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# Rules of Retirement Systems

## Division 50—The County Employees’ Retirement Fund Chapter 20—County Employees’ Deferred Compensation Plan

Title	Page
16 CSR 50-20.010 Establishment and Purpose of Plan .....	3
16 CSR 50-20.020 Definitions .....	3
16 CSR 50-20.030 Participation in the Plan .....	4
16 CSR 50-20.050 Limitations on Deferral .....	4
16 CSR 50-20.060 Accounts of Participants .....	4
16 CSR 50-20.070 Distribution of Accounts .....	5
16 CSR 50-20.080 Death Benefits .....	6
16 CSR 50-20.090 Plan Administration .....	6
16 CSR 50-20.100 Merger of Prior Plan .....	7
16 CSR 50-20.110 Miscellaneous 457 Plan Rules .....	7
16 CSR 50-20.120 Additional Provisions .....	7



**Title 16—RETIREMENT SYSTEMS**  
**Division 50—The County Employees'**  
**Retirement Fund**

**Chapter 20—County Employees' Deferred**  
**Compensation Plan**

**16 CSR 50-20.010 Establishment and Pur-**  
**pose of Plan**

*PURPOSE: This rule establishes the 457 Plan authorized by section 50.1300, RSMo, and describes its intent.*

(1) In accordance with the authority granted to the County Employees' Retirement Board by section 50.1300, RSMo, the Board hereby adopts the County Employees' Deferred Compensation Plan (the "Plan"). The Plan shall be maintained for the exclusive benefit of covered employees and is intended to comply with the eligible deferred compensation plan requirements under section 457 of the *Internal Revenue Code* of 1986, as amended, and regulations thereunder, and other applicable law. Assets and income of the Plan shall be held in trust for the exclusive benefit of the Plan's Participants and their Beneficiaries.

(2) The purpose of this Plan is to enable employees who become covered under the Plan to enhance their retirement security by permitting them to enter into agreements with their Employer to defer a portion of their Compensation and receive benefits at retirement, Separation from Service, death, or in the event of financial hardship due to Unforeseeable Emergencies.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.020 Definitions**

*PURPOSE: This rule provides the definitions needed to describe the terms of the 457 Plan authorized by section 50.1300, RSMo.*

(1) Whenever used in this Chapter 20, the following terms shall have the meanings as set forth in this rule 16 CSR 50-20.020 unless a different meaning is clearly required by the context:

(A) Account means the individual book-keeping account maintained for each Participant that represents his or her total proportionate interest in the Trust Fund. A Participant is fully vested in his or her Account at all times.

(B) Beneficiary means the person, persons, or legal entity entitled to receive benefits under this Plan which become payable in the event of the Participant's death.

(C) Board means the Board of Directors of the County Employees' Retirement Fund.

(D) Code means the *Internal Revenue Code* of 1986, as amended, and includes any regulations thereunder.

(E) Compensation means all salary and other compensation paid to a county employee for personal services rendered as a county employee, which is currently includable in the Employee's gross income for the taxable year for federal income tax purposes (W-2 earnings); such term does not include any amount excludible from gross income under this Plan or any other plan described in section 457(b) of the Code, any amount excludible from gross income under section 403(b) of the Code, or any other amount excludible from gross income for federal income tax purposes.

(F) Deferral means the amount of Compensation that a Participant elects to defer pursuant to a properly executed Deferral Agreement.

(G) Deferral Agreement means the agreement between a Participant and an Employer to defer receipt of Compensation not yet earned.

(H) Employee means any person, an elective or appointive county official or employee regularly employed by a county who is under the direct control and supervision of a county or an elected or appointed county official and who is subject to continued employment, promotion, salary review or termination by a county or an elected or appointed county official and who is compensated directly from county funds and whose position requires the actual performance of duties during not less than 1,000 hours per calendar year, except county prosecuting attorneys covered under sections 56.800–56.840, RSMo, circuit clerks and deputy circuit clerks covered under the Missouri State Retirement System and county sheriffs covered under sections 57.949–57.997, RSMo, and employees who received some compensation from the county but who are subject to hiring, supervision, promotion or termination by an entity other than the county such as an extension council or the circuit court.

