difference. The average pay difference is the dollar amount of the average difference from predicted pay, calculated as follows:

A. The number of employees in each female-dominated class is multiplied by the dollar amount of the difference from predicted pay for that class. Both positive amounts (above predicted pay) and negative amounts (below predicted pay) are included.

B. The sum of the amounts in item A is divided by the total number of employees in female-dominated classes and rounded to the nearest whole dollar. The result is the average difference from predicted pay for female-dominated classes.

C. The process explained in items A and B is repeated for male-dominated classes. The result is the average difference from predicted pay for male-dominated classes.

Subp. 8. **Analyzing average pay difference.** The department must evaluate the average pay difference as explained in items A and B.

A. If the average pay difference is the same for male-dominated and female-dominated classes, or if the average pay difference does not represent a disadvantage for female-dominated classes, the department must find that the jurisdiction passes the statistical analysis test.

B. If the average pay difference represents a disadvantage for female-dominated classes, the department must continue the analysis as described in subpart 9.

Subp. 9. **Significance of average pay difference (t-test).** If the average pay difference represents a disadvantage for female-dominated classes, a standard test of statistical significance called the t-test must be applied to this finding. The department must evaluate the results as explained in items A and B.

A. The t-test of pooled variance is applied using conventional statistical techniques. Significance is determined at the five percent level for a one-tailed test. The statistical analysis rounds the value of t to three decimal places. The sample t table is taken from a standard statistical text: Blalock, Social Statistics, Second Edition 1972, published by McGraw-Hill, page 559. The degrees of freedom is the total number of employees in male-dominated and female-dominated classes, minus two. To be significant, the value of t for a jurisdiction must be at or above the level listed, except that for degrees of freedom not listed, the required level of t is taken from a standard normal distribution table.

Distribution of t (five percent significance)

Degrees of Freedom	Value of t
1	6.314
2	2.920
3	2.353
4	2.132
5	2.015
6	1.943
7	1.895
8	1.860
9	1.833
10	1.812
11	1.796
12	1.782
13	1.771
14	1.761
15	1.753
16	1.746
17	1.740
18	1.734
19	1.729
20	1.725
21	1.721
22	1.717
23	1.714
24	1.711
25	1.708
26	1.706
27	1.703
28	1.701
29	1.699
30	1.697

40	1.684
60	1.671
120	1.658
infinity	1.645

B. If the *t*-test is not significant, the department must find that the jurisdiction has passed the statistical analysis test. If the *t*-test is significant, the department must find that the jurisdiction has failed the statistical analysis test and is not in compliance.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0600 ALTERNATIVE ANALYSIS TEST.

Subpart 1. **Scope.** This part applies to:

A. a jurisdiction with three or fewer male-dominated classes;
 B. a jurisdiction with four or five male-dominated classes, when the jurisdiction has an underpayment ratio of less than 80.0 percent as explained in part 3920.0500, subpart 6; and

C. a jurisdiction with no salary ranges for any of its classes, when the jurisdiction has an underpayment ratio of less than 80.0 percent as explained in part 3920.0500, subpart 6.

Subp. 2. **Criteria for alternative analysis test.** To pass the alternative analysis test, a jurisdiction must meet one of the following criteria:

A. an initial review shows that salary, or salary plus benefits, for female-dominated classes is not consistently below that of male-dominated classes of comparable work value, as described in subpart 4;

B. for classes with no salary ranges, differences in years of service explain the underpayment for all underpaid female-dominated classes, as described in subpart 6;

C. for classes with no salary ranges, differences in performance, separately or in combination with differences in years of service, explain the underpayment for all underpaid female-dominated classes, as described in subpart 7; or

D. for classes with no salary ranges, combined differences in years of service and performance explain the underpayment for some of the underpaid female-dominated classes, and the remaining number of underpaid female-dominated classes is 20.0 percent, or less, of female-dominated classes in the jurisdiction, as explained in subparts 6 and 7.

