

OPM 01-64

DATE: October 3, 2001

TO: All Appointing Authorities

FROM: Oscar B. Jackson, Jr., Administrator and
Cabinet Secretary of Human Resources

**RE: Emergency Rules Regarding Performance-Based Adjustments
and Declaratory Ruling**

Attached are four emergency amendments to the Merit System of Personnel Administration Rules, which were approved by the Governor on September 26, 2001. **The rules become effective October 15, 2001.**

The amendments to 530:10-7-1 are necessary to make the rule consistent with statutory changes made during the 2001 Legislative Session. The amendments to 530:10-7-1.1 establish that performance -based adjustment programs are not to be established in an agency's salary administration plan. (A separate plan for performance-based adjustments is required by Merit Rule 530:10-7-27.) The deletion to Subsection (b) of 530:10-7-1.2 is necessary to continue an earlier emergency amendment, which eliminated a restriction on the use of certain pay movement mechanisms in the unclassified service.

A new Merit Rule, 530:10-7-27, implements a statutory change made during the 2001 Legislative Session which authorized performance-based adjustments or "pay for performance." The following is a declaratory ruling on the interpretation of 530:10-7-27:

May unclassified employees receive performance-based adjustments, and if so, why are they not mentioned in the rule?

Section 840-2.17 of Title 74 of the Oklahoma Statutes authorizes performance-based adjustments for both classified and unclassified employees, but authorizes OPM to adopt rules regarding performance-based adjustments only for classified employees. Further, Section 840-5.1 of Title 74 of the Oklahoma Statutes states that unclassified employees are not subject to the Merit Rules except for leave regulations or "where otherwise provided." So state agencies are authorized by

the Oklahoma Personnel Act to establish performance-based adjustment programs for unclassified employees, but those programs are not subject to the Merit Rules or to the approval of the Office of Personnel Management.

What is meant by "the standard performance management system provided by 530:10-17-31"?

The Office of Personnel Management's Performance Management Process (PMP).

May an agency reward only its "top performers" in its performance-based adjustment program?

An agency may choose to award performance-based adjustments only to those employees who achieved an overall rating of "exceeds standards" on their most recent performance evaluation, but the program must award such adjustments to all employees who "exceed standards."

What is meant by the requirement that the performance-based adjustment program provide for uniform treatment?

All permanent classified employees achieving the same overall rating (such as "exceeds standards") must be awarded the same dollar figure or percentage of salary. The one exception is the situation in which an agency has determined that it will make salary adjustments (as opposed to lump-sum payments) and a performance-based adjustment will cause an employee's salary to exceed the maximum of the pay band. Such an employee may receive a salary increase up to the maximum and the remainder of the performance-based adjustment as a lump-sum payment, but may not have his or her salary raised above the maximum of the pay band.

Does the performance evaluation upon which a performance-based adjustment is based have to have been finalized after the effective date of the rule (October 15, 2001)?

No, a performance-based adjustment may be awarded based on an evaluation that was finalized before October 15, 2001, so long as the evaluation is not more than one year old. However, no performance-based adjustment may be awarded to permanent classified employees prior to the effective date of the rule.

Questions regarding performance-based adjustments may be directed to OPM Compensation at (405) 521-6307. Questions regarding the Performance Management Process (PMP) may be directed to OPM Personnel Assessment at (405) 521-6367.

**TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES**

**SUBCHAPTER 7. SALARY AND PAYROLL
PART 1. SALARY AND RATES OF PAY**

530:10-7-1. Purpose and general provisions

(a) The purpose of the rules in this Part is to *establish pay regulations, regulations for performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments* [74:840-1.6A].

(b) Pay raises are prohibited unless specifically authorized by legislation or the Merit Rules. A cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis is prohibited unless specifically authorized by the Legislature.

(c) The rules in this subchapter provide for market adjustments, increases upon ~~intra-agency~~ lateral transfer, skill-based adjustments, equity-based adjustments, career progression increases, ~~and~~ salary adjustments upon completion of the initial probationary period or trial period, and performance-based adjustments. Appointing Authorities may use these pay mechanisms only if funds are available in the agency's budget for the current and subsequent fiscal ~~years~~ year without the need for additional funding to increase the personal services budget of the agency. Upon certification from the Director of State Finance that an Appointing Authority has exceeded the agency's budget for the current or subsequent fiscal year due to the use of the pay movement mechanisms listed in this subsection, the Administrator may withdraw authorization for the agency to use the following pay movement mechanisms during the next appropriations cycle: market adjustments, increases upon ~~intra-agency~~ lateral transfer, equity-based adjustments, performance-based adjustments, and career progression increases. [74:840-2.17]

530:10-7-1.1. Salary administration plan

An Appointing Authority shall adopt a salary administration plan for the agency's classified positions and submit the plan for the approval of the Administrator. The salary administration plan shall establish hiring ranges for all positions within the agency's classification plan. Components of a salary administration plan include but are not limited to conditions under which the Appointing Authority may establish a hiring rate above the midpoint of the pay range, skill-based pay programs, and other pay movement mechanisms authorized by 74:840-2.17 except performance-based adjustments. The salary administration plan may be amended by the Appointing Authority at any time and submitted to the Administrator for approval of the amended plan.