(I) Employer means each county in the state, except any city not within a county and counties of the first classification with a charter form of government.

(J) Investment Option means one of the options established by the Board, in which amounts contributed to a Participant's Account may be invested at the Participant's dis-

cretion. There is no limit on the type of investment that the Board may designate as an option.

(K) Participant means an Employee or former Employee who has been enrolled in this Plan and who retains his or her Account under the Plan.

(L) Plan means the County Employees' Deferred Compensation Plan as set forth in this Chapter 16 CSR 50-20 and as it may be amended from time to time.

(M) Plan Year means the calendar year.

(N) Prior Plan means any deferred compensation plan that is an eligible deferred compensation plan (as defined in section 457 of the Code), which has been consolidated with this Plan as permitted by section 50.1300, RSMo.

(O) Separation from Service means the severance of a Participant's employment with an Employer for any reason, including retirement or disability.

(P) Transfer Amounts means amounts transferred to a Participant's Account in accordance with 16 CSR 50-20.030(6) or 16 CSR 50-20.100.

(Q) Trust Agreement means an agreement entered into by the Board and one or more Trustees to govern the Trust Fund. The Trust Agreement shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Missouri.

(R) Trust Fund means the sum of the contributions made to the Plan and held by the Trustee or Trustees in a trust, increased by any profits or income thereon and decreased by any losses or expenses incurred in the administration of the Trust Fund and any payments made therefrom.

(S) Trustee means the entity, or individual, or committee that is responsible for holding and managing the Trust Fund.

(T) Unforeseeable Emergency means a severe financial hardship to the Participant resulting from a sudden and unexpected illness or accident of the Participant or of a dependent of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or the desire to purchase a home shall not be an Unforeseeable Emergency. Payment may not be made in the event that such hardship is or may be relieved—

1. Through reimbursement or compensation by insurance or otherwise;

2. By liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or



3. By cessation of Deferrals under the Plan.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.030 Participation in the Plan**

*PURPOSE: This rule provides the 457 Plan's eligibility requirements and the rules governing deferral elections to the 457 Plan.*

(1) Eligibility. Effective January 1, 2000, each Employee who is employed by an Employer and is a member of the pension fund described in 50.100-50.1200, RSMo may become a Participant in this Plan. Participation shall commence when enrollment becomes effective pursuant to section (2).

(2) Enrollment. Employees may enroll in the Plan by completing a Deferral Agreement and submitting it to their Employer. The Employer shall be responsible for submitting the Deferral Agreement to the Board (or its designee) and ensuring that contributions are forwarded to the Trustee selected by the Board. Enrollment shall be effective as soon as administratively practicable following the date the Deferral Agreement is properly completed by the Employee and received by the Employer.

(3) Modifications to Amount Deferred. A Participant may change Deferrals with respect to Compensation not yet earned by submitting a new properly executed Deferral Agreement to his or her Employer. The change shall take effect as soon as administratively practicable but not earlier than the first day of the pay period beginning in the calendar year quarter following receipt of the properly completed Deferral Agreement by the Employer.

(4) Revocation of Deferral. Any Participant may revoke his or her election to have Compensation deferred by notifying the Employer in writing. This revocation shall take effect as soon as administratively practicable, but no earlier than the first pay period following receipt of written notice of such revocation by the Employer. A Participant who revoked his or her Deferral may not enter into a new Deferral Agreement that is effective prior to the first day of the calendar year quarter following the revocation. Deferrals shall be revoked automatically for any month in which there are insufficient monies to make the

entire Deferral agreed upon, and automatically reinstated in the next pay period that Compensation is sufficient to make the agreed upon Deferral.