Subp. 3. **Basis for alternative analysis.** The analysis is based on the maximum monthly salaries and job evaluation ratings listed in the jurisdiction's implementation report, except as described below. If the jurisdiction has no salary ranges, the analysis is based on the highest actual salary paid for each class. If a jurisdiction provides different benefits to male-dominated and female-dominated classes of comparable work value, and if those differences represent a disadvantage to any female-dominated class, the analysis is based on the jurisdiction's benefits contribution limit plus the maximum monthly salary, or on the jurisdiction's benefits contribution limit plus the highest salary actually paid for each class.

Subp. 4. **Initial review.** The department must conduct an initial review to determine whether salary, or salary plus benefits, for female-dominated classes is not consistently below that of male-dominated classes of comparable work value. The department must examine salary or salary plus benefits for each female-dominated class using the criteria in items A to D, and must identify each female-dominated class which is underpaid. For purposes of this part, "underpaid" means paid less than the level established by these criteria.

The department must count the number of underpaid female-dominated classes and calculate underpaid female-dominated classes as a percentage of all female-dominated classes in the jurisdiction. If 20.0 percent or a smaller percentage of female-dominated classes are underpaid according to the criteria in items A to D, the department must find that the jurisdiction has passed the alternative analysis test. If more than 20.0 percent of female-dominated classes are underpaid according to these criteria, the department must proceed as explained in subpart 5.

A. If there are any female-dominated classes with higher job evaluation ratings than male-dominated classes, and there are no male-dominated classes with ratings higher

than those female-dominated classes, the amount of salary or salary plus benefits for each of those female-dominated classes must be equal to or higher than the amounts for each lower-rated male-dominated class.

B. If there are any female-dominated classes with job evaluation ratings falling between lower-rated and higher-rated male-dominated classes, the amount of salary or salary plus benefits for each of the female-dominated classes must fall between the amounts for the male-dominated classes.

C. If there are any female-dominated classes with the same job evaluation ratings as male-dominated classes, the amount of salary or salary plus benefits for each of those female-dominated classes must be equal to or higher than the amounts for any of the male-dominated classes. This criterion does not apply if there are any male-dominated classes which are rated higher than the female-dominated class, but which receive salary or salary plus benefits amounts equal to or lower than the amounts for the female-dominated class.

D. If there are any female-dominated classes with job evaluation ratings lower than all male-dominated classes, those female-dominated classes must be compensated as reasonably in proportion to their job evaluation ratings as other classes in the jurisdiction.

Subp. 5. Failure to meet initial review standard. If more than 20.0 percent of female-dominated classes are underpaid according to the criteria in subpart 4, the department must determine whether the jurisdiction has salary ranges for its classes.

A. If there is no salary range for one or more underpaid female-dominated classes, or if there is no salary range for one or more male-dominated classes with which the underpaid female-dominated classes are being compared, the department must analyze years of service under subpart 6.

B. If there are salary ranges for the underpaid female-dominated class and for all male-dominated classes with which the female-dominated class is being compared, the department must find that the jurisdiction has failed the alternative analysis test and is not in compliance.

Subp. 6. Years of service. The department must analyze the years of service for employees in female-dominated and male-dominated classes in the situation described in subpart 5, item A. For each of the underpaid female-dominated classes, the department must determine whether differences in years of service explain the underpayment.

The department must then count the remaining number of underpaid female-dominated classes for which years of service do not explain the underpayment, and evaluate the result as explained in items A to C.

A. If the remaining number of underpaid female-dominated classes is 20.0 percent or a smaller percentage of female-dominated classes in the jurisdiction, the department must find that the jurisdiction has passed the alternative analysis test.

B. If the remaining number of underpaid female-dominated classes is more than 20.0 percent of female-dominated classes, and if the jurisdiction has no salary ranges for any of its classes, the department must request and analyze any documents about performance differences submitted by the jurisdiction, as explained in subpart 7.

C. If the remaining number of underpaid female-dominated classes is more than 20.0 percent of female-dominated classes, and if the jurisdiction has salary ranges for some or all of its classes, the department must find that the jurisdiction has failed the alternative analysis test and is not in compliance.

