

Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 2—Classification and Pay Plans**

EMERGENCY AMENDMENT

1 CSR 20-2.020 The Pay Plan. The board is deleting sections (1), (2), and (5), renumbering and amending existing sections (3) and (4) as necessary, and adding a new section (3).

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

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

[(1) Preparation. After consultation with appointing authorities and the state fiscal officers and after a public hearing, the director, from time-to-time as circumstances require, shall prepare and recommend to the board a pay plan for all classes subject to the State Personnel Law. The pay plan shall include for each class of positions, a pay range with a minimum and a maximum rate, and such provision for intermediate rates of pay as the director considers necessary or equitable. The pay plan may include provision for grouping of management positions with similar levels of responsibility or expertise into broad classification bands for purposes of determining compensation and provision for such salary differentials and other pay structures as the director considers necessary or equitable. In establishing the rates and ranges of pay, the director shall give consideration to the experience in recruiting for positions in the state service, the rates of pay prevailing in the state for the services performed and for comparable services in public and private employment, living cost, maintenance or other benefits received by employees and the financial condition and policies of the state. The initial pay plan for divisions of service or branches, when first brought under the provisions of the law, shall be prepared in this same manner and, upon adoption, become a part of the general pay plan.

(2) Adoption. The pay plan shall take effect when approved by the board and the governor. Each employee appointed to a position subject to these rules, after the adoption of the pay plan, shall be paid according to the provisions of the pay plan for the position in which s/he is employed; provided that the commissioner of administration certifies that there are

funds appropriated and available to pay the adopted pay plan. The pay plan also shall be used as the basis for preparing budget estimates for submission to the legislature as these budget estimates concern payments for services performed in positions subject to the State Personnel Law.]

[(3)](1) Effect of Amendments, Revisions, and Additions. When amendments or revisions to the pay plan are effective, rates of pay of employees *[shall be]* are adjusted *[to that step]* in the amended scale comparable to the *[step in the old]* prior scale, *[unless]*. *[a]A* lesser adjustment *[is]* may be specifically requested and justified by an appointing authority and approved by the director. This approval *[shall be]* is conditioned upon uniformity of treatment for all employees of a division of service. When a new or revised class of positions is established in the classification plan, the director *[shall]* recommends for approval of the board an appropriate pay range within the pay plan.

[(4)](2) Administration. The implementation and ongoing administration of the pay plan *[shall]* will be conducted in a manner which promotes *[equitable pay relationships and the]* efficient and effective practice of personnel administration. *[Appointing authorities shall have a responsibility to exercise the discretion included in these rules in a manner which avoids inconsistent, arbitrary or discriminatory pay actions.]* The pay plan *[shall]* will be administered in accordance with the following provisions:

[(A) Appointment Rate. The minimum rate of pay for a class normally shall be paid upon appointment to the class. The following are exceptions to this practice:

1. If an appointing authority determines that the qualifications of an applicant substantially exceed those normally expected of beginning employees in the class involved, or if an appointing authority determines, based on permanent position-related factors, such as working conditions or physical location of work, that the beginning rate of pay for an individual position or group of positions is insufficient to meet recruitment or staffing needs, an appointment at a rate above the minimum rate is authorized. In these cases, the proposed rate of pay should not exceed that which is being paid to present employees with comparable qualifications or to present employees in similar position-related circumstances; and

2. If an appointing authority finds that the beginning rate of pay for a given class of positions is insufficient to meet minimum recruitment needs, either statewide or in selected areas of the state, the appointment of employees in that class may be made at a higher rate of pay. In these cases, employees in the affected class and area should be advanced at least to the proposed new rate. Establishment of class-wide recruitment rates should be based on the appointing authority's recruitment and retention experience, register experience, local competitive salary data, effect of rates on other classes utilized by the agency and the budgetary impact of establishing those rates;]

[(B)](A) Salary Advancements. Salary advancements within the pay range for the class occupied by an employee are of three (3) types: probationary salary advancements, specific salary advancements authorized during a fiscal year, and discretionary salary advancements, administered in accordance with the following provisions:

1. A probationary salary advancement of up to *[two (2) steps]* **four percent (4%)** is *[authorized]* permitted for an employee upon successful completion of the original probationary period. As used in this paragraph, successful completion means the granting of regular **employee** status to a probationary employee, rather than the evaluation attained in the performance appraisal. An appointing authority