(5) Transmittal of Contributions. Notwithstanding any contrary provision of the Plan, in accordance with section 457(g) of the Code, all Deferrals, all property and rights purchased with such Deferrals, and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. All amounts of compensation deferred under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Accounts of Participants.

(6) Acceptance of Transfers. A Participant who participated in any eligible deferred compensation plan described in section 457(b) of the Code may transfer his or her account in such a plan or, effective January 1, 2002, an eligible rollover distribution described in section 457(e)(16) of the Code to his or her Account in this Plan.

(7) Minimum Deferral. The minimum deferral permitted under the Plan shall be \$10 per month.

*AUTHORITY: section 50.1300, RSMo 2000.\* Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed Aug. 18, 2003, effective Feb. 29, 2004.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.050 Limitations on Deferral**

*PURPOSE: This rule describes the limitations on deferral elections to the 457 Plan imposed by the Internal Revenue Code.*

(1) General Limitation. The maximum Deferral amount for any Participant in any taxable year beginning after December 31, 2001 shall not exceed the lesser of—

(A) Eleven thousand dollars (\$11,000) (as adjusted for taxable years beginning before January 1, 2007 in accordance with section 457(e)(15)(A) of the Code, and for taxable years beginning after December 31, 2006 to reflect increases in the cost of living in accordance with sections 457(e)(15)(B) and 415(d) of the Code); or

(B) One hundred percent (100%) of the Participant's Compensation for the taxable year.

(2) Catch-Up Contributions. All Participants who are eligible to make Deferrals under this Plan for a Plan Year and have attained age fifty (50) before the close of the Plan Year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, section 414(v) of the Code for Plan Years beginning after December 31, 2001. Such contributions shall not be taken into account for purposes of subsection (1)(A) or section (3).

(3) Coordination with Other Plans. If a Participant participates in more than one Code section 457 Plan, the maximum deferral under all such plans shall not exceed the amounts described in 16 CSR 50-20.050(1) and (2) above (as modified by any adjustment provided under Code section 457(b)(3)).

(4) The provisions of this rule 16 CSR 50-20.050 shall be administered in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994.

*AUTHORITY: section 50.1300, RSMo 2000.\* Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed Aug. 18, 2003, effective Feb. 29, 2004.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.060 Accounts of Participants**

*PURPOSE: This rule describes the accounting for a Participant's interest in the 457 Plan, and the investment of a Participant's Account.*

(1) Accounts. The Board shall establish and maintain Accounts on behalf of each Participant. Such Participant Accounts shall be valued at fair market value as of each business day. Each Participant's Account balance shall reflect his or her aggregate Deferral Amounts, Transfer Amounts and any earnings (or losses) attributable to such amounts, and shall be reduced by administrative, investment, and other fees and expenses attributable to his or her Account that are necessary for the administration of the Participant's Account.

(2) Investments. A Participant may request that his or her Account (and his or her Deferrals) be allocated among the Investment Options made available by the Board. The initial allocation request shall be made at the time of enrollment. Once made, an investment allocation request shall remain in effect



until changed by the Participant. A Participant may change his or her investment allocation by submitting a request to the Board (or its designee) in such form as may be permitted by the Board (or its designee). Such changes shall become effective as soon as administratively feasible after the Board (or its designee) receives such request. If the Participant fails to make an investment allocation request at the time of his or her enrollment, the Participant's Account shall be invested in default Investment Options selected by the Board, until such time as the Participant submits an investment allocation request.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

#### 16 CSR 50-20.070 Distribution of Accounts

*PURPOSE: This rule describes the timing and form of benefit payments from the 457 Plan.*

(1) Eligibility for Payment. Distribution to a Participant of his or her Account shall be made no earlier than—

(A) Separation from Service;

(B) The calendar year in which the Participant attains age 70 1/2;

(C) The date the Board approves a distribution to the Participant on account of an Unforeseeable Emergency; or

(D) The date the Participant requests a voluntary in-service *de minimis* distribution from the Plan.