Subp. 7. Performance. In the situation described in subpart 6, item B, if a jurisdiction reported that documentation of performance differences is available, as explained in part 3920.0300, subpart 7, the department must request the documentation from the jurisdiction. The department must find that a jurisdiction which does not submit this information within the time set by the department has submitted an incomplete or inaccurate report, as explained in part 3920.0700, subpart 2.

The department must analyze the documentation in each case where a female-dominated class is underpaid according to subpart 4. For each of these female-dominated classes, the department must decide whether differences in performance explain the underpayment, separately or in combination with information about years of service for classes without salary ranges.

The department must then count the remaining number of underpaid female-dominated classes for which neither years of service nor performance explain the underpayment, and evaluate the result as explained in items A and B.

A. If the remaining number of underpaid female-dominated classes represents 20.0 percent or a smaller percentage of female-dominated classes in the jurisdiction, the department must find that the jurisdiction has passed the alternative analysis test.

B. If the remaining number of underpaid female-dominated classes represents more than 20.0 percent of female-dominated classes, the department must find that the jurisdiction has failed the alternative analysis test and is not in compliance.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0700 OTHER TESTS.

Subpart 1. **Scope.** This part describes additional tests to be passed in the compliance review. If a jurisdiction fails any of the tests which apply to that jurisdiction as explained in subparts 2 to 5, the department must find the jurisdiction not in compliance.

Subp. 2. **Complete and accurate information test.** Each jurisdiction must report accurately and completely all of the information required by Minnesota Statutes, sections 471.991 to 471.999, and this chapter. If a jurisdiction fails to submit a report by January 31, 1992, the department must find that jurisdiction not in compliance.

Any person or entity may submit a complaint about the accuracy or completeness of a jurisdiction's report by writing to the department. The complaint must specify the information believed to be inaccurate or incomplete. In response to a complaint, the department must decide either that the complaint is without merit and that no review is necessary, or that the complaint may have merit and a review is necessary.

In addition, the department may initiate a review of the accuracy and completeness of a jurisdiction's report for the purpose of ensuring that the compliance review is based upon correct and complete information.

If the department decides that a review is necessary, the department must notify the jurisdiction in writing that a review is being undertaken. The department's notice must identify the missing information, the information which may be inaccurate, and any information required to demonstrate the completeness and accuracy of the report. The department must establish and notify the jurisdiction of a reasonable time period for the jurisdiction to submit missing information or to verify the information.

If the jurisdiction does not respond within the established time period, or if the department determines after reviewing the response that the report remains inaccurate or incomplete, the department must find the jurisdiction not in compliance.

Subp. 3. **Reopening department determinations.** If the conditions listed in items A and B are met, the department must reopen the jurisdiction determination under part 3920.0200, the compliance review under part 3920.0400, the reconsideration review under part 3920.0900, or the request for suspension of penalty review under part 3920.1100. The appropriate review process must be reopened if:

A. after making a jurisdiction determination, a compliance determination, a reconsideration determination, or a determination on a request for suspension of penalty, the department becomes aware that information submitted by a jurisdiction may be inaccurate or incomplete; and

B. the department has reason to believe that completing or correcting the information is likely to affect one of those determinations.

If any of the review processes are reopened, the department must use the procedure in subpart 2. In addition, the department must consider the evidence, notify the jurisdiction, and undertake all other procedures appropriate for the affected review process.

Jurisdictions found not in compliance as the result of reopening a review process may submit a reconsideration request under part 3920.0900. Jurisdictions subject to a penalty as the result of reopening a review process may submit a request for suspension of penalty under part 3920.1100, a contested case appeal as provided in part 3920.1200, or both.

Subp. 4. **Salary range test.** The average number of years required for female-dominated classes to qualify for the maximum monthly salary may not be consistently larger than the average number of years required for male-dominated classes to qualify for the maximum monthly salary. If a jurisdiction provides a different number of years to qualify for the maximum monthly salary for male-dominated and female-dominated classes, the department must evaluate this information as follows. The evaluation is limited to classes with an established number of years to reach maximum salary.

A. Calculate the average years to maximum for female-dominated classes by adding the years to maximum for female-dominated classes and dividing the result by the number of female-dominated classes.