530:10-7-1.2. Funding and reporting requirements

(a) Use of pay movement mechanisms involving market adjustments, lateral transfers, skill-based pay adjustments, equity-based adjustments, career progression increases, probationary increases, ~~and~~ increases upon the completion of trial periods, and performance-based adjustments are limited to those possible using funds available in the agency's budget for the current and subsequent fiscal year without the need for additional funding. [74:840-2.17]

~~(b) An Appointing Authority may, at his or her discretion, use any of the following pay movement mechanisms for positions in the unclassified service: skill-based pay~~

~~adjustments, equity-based adjustments, and adjustments upon intra-agency lateral transfer. Use of these pay movement mechanisms for positions in the unclassified service is not subject to the Merit Rules regarding these pay movement mechanisms. However, Section 840-2.17 of the Oklahoma Personnel Act requires an Appointing Authority who uses any of these pay movement mechanisms for positions in the unclassified service to report their use to the Office of Personnel Management. Reporting requirements are listed in subsection (c) of this section. Nothing in this subsection is intended to limit the use of any other salary adjustments authorized by law for positions in the unclassified service.~~

~~(e)(b) An Appointing Authority using any of the pay movement mechanisms listed in subsection (a) shall annually report the pay movement mechanisms used to the Office of Personnel Management no later than January 1 of each year on a form prescribed by the Administrator. The report shall include information for the twelve-month period ending on December 31 of each year and shall include the type of pay mechanisms used, frequency, amounts provided, and affected job families and classifications for both classified and unclassified employees. The report shall also include a projection of the pay movement mechanisms to be used and anticipated costs for the remainder of the fiscal year. [74:840-2.17]~~

530:10-7-27. Performance-based adjustments

(a) Performance-based adjustments enable Appointing Authorities to award a salary increase or lump sum payment to employees who have achieved an overall rating of "meets standards" or better on their most recent performance evaluation. This performance evaluation shall be conducted with the standard performance management system provided by 530:10-17-31.

(b) Appointing Authorities may adopt a performance-based adjustment program for permanent classified full-time and part-time employees pursuant to this Section. The program may allow performance-based adjustments for part-time employees on a pro-rated basis.

(c) In order to adopt a performance-based adjustment program, an Appointing Authority must submit a written performance-based adjustment plan to the Administrator for approval. The plan must:

(1) Indicate the manner in which the Appointing Authority intends to award performance-based adjustments, including a determination that performance-based adjustments will be awarded for overall ratings of "meets standards" and "exceeds standards," or "exceeds standards" only. Performance-based adjustments shall not exceed 5% of an employee's annual salary for "meets standards" or 10% of an employee's annual salary for "exceeds standards." The plan shall include:

(A) The amount or percentage that the Appointing Authority will award to qualifying employees; or

(B) The total dollar figure the Appointing Authority intends to set aside for performance-based adjustments to be divided among qualifying employees;

(2) Identify and define the 12-month evaluation cycle to be used within the agency, such as a calendar year or fiscal year. The plan may not be amended within the evaluation cycle but may be discontinued according to paragraph (5) of this subsection;

(3) Indicate whether the Appointing Authority will award performance-based adjustments as an increase to the employee's salary, a lump sum payment, or a combination thereof;

(4) Include certification by the Appointing Authority that the agency can fund the performance-based adjustment program for the current and subsequent fiscal year without the need for additional funding, and that the plan provides for uniform treatment of all permanent classified employees of the agency who achieve a "meets standards" or "exceeds standards" except as provided in subsection (e). The Appointing Authority shall not delegate authority to sign the certification; and

(5) Include a statement that the Appointing Authority may discontinue performance-based adjustments at any time should it be necessary to prevent a budget shortfall. The Appointing Authority shall notify employees of the discontinuation of the plan and the reason therefore.

(d) The performance-based adjustment plan must be approved by the Administrator before the Appointing Authority may grant performance-based adjustments to any permanent classified employee.

(e) An Appointing Authority shall not grant performance-based salary increases which cause an employee's base salary to exceed the maximum of the pay band to which the employee is assigned. [530:10-7-10] Such employees may be given performance-based salary increases up to the maximum of the pay band to which assigned and may also receive the remainder of the increase as a lump sum payment.

(f) An Appointing Authority may grant only one performance-based adjustment to any employee for any 12-month evaluation cycle. An Appointing Authority shall not award a performance-based adjustment to any employee based upon a performance evaluation, which is more than one year old.