(2) Distribution Due to Unforeseeable Emergency. A Participant may request a distribution due to Unforeseeable Emergency by submitting a request to the Board (or its designee). The Board (or its designee) shall have the authority to require such evidence as it deems necessary to determine whether a distribution is warranted. If an application for a hardship distribution due to an Unforeseeable Emergency is approved, the distribution is limited to an amount sufficient to meet the Unforeseeable Emergency. The allowed distribution shall be paid in a single sum to the Participant as soon as possible after approval of such distribution.

(3) Voluntary In-Service *De Minimis* Distribution. A Participant who is an active Employee shall receive a distribution of his or her Account if the following requirements are met:

(A) The Participant's Account balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater);

(B) The Participant has not previously received an in-service distribution of his or her Account balance;

(C) The Participant has not made Deferrals during the two-year period ending on the date of the in-service distribution; and

(D) The Participant elects to receive the distribution.

(4) Commencement of Distributions.

(A) General Rule. Distribution of a Participant's Account under the Plan shall be made in the form elected by the Participant, commencing as soon as administratively feasible after the calendar year quarter in which the Participant's Separation from Service occurs, unless the Participant elects to defer this payment. A Participant may elect that the distribution of benefits be made at any time following his or her Separation from Service as long as distributions commence no later than sixty (60) days following the close of the calendar year in which the Participant attains age seventy and a half (70 1/2), or retires, if later.

(B) Notwithstanding subsection (4)(A), if the value of a Participant's Account is one thousand dollars (\$1,000) or less, then his or her benefit under the Plan shall be distributed to him or her in a single sum as soon as administratively feasible following his or her Separation from Service.

(C) Employees who terminate employment and then resume employment with an Employer within thirty (30) days will not forfeit their prior service and will not be required to receive a refund of their payroll contributions.

(5) Payment Options. A Participant's or Beneficiary's election of a payment option must be made at least thirty (30) days prior to the date that the payment of benefits is to commence. If a timely election of a payment option is not made, benefits shall be paid in a single lump sum. Once payments have commenced, the form of payment option may not be changed.

(6) Subject to applicable law and the other provisions of this Plan, distributions may be made in accordance with one of the following payment options:

(A) A single lump-sum payment;

(B) Installment payments for a period of years (payable on a monthly, quarterly, semi-annual, or annual basis) which extends no

longer than the life expectancy of the Participant;

(C) Partial lump-sum payment of a designated amount, with the balance payable in installment payments for a period of years, as described in subsection (6)(B), as long as such installment payments begin prior to the end of the calendar year following the year the partial lump-sum payment was made; and

(D) Annuity payments (payable on a monthly, quarterly, or annual basis) for the lifetime of the Participant or for the lifetimes of the Participant and Beneficiary if permitted under sections 401(a)(9) or 457(d) of the Code. If the Participant fails to make a timely election of one of the payment options described above, payment shall be made in a single sum.

(7) Direct Rollover Option.

(A) After December 31, 2001, a distributee may elect to have an eligible rollover distribution paid directly to a single eligible retirement plan specified by the distributee. However, this election may not be made if the total eligible rollover distributions paid to the distributee from the Plan will be less than two hundred dollars (\$200).

(B) A distributee may elect to divide an eligible rollover distribution so that part is paid directly to an eligible retirement plan and part is paid to the distributee. However, the part paid directly to the eligible retirement plan must total at least five hundred dollars (\$500).

(C) A distributee may elect a direct rollover after having received a written notice which complies with the rules of Code section 402(f). In general, payment to a distributee shall not begin until thirty (30) days after the section 402(f) notice is given. However, payment may be made sooner if the notice clearly informs the distributee of the right to a period of at least thirty (30) days to consider the decision of whether or not to make a direct rollover, and the distributee, after receiving the notice, makes an affirmative election to receive an immediate distribution. A distributee who fails to make an election in the thirty (30)-day period shall receive the eligible rollover distribution immediately after the thirty (30)-day period expires.