B. Calculate the average years to maximum for male-dominated classes by adding the years to maximum for male-dominated classes and dividing the result by the number of male-dominated classes.

C. Divide the result from item B by the result from item A, and multiply the result times 100. If this amount is 80.0 percent or more, the department must find that the jurisdiction has passed the salary range test. If this amount is less than 80.0 percent, the department must find that the jurisdiction has failed the salary range test and is not in compliance.

Subp. 5. **Exceptional service pay test.** The percentage of female-dominated classes receiving exceptional service pay may not be consistently below the percentage of male-dominated classes receiving exceptional service pay. If employees in male-dominated classes receive exceptional service pay, the department must evaluate the information as provided in items A to D.

A. Count the number of male-dominated classes in which employees are receiving some form of exceptional service pay. Divide the sum by the total number of male-dominated classes, and multiply the quotient by 100.

B. If the result from item A is 20.0 percent or less, the department must find that the jurisdiction has passed the exceptional service pay test. If the result from item A is more than 20.0 percent, the department must continue the evaluation.

C. Count the number of female-dominated classes in which employees are receiving some form of exceptional service pay. Divide the sum by the total number of female-dominated classes, and multiply the quotient by 100.

D. Divide the result from item C by the result from item A, and multiply the quotient by 100. If the result is 80.0 percent or more, the department must find that the jurisdiction has passed the exceptional service pay test. If the result is less than 80.0 percent, the department must find that the jurisdiction has failed the exceptional service pay test and is not in compliance.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0800 COMPLIANCE NOTIFICATION.

Subpart 1. **Written notice.** When the department makes a compliance decision, it must notify the jurisdiction in writing.

Subp. 2. **Jurisdictions in compliance.** If a jurisdiction is in compliance, the department must notify the jurisdiction of the date on which the next implementation report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

Subp. 3. **Jurisdictions not in compliance.** If a jurisdiction is not in compliance, the department must provide a detailed description of the basis for the finding, specific recommended actions to achieve compliance, an estimated cost of compliance, a date by which compliance must be achieved to avoid a penalty, and a date by which the jurisdiction must submit a revised report for reexamination by the department.

The revised report must consist of the same information required in the original implementation report, except that the information must be revised to be current as of the date by which compliance must be achieved to avoid a penalty. The date by which the jurisdiction must submit a revised report must be 30 days after the date by which compliance must be achieved to avoid a penalty.

In setting the date by which compliance must be achieved to avoid a penalty, the department must consider the basis for the noncompliance finding and the actions recommended to achieve compliance.

Subp. 4. **Report to legislature.** The department must list all jurisdictions found not in compliance in its annual pay equity report to the legislature.

Subp. 5. **Next steps.** If a jurisdiction found not in compliance disagrees with the compliance decision or the date by which compliance must be achieved to avoid a penalty, the jurisdiction may request reconsideration of the decision under part 3920.0900. If a jurisdiction found not in compliance agrees with the compliance decision, it must act to come into compliance and it must submit a revised report by the date specified in the compliance notice.

After the date specified in the compliance notice, the department must examine the revised report and make a revised compliance decision by the methods explained in parts 3920.0400 to 3920.0700.

A. If the department finds the jurisdiction in compliance as of the date specified, based on the revised report, no penalty may be imposed. The department must notify the jurisdiction that it is in compliance and must specify the date on which the next report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

B. If the department finds the jurisdiction not in compliance as of the date specified, based on the revised report, the department must notify the jurisdiction that the jurisdiction is not in compliance and that a penalty will be imposed under part 3920.1000. The department must provide a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance. The jurisdiction may submit a request for suspension of penalty under part 3920.1100, a contested case appeal as explained in part 3920.1200, or both.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.0900 RECONSIDERATION.

Subpart 1. **Scope.** If a jurisdiction disagrees with the department's compliance decision or with the time provided by the department to achieve compliance, it may request reconsideration of the decision. As the result of a reconsideration, the department must decide, based on the written information described in subparts 7 to 9:

A. that its original noncompliance decision and date for achieving compliance were correct;

B. that the original noncompliance decision was incorrect and the jurisdiction is in compliance; or

C. that the original noncompliance decision was correct but that more time will be provided for the jurisdiction to achieve compliance.