Emergency Rules

may grant a probationary salary advancement of up to *[two (2) steps] four percent (4%)* following successful completion of a promotional probationary period or completion of six (6) months of service following upward reclassification;

2. Within-grade, market progression or other specific salary advancements which are only authorized during a fiscal year when specific funding has been appropriated for all agencies. When such funding is approved and appropriated by the legislature, the Personnel Advisory Board will issue guidelines and instructions for implementation of these provisions. Within-grade, market progression, or other specific salary advancements may be for *[one or more steps or for]* varying amounts or percentages within the range for the class, and may be based on length of total state service, performance appraisal, time in class, relative market position within the range, or any combination of these or other factors;

3. Discretionary salary advancements may be granted by an appointing authority as warranted by the needs of the service, *except that the appointing authority shall have a responsibility to exercise this discretion in a manner which avoids inconsistent, arbitrary or discriminatory pay actions. For positions in the classified service, discretionary salary advancements cannot be given during the probationary period, unless approved by the director of the Division of Personnel in cases where it does not affect competitive appointments that would compromise the selection group as enumerated in 1 CSR 20-3.030(3)(A);* and

4. The probationary salary advancement and the specific salary advancement authorized during a fiscal year as described in paragraphs *[(4)(B)1.] (2)(A)1.* and *2. [shall] will* be given to eligible employees to the extent that funds are available for implementation of these provisions. No employee *[shall] can* be denied a probationary salary advancement or specific salary advancement authorized during a fiscal year as described in paragraphs *[(4)(B)1.] (2)(A)1.* and *2.* in order to provide a salary advancement to another employee authorized under paragraph *[(4)(B)3.] (2)(A)3.;*

[(C)](B) The provisions of this rule pertaining to salary advancements *[shall] do* not apply to salary adjustments made in accordance with section *[(3)] (1)* when revisions occur in the pay plan;

[(D)](C) Pay Rates in Transfer, Promotion, Reclassification, or Demotion. If an employee is transferred, promoted, reclassified, or demoted, the employee's rate of pay *[shall be]* is determined as follows:

1. If the rate of pay in the previous class is less than the minimum rate established for the new class, the rate of pay *[shall be]* is advanced to at least the minimum for the new class;

2. If the rate of pay in the previous class is more than the maximum rate for the new class, the pay *[shall be]* is reduced to the maximum rate for the new class or lower for purposes of equity, except as provided for in paragraph *[(4)(D)6.] (2)(C)4.* of this rule;

3. If the rate of pay in the previous class falls within the range of pay for the new class *[and at an established step of the new range]*, the salary rate will depend on the type of personnel transaction. In the case of transfer or lateral reclassification, the salary rate *[shall]* remains the same unless otherwise provided by the appointing authority due to equity considerations. In the case of promotion or upward reclassification, the salary rate *[shall] may* be increased *[one (1) step or more]*. In the case of downward reclassification, voluntary demotion, or demotion for cause, the salary rate *[will] may* be reduced *[one (1) step or more]* as justified by the difference in salary levels between the class to which demoted and the class previously held, or for purposes of equity. At the discretion of the appointing authority, the salary rate in the case of voluntary demotion or downward reclassification may remain unchanged; **and**

[4. If the rate of pay in the previous class falls within the range of pay for the new class but does not correspond to an established step in the new salary range, it shall be advanced to at least the next higher step if the action is a

promotion or upward reclassification or decreased to, at least, the next lower step or more for purposes of equity if the action is a demotion or downward reclassification;

5. *The following upward reclassification or promotional salary increase formula may be used as a guide when exceeding the mandatory one (1)-step increase. By formula, the number of steps the salary may be increased is one (1) more than the number of pay ranges by which the new class exceeds the previous class. Consistent application will promote equitable treatment of employees affected by these actions; and]*

[6.]4. If the rate of pay in the previous class is more than the maximum rate established for the new class, a salary rate above the maximum rate for the new class may be approved in accordance with the following provisions:

A. Where a department, division, work unit, class of employees, or other entity of state government is initially made subject to the classification provisions of the State Personnel Law, the Personnel Advisory Board may approve salary rates above the established maximum rates for the affected employees in job classes to which the newly-allocated positions are assigned. Similarly, if a series of classes or a single class of positions within the classification plan is restructured, altered or abolished, the Personnel Advisory Board may approve above-the-maximum rates for affected employees, upon recommendation of the appointing authority. In each case where an above-the-maximum rate has been authorized by the Personnel Advisory Board, the rate of pay will be clearly recorded as an over-the-range rate, and the affected employee will not be eligible for any additional type or amount of salary adjustment or advancement until the rate of pay falls within the range of pay for the class to which the position is allocated;

B. Where a position is reallocated to a lower class by action of an appointing authority under delegated allocation authority or by the Division of Personnel, the appointing authority, with approval of the personnel director, may elect to continue the incumbent employee's rate of compensation at the above-the-maximum rate, establish a lower rate of pay which exceeds the established maximum for the class, or reduce the salary to an equitable rate within the authorized range of pay for the lower class as provided for in paragraph *[(4)(D)2.] (2)(C)2.* If the appointing authority elects to establish an above-the-maximum rate, the rate of pay will be clearly recorded as an over-the-range rate, and the affected employee will not be eligible for any additional type or amount of salary adjustment or advancement until that time as his/her rate of pay *[shall]* falls within the range of pay for the class to which the position is allocated; and

C. An over-the-range rate established under subparagraphs *[(4)(D)6.A.] (2)(C)4.A.* and B. will continue while the employee remains in the same, comparable, or higher classification in the same department. The payment of a differential authorized by the Personnel Advisory Board will be allowed where applicable, and the salary of an affected employee who enters or exits a position covered by this differential will be adjusted in a manner consistent with agency policy and practice. Where an employee receiving an over-the-range rate of pay maintains continuous state employment but accepts a position in the same, comparable, or higher classification in another department covered by the classification and pay provisions of the State Personnel Law the appointing authority of the receiving agency *[shall have] has* the discretion to continue the authorized over-the-range rate, to establish a lower rate of pay which exceeds the established maximum for the class, or to reduce it to an equitable rate within the authorized range of pay for the class. Once the range of pay for the class occupied by the employee can accommodate the rate of pay, the over-the-range rate will be void and the employee's compensation will be subject to the provisions contained elsewhere in the rules; and

[(E)](D) Total Remuneration. The salary rate established in the pay plan is intended as remuneration for the performance of full-time

Emergency Rules

work in accordance with 1 CSR 20-5.010(1)(A). Employees may receive additional payments as follows: overtime payments in accordance with 1 CSR 20-5.010(1); pay differentials and performance incentive payments as authorized by the Personnel Advisory Board; suggestion award payments authorized by section 36.030, **RSMo**, of the State Personnel Law; reimbursement for official travel as permitted by 1 CSR 10-11.010; and nonmonetary income or fringe benefits, which represent provisions made to an employee primarily for the benefit of the state. Subsistence deductions from the pay of an employee for articles provided at a state-owned facility primarily for the benefit of the employee are not considered to be a reduction in total remuneration of the employee.

[(5) Certification of Payroll. No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person employed in a division of service unless this person is appointed and employed in accordance with the provisions of the law and these rules. Changes in employment conditions or status which are governed by the law and the rules adopted shall be subject to the same conditions. The director shall establish the procedure necessary to secure compliance with this section. Any sum paid contrary to any provision of the law or of these rules may be recovered for the state in an action maintained by any citizen of Missouri, from any officer who made, approved or authorized payment or who signed or counter-signed a voucher, payroll, check or warrant for the payment or from the sureties on the official bond of any such officer. All moneys recovered in any such action shall be paid into the state treasury. Any citizen of Missouri may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of the law or of these rules (see section 36.330, RSMo).]

(3) Reports. The director will prescribe the necessary mechanism(s) for reports of all personnel changes in the service. These will provide the instructions for submitting the supporting or otherwise pertinent information as the director may deem to be needed. The instructions to appointing authorities will explain which of the changes call for prior approval of the director before they may become effective, which of them require reports when made, and which of them need to be reported sufficiently in advance of the end of the payroll period to permit them to be given effect in the checking and approval of the next payroll.

AUTHORITY: sections 36.060 and 36.070, RSMo Supp. [1995] 2018. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the Missouri Register. A proposed amendment covering this same material will be filed at a later date to be published in the Missouri Register.