(D) For purposes of this section (7), the following terms have the meanings set forth below:

1. An "eligible rollover distribution" is any distribution or withdrawal payable under the terms of this Plan to a Participant, which is described in Code section 402(c)(4). In general, this term includes any single-sum distribution, and any distribution which is



one in a series of substantially equal periodic payments made over a period of less than ten (10) years, and is less than the distributee's life expectancy. However, an eligible rollover distribution does not include the portion of any distribution which constitutes a minimum required distribution under Code section 401(a)(9) or any distribution due to unforeseeable emergency. Such term also does not include a distribution to the Participant's Beneficiary, unless the Beneficiary is the Participant's spouse;

2. "Eligible retirement plan" means—

- A. An individual retirement account described in Code section 408(a);
- B. An individual retirement annuity described in Code section 408(b);
- C. An annuity plan described in Code section 403(a);
- D. A retirement plan qualified under Code section 401(a), but only if the terms of the plan permit the acceptance of rollover distributions;
- E. An annuity contract described in Code section 403(b); and
- F. An eligible deferred compensation plan under Code section 457(b) which is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state; and

3. "Distributee" means a Participant or the spouse of a deceased Participant.

(8) This Plan also shall accept the transfer of amounts previously deferred by a Participant under another eligible deferred compensation plan described in section 457 of the Code or, effective January 1, 2002, an eligible rollover distribution described in section 457(e)(16) of the Code.

(9) All distributions under this rule 16 CSR 50-20.070 shall be made in accordance with the requirements of Code sections 457(d)(2) and 401(a)(9).

(10) Lost Participants. Notwithstanding any other provision of the Plan, if it is not possible to make payment because the Board cannot locate the Participant after making reasonable efforts to so do, a retroactive payment may be made as soon as administratively feasible after the date on which the Participant is located.

(A) If the Board is unable to locate any person entitled to receive distribution from an Account hereunder, such Account shall be forfeited and used to reduce Plan expenses on the date two years after the date the Board sends by certified mail a notice concerning the benefits to such person at his or her last

known address (or determines that there is no last known address).

(B) If an Account is forfeited under this Section and a person otherwise entitled to the Account subsequently files a claim with the Board during any Plan Year, before any allocations for such Plan Year are made, the Account will be restored to the amount which was forfeited without regard to any earnings or losses that would have been allocated. Such restoration shall first be taken out of forfeitures which have not been allocated and if such forfeitures are insufficient to restore such person's account balance, restoration shall be made by an Employer contribution to the Plan.

*AUTHORITY: section 50.1300, RSMo 2000. \* Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002. Amended: Filed June 7, 2006, effective Jan. 30, 2007.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.080 Death Benefits**

*PURPOSE: This rule describes the benefits available to a Participant's Beneficiary upon his or her death and the procedure for designating a Beneficiary.*

(1) Death Benefit. As soon as administratively feasible following the close of the calendar year quarter in which the death of a Participant occurs, the Participant's Beneficiary shall receive a single-sum distribution of the Participant's entire Account balance.

(2) Beneficiary Designation. A Participant shall have the right to designate a Beneficiary, and amend or revoke such designation at any time, in writing. Such designation, amendment or revocation shall be effective upon receipt by the Board.

(3) Failure to Designate a Beneficiary. If no designated Beneficiary survives the Participant, or no Beneficiary has been designated by the Participant, and benefits are payable following the Participant's death, the Board shall direct that payment of benefits be made to the person or persons in the first of the following classes of successive preference Beneficiaries:

- (A) The spouse of the Participant; and
- (B) The Participant's estate.