Subp. 2. **Initiating a reconsideration request.** To initiate a reconsideration request, the jurisdiction must give written notice to the department. The reconsideration request must be submitted within 30 days after the date of the noncompliance notice sent by the department.

Subp. 3. **Submitting information.** The jurisdiction must submit written information to support the request within 60 days after the date of the noncompliance notice sent by the department.

A. A jurisdiction requesting reconsideration must submit the information listed in subpart 5, notice to employees.

B. A jurisdiction requesting reconsideration of the time provided to achieve compliance, but not requesting reconsideration of the original compliance decision, must also submit the information listed in subpart 8, compliance plan.

C. A jurisdiction may also submit any of the information listed in subpart 9, evidence for reconsideration.

Subp. 4. **Burden of proof.** During the reconsideration process, the burden of proof is on the jurisdiction to demonstrate to the department that the compliance decision was incorrect or that the time allowed to achieve compliance should be extended.

Subp. 5. **Notice to employees.** Reconsideration requests must include:

A. a statement signed by the chief elected official, or if none, the chief appointed official, verifying that exclusive representatives and employees have been notified of the reconsideration request, as explained in subpart 6; and

B. a copy of the notice sent and posted, as explained in subpart 6.

Subp. 6. Notice requirements. A jurisdiction requesting reconsideration must send a written notice to each exclusive representative, if any, for employees of the jurisdiction. The jurisdiction must also post the notice in a prominent location accessible to all employees, and make a copy available in the public library.

The notices must be sent and posted before the request for reconsideration is submitted to the department. Posted notices must remain posted for at least 90 days after the reconsideration request is submitted to the department.

The written and posted notices must include the following information:

A. a statement that the jurisdiction has been found not in compliance with the Local Government Pay Equity Act and that the jurisdiction is requesting a reconsideration of that decision or a longer period of time to achieve compliance;

B. a description of the grounds for the reconsideration request;

C. a statement that the department's determination and the materials submitted in support of the reconsideration request are public information available to anyone requesting the information;

D. a statement that any comments concerning the reconsideration request may be submitted to the department; and

E. the department's address and telephone number.

Subp. 7. Comments. A person or entity may submit a complaint about the accuracy or completeness of a jurisdiction's reconsideration request by writing to the department. The complaint must specify the information believed to be inaccurate or incomplete. In response to a complaint, the department must decide either that the complaint is without merit and that no review is necessary, or that the complaint may have merit and a review is necessary.

In addition, the department may initiate a review of the accuracy and completeness of a jurisdiction's reconsideration request for the purpose of ensuring that the reconsideration is based upon correct and complete information. If the department decides that a review is necessary, it must follow the procedures in part 3920.0700, subpart 2.

Subp. 8. Compliance plan. If a jurisdiction agrees that it is not in compliance, but requests reconsideration of the time allowed to achieve compliance, it must submit the following information to the department in writing:

A. a plan for achieving compliance, including the jurisdiction's proposed actions and response to the department's recommendations;

B. a proposed date for achieving compliance and for submitting a revised report for department review; and

C. a statement by the chief elected official or, if none, the chief appointed official, that the plan and proposed date have been approved by the jurisdiction's governing body.

Subp. 9. Evidence for reconsideration. In submitting a request for reconsideration of the compliance decision or for reconsideration of the time allowed to achieve compliance, the jurisdiction may submit written evidence concerning any of the facts in items A to H.

A. **Nongender-based inequities.** A jurisdiction may demonstrate that compensation inequities between male-dominated and female-dominated classes are not gender-based. The jurisdiction may submit any relevant information.

B. **Recruitment difficulties.** A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of recruitment difficulties in male-dominated classes. The jurisdiction may submit information documenting that:

(1) recruitment problems in female-dominated classes would be identified, evaluated, and treated the same as recruitment problems in male-dominated classes; and

(2) the higher compensation for male-dominated classes is needed to attract qualified candidates for those classes.

C. Retention difficulties. A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of retention difficulties in male-dominated classes. The jurisdiction may submit information documenting that:

(1) retention problems in female-dominated classes would be identified, evaluated, and treated the same as retention problems in male-dominated classes; and

(2) the higher compensation for male-dominated classes is needed to retain employees in those classes.

D. Recent arbitration. A jurisdiction may demonstrate that one or more female-dominated classes receive lower compensation than male-dominated classes because of recent arbitration awards that are inconsistent with equitable compensation relationships. The jurisdiction may submit any relevant information.

E. Good faith. A jurisdiction may demonstrate that it has made a good faith effort to achieve compliance. The jurisdiction may submit any information supporting subitems (1) to (3).

(1) Since 1984, the jurisdiction has substantially reduced the frequency or amount of compensation inequities for female-dominated classes in comparison with male-dominated classes.

(2) Since 1984, a substantial portion of funds available for compensation increases has been spent on reducing compensation inequities for female-dominated classes.

(3) There is other evidence of the jurisdiction's good faith efforts to achieve compliance.

F. Continued progress. A jurisdiction may demonstrate its continued progress toward compliance. The jurisdiction may submit any relevant information.

G. Constraints. A jurisdiction may demonstrate any constraints it faces. The jurisdiction may submit any information supporting subitem (1) or (2).

(1) severe fiscal constraints have made implementation difficult or impossible; or

(2) there are other constraints which have made implementation of pay equity difficult or impossible.

H. Other evidence. A jurisdiction may submit any other information to demonstrate that the department's compliance decision was incorrect or that more time should be provided to achieve compliance.

Subp. 10. Reconsideration decision and notice. The department must notify the jurisdiction in writing of its decision after reconsideration.

A. If the department decides that the original noncompliance decision was incorrect and the jurisdiction is in compliance, the department must notify the jurisdiction of that decision. The notice must specify the date on which the next implementation report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

B. If the department decides that the original noncompliance decision and date for achieving compliance were correct, the department must notify the jurisdiction of that decision. The notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance, if any of that information is revised from the department's original noncompliance notice. If the jurisdiction does not achieve compliance and submit a revised report by the date specified in the department's original compliance notice, a penalty will be imposed under part 3920.1000.

C. If the department decides that the original noncompliance decision was correct but that more time will be provided to achieve compliance, the department must notify the jurisdiction of that decision. The notice must specify the revised date by which compliance must be achieved to avoid a penalty, as explained in part 3920.0800, subpart 3. In addition, the notice must include a detailed description of the basis for the finding, specific recommended actions to achieve compliance, and an estimated cost of compliance, if any of that information is revised from the department's original noncompliance notice.

Subp. 11. Next steps. If a reconsideration results in a time extension for achieving compliance, the jurisdiction must submit a revised report by the date established by the depart-

ment. The department must examine the revised report by the methods in parts 3920.0400 to 3920.0700, and make a revised compliance decision.

A. If a reexamined jurisdiction is found in compliance, the department must notify the jurisdiction of the date on which the next implementation report must be submitted to ensure that pay equity is maintained, as explained in part 3920.1300, subpart 2.

B. If a reexamined jurisdiction is again found not in compliance, the department must notify the jurisdiction that a penalty will be imposed, as explained in part 3920.0800, subpart 5, item B.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.1000 PENALTIES.

Subpart 1. **Department of Revenue notification.** If a reexamined jurisdiction is found not in compliance, the department must notify the Department of Revenue and the jurisdiction that the jurisdiction is subject to a financial penalty under Minnesota Statutes, section 471.9981, subdivision 6, paragraph (c).

Subp. 2. **Enforcement conditions.** The Department of Revenue must enforce the penalty beginning in calendar year 1992, except that the penalty may not be enforced until after the end of the first regular legislative session in which the jurisdiction was listed not in compliance. In addition, the penalty must be suspended under the circumstances in part 3920.1100, subpart 8, item A, and no penalty may be imposed under the circumstances in part 3920.1200, subpart 3.