(4) All death benefits paid in accordance with this rule 16 CSR 50-20.080 shall be made in accordance with the requirements of Code sections 457(d)(2) and 401(a)(9).

(5) Direct Rollover. If the Participant's Beneficiary is his or her spouse, the direct rollover provisions shall apply to a distribution in accordance with this rule.

*AUTHORITY: section 50.1300, RSMo 2000. \* Original rule filed May 9, 2000, effective Jan. 30, 2001. Amended: Filed April 25, 2002, effective Nov. 30, 2002.*

*\*Original authority: 50.1300, RSMo 1999.*

**16 CSR 50-20.090 Plan Administration**

*PURPOSE: The purpose of this rule is to outline the administrative procedures and responsibilities for the 457 Plan.*

(1) Plan Administration. The management of the Plan shall be vested in the Board according to the provisions in sections 50.1000 to 50.1260, RSMo, as such Board is established in section 50.1030, RSMo. Any action taken on any matter within the discretion of the Board shall be final, conclusive, and binding on all parties. In order to discharge its duties hereunder, the Board shall have the power and authority to adopt, interpret, alter, amend or revoke rules and regulations necessary to administer the Plan, to delegate ministerial duties and to employ such outside professionals as may be required for prudent administration of the Plan. The Board shall also have authority to enter into agreements as may be necessary to implement this Plan. Any individual member of the Board who is otherwise eligible may participate in the Plan but shall not be entitled to make decisions solely with respect to his or her own participation and benefits under the Plan.

(2) Amendment of Plan. The Board shall have the right to amend the Plan, at any time and from time to time, in whole or in part.

(3) To implement the Plan, the Board shall enter into a Trust Agreement, so that Plan funds shall be segregated from an Employer's own assets and held in trust by the Trustee for the exclusive benefit of Participants and their Beneficiaries. Any or all benefits that may accrue to any Participant or Beneficiary under this Plan shall be subject to the terms and conditions of said Trust Agreement. Except as provided in section (4), it shall be impossible under any circumstances at any time for any part of the corpus or income of the Trust Fund to be used for, or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.



(4) Plan Expenses. All expenses of Plan administration, including (by way of illustration and not limitation) those incurred by the Board and the fees of the Trustee shall be paid from the Trust Fund.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

### 16 CSR 50-20.100 Merger of Prior Plan

*PURPOSE: The rule describes how a county's prior 457 Plan may be merged into this 457 Plan.*

If an Employer has sponsored any other plan described under section 457(b) of the Code, the Employer may elect to consolidate such Prior Plan with this Plan, with the consent of the Board. In this event, the account of each of the Employer's Employees in the Prior Plan shall be transferred to the Trust Fund and made a part of each Employee's Account in the Plan. An Employer is not required to consolidate a Prior Plan with this Plan.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

### 16 CSR 50-20.110 Miscellaneous 457 Plan Rules

*PURPOSE: The purpose of this rule is to set forth miscellaneous provisions relating to the 457 Plan.*

(1) Limitation of Rights: Employment Relationship. Neither the establishment of this Plan nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving a Participant or any other person any legal or equitable right against an Employer except as provided in the Plan. In no event shall the terms of employment of any Employee be modified or in any way be affected by the Plan.

(2) Benefits under this Plan may not be assigned, sold, transferred, or encumbered, and any attempt to do so shall be void. A Participant's or Beneficiary's Account shall not be subject to debts or liabilities of any kind and shall not be subject to attachment, garnishment or other legal process.

(3) Representations. The Board does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will result from participation in this Plan. A Participant should consult with professional tax advisors to determine the tax consequences of his or her participation. Furthermore, the Board does not represent or guarantee successful investment of Deferrals and shall not be required to restore any loss which may result from such investment or lack of investment.

(4) Severability. If a court of competent jurisdiction holds any provision of this Chapter 16 CSR 50-20 to be invalid or unenforceable, the remaining provisions of the Chapter shall continue to be fully effective.