Subp. 3. **Enforcement procedure.** The Department of Revenue must enforce the penalty by deducting aid or by fining the jurisdiction. For purposes of this part, "aid" means amounts otherwise payable under Minnesota Statutes, section 124A.23, 273.1398, or 477A.011 to 477A.014. The Department of Revenue must determine which of the amounts in items A and B is larger, and deduct the aid or assess the fine accordingly:

A. an amount equivalent to five percent of the aid otherwise payable for calendar year 1992, calculated from January 1, 1992, added to an amount equivalent to five percent of the aid otherwise payable for all additional years after 1992, in which the department certifies that the jurisdiction remains not in compliance; or

B. an amount equivalent to \$100 a day, calculated from January 1, 1992, until the date the department certifies to the Department of Revenue that the jurisdiction has achieved compliance.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.1100 REQUEST FOR SUSPENSION OF PENALTY.

Subpart 1. **Scope.** A jurisdiction which has been notified that it is subject to a penalty under Minnesota Statutes, section 471.9981, subdivision 6, paragraph (c), may submit a request for suspension of penalty with the department. A jurisdiction is not required to submit a reconsideration request before submitting a request for suspension of penalty.

Subp. 2. **Evidence for request.** The department may suspend the penalty for a specified time if a jurisdiction provides written evidence to the department demonstrating that:

A. the failure to implement equitable compensation relationships was attributable to circumstances beyond its control or to severe hardship; or that

B. noncompliance results from factors unrelated to the sex of the members dominating the affected classes and that the subdivision is taking substantial steps to achieve compliance to the extent possible.

Subp. 3. **Initiating a request.** To initiate a request for suspension of penalty, the jurisdiction must submit written notice to the department within 30 days after the date of the penalty notice sent by the department.

Subp. 4. **Burden of proof.** During the request for suspension of penalty process, the burden of proof is on the jurisdiction to demonstrate to the department that the penalty should be suspended.

Subp. 5. **Notice to employees.** A request for suspension of penalty must include:

A. a statement signed by the chief elected official or, if none, the chief appointed official, verifying that exclusive representatives and employees have been notified of the request for suspension of penalty, as explained in subpart 6; and

B. a copy of the notice sent and posted as explained in subpart 6.

Subp. 6. **Notice requirements.** A jurisdiction submitting a request for suspension of penalty must send a written notice to each exclusive representative, if any, for employees of the jurisdiction. The jurisdiction must also post the notice in a prominent location accessible to all employees, and make a copy available in the public library.

The notices must be sent and posted before the request for suspension of penalty is submitted to the department. Posted notices must remain posted for at least 90 days after the request for suspension of penalty is submitted to the department.

The written and posted notices must include the following information:

A. a statement that the jurisdiction is subject to a penalty for noncompliance with the Local Government Pay Equity Act and that the jurisdiction is submitting a request for suspension of penalty;

B. a description of the grounds for the request;

C. a statement that the department's determination and the materials submitted in support of the request for suspension of penalty are public information available to anyone requesting the information;

D. a statement that any comments concerning the request for suspension of penalty may be submitted to the department; and

E. the department's address and telephone number.

Subp. 7. **Comments.** A person or entity may submit a complaint about the accuracy or completeness of a jurisdiction's request for suspension of penalty by writing to the department. The complaint must specify the information believed to be inaccurate or incomplete. In response to a complaint, the department must decide either that the complaint is without merit and that no review is necessary, or that the complaint may have merit and a review is necessary.

In addition, the department may initiate a review of the accuracy and completeness of a jurisdiction's request for suspension of penalty for the purpose of ensuring that the department's suspension decision is based upon correct and complete information. If the department decides that a review is necessary, it must follow the procedures in part 3920.0700, subpart 2.

Subp. 8. **Decision on request.** The department must make a finding on the request for suspension of penalty, based on the evidence in subparts 2 and 7, and must provide written notice of the finding to the jurisdiction.

A. If the department finds that the penalty should be suspended, it must notify the Department of Revenue of its decision. In this case, the department must extend the time to achieve compliance and notify the jurisdiction of the date when a second revised report will be required. The department must review the second revised report according to parts 3920.0400 to 3920.0700.

B. If the department finds that the penalty should not be suspended, the Department of Revenue must enforce the penalty except as provided under part 3920.1200.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.1200 CONTESTED CASE APPEAL.

Subpart 1. **Scope.** A jurisdiction which has been notified that it is subject to a penalty may file an appeal to be decided as a contested case. A jurisdiction is not required to submit a reconsideration request or a request for suspension of penalty before filing a contested case appeal.

Subp. 2. **Initiating a contested case appeal.** To initiate a contested case appeal, the jurisdiction must submit written notice to the department within 30 days after the date of the penalty notice sent by the department.

Subp. 3. **No penalty pending appeal.** When it receives a contested case appeal notice, the department must notify the Department of Revenue that the appeal is pending. No penalty may be imposed while an appeal is pending.

Subp. 4. **Contested case procedure.** When it receives a contested case appeal notice, the department must initiate a contested case proceeding under Minnesota Statutes, sections 14.57 to 14.62.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*

3920.1300 MAINTAINING PAY EQUITY.

Subpart 1. **Scope.** After the original implementation date and reporting date, a jurisdiction must maintain equitable compensation relationships and submit additional reports as required by the department. The department must monitor compliance on an on-going basis and must report to the legislature annually. This part explains procedures for monitoring pay equity after the first implementation cycle.

Subp. 2. **Future reports.** The department must establish a schedule for future reporting, providing that approximately one-third of all jurisdictions must report each year beginning in 1994.

A. The department must give a jurisdiction at least one year's notice of the date when its next scheduled report will be due.

B. The department must require, and a jurisdiction must submit, the same information required in the original implementation report, except that the information must be revised to be current as of the date 30 days before the new report. In addition, a jurisdiction must:

(1) submit information on additional cash compensation paid at any time in the 12 months before the new report; and

(2) verify that the jurisdiction has notified the department if the jurisdiction has adopted a new job evaluation system, or substantially modified an existing system, at any time after December 31, 1991.

Subp. 3. **Future compliance reviews and notifications.** The department must review the reports and make compliance decisions according to parts 3920.0400 to 3920.0700, and notify jurisdictions of its decisions according to part 3920.0800.

Subp. 4. **Future reconsideration and appeal.** A jurisdiction which was found in compliance at one time, but which is found not in compliance at a future date, may initiate the reconsideration request under part 3920.0900. If a jurisdiction is subject to a penalty after reexamination, the jurisdiction may initiate the request for suspension of penalty under part 3920.1100, and the contested case appeal described in part 3920.1200. The department must consider the evidence and make decisions as provided in parts 3920.0900, 3920.1100, and 3920.1200.

Subp. 5. **Future penalties.** A jurisdiction which was found in compliance at one time, but which is found not in compliance at a future date, and which remains not in compliance after reexamination, is subject to the penalties in part 3920.1000, except that the penalty applies only to the period the jurisdiction is found not in compliance under subpart 6.

Subp. 6. **Enforcement conditions for future penalties.** The Department of Revenue must enforce the penalty beginning in the calendar year in which the department finds the jurisdiction not in compliance, except that the penalty may not be enforced until after the end of the first regular legislative session in which the jurisdiction was listed not in compliance. In addition, the penalty must be suspended under the circumstances in part 3920.1100, subpart 8, item A, and the penalty may not be imposed under the circumstances in part 3920.1200, subpart 3.

Subp. 7. **Enforcement procedures for future penalties.** The Department of Revenue must enforce the penalty by deducting aid or fining the jurisdiction. For purposes of this part, "aid" means amounts otherwise payable under Minnesota Statutes, section 124A.23, 273.1398, or 477A.011 to 477A.014. The Department of Revenue must determine which of the amounts in items A and B is larger, and deduct the aid or assess the fine accordingly:

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A. an amount equivalent to five percent of the aid otherwise payable for the calendar year in which the department finds the jurisdiction not in compliance, added to an amount equivalent to five percent of the aid otherwise payable for all additional years in which the department certifies that the jurisdiction remains not in compliance; or

B. an amount equivalent to \$100 a day, calculated from the date the department finds the jurisdiction not in compliance until the date the department certifies that the jurisdiction has achieved compliance.

Statutory Authority: *MS s 43A.04*

History: *17 SR 712*