(5) The provisions of this Chapter 16 CSR 50-20 shall be construed in accordance with section 457 of the Code, all other applicable federal law, and, to the extent such other statutes do not apply, the laws of the State of Missouri.

*AUTHORITY: section 50.1300, RSMo Supp. 1999.\* Original rule filed May 9, 2000, effective Jan. 30, 2001.*

*\*Original authority: 50.1300, RSMo 1999.*

### 16 CSR 50-20.120 Additional Provisions

*PURPOSE: This rule is intended as good faith compliance with the provisions of section 457(b) of the Code and is to be construed in accordance with such provisions and guidance issued thereunder.*

(1) The following words and terms, when used in this section, have the meaning set forth below:

(A) Administrator—The Board of Directors of the County Employees' Retirement Fund;

(B) Account Balance—The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit and any distribution made to the Participant or the Participant's Beneficiary. The Account Balance includes any account established under section (5) for rollover contributions and plan-to-plan transfers made for a Participant;

(C) Annual Deferral—The amount of Compensation deferred in any year;

(D) Beneficiary—The designated person who is entitled to receive benefits under the Plan after the death of a Participant;

(E) Code—The *Internal Revenue Code* of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time-to-time be amended or renumbered;

(F) Compensation—All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under section (3));

(G) Employee—Shall have the meaning set forth in rule 16 CSR 50-20.020(1)(H);

(H) Employer—Shall have the meaning set forth in rule 16 CSR 50-20.020(1)(I);

(I) Includible Compensation—An Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of two hundred thousand dollars (\$200,000) (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under section (3));

(J) Normal Retirement Age—Age sixty-two (62);

(K) Participant—An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan;

(L) Plan—Shall have the meaning set forth in rule 16 CSR 50-20.020(1)(L);

(M) Severance from Employment—The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code);

(N) Trust Agreement—The written agreement (or declaration) made by and between the Board and the Trustee under which the Trust Fund is maintained;



(O) Trust Fund—The Trust Fund created under and subject to the Trust Agreement;

(P) Trustee—The Trustee duly appointed and currently serving under the Trust Agreement; and

(Q) Valuation Date—Each business day.

(2) Participation and contributions shall be in accordance with the following:

(A) Election Required for Participation. An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it in accordance with such other applicable Plan terms. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The participation election shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed;

(B) Commencement of Participation. An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to subsection (2)(A). Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer Compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer;

(C) Information Provided by the Participant. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b);

(D) Contributions Made Promptly. Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer

than is reasonable for the proper administration if the contribution is made to the Trust Fund within fifteen (15) business days following the end of the month in which the amount would otherwise have been paid to the Participant;

(E) Amendment of Annual Deferrals Election. Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. A change in the amount of the Annual Deferrals shall take effect as soon as administratively practicable but not earlier than the first day of the first pay period beginning in:

1. Except as otherwise determined pursuant to paragraph (2)(E)2., the next calendar year quarter following the receipt of the properly completed Deferral Agreement by the Employer; or

2. If so determined by the county clerk of the Employer, the calendar month following receipt of the properly completed Deferral Agreement by the Employer. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator;

(F) Leave of Absence. Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues; and

(G) Disability. A disabled Participant may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

(3) Limitations on amounts deferred shall be in accordance with the following:

(A) Basic Annual Limitation. The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of i) the Applicable Dollar Amount or ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code as set forth below:

The Applicable Dollar	
For the following years:	Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000

Adjusted for cost-of-living after 2006 to the extent provided under section 415(d) of the Code.

(B) Age Fifty (50) Catch-up Annual Deferral Contributions. A Participant who will attain age fifty (50) or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age fifty (50) catch-up Annual Deferrals for the year. The maximum dollar amount of the age fifty (50) catch-up Annual Deferrals for a year is as follows:

The maximum age 50 catch-up	
For the following years:	dollar amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000

Adjusted for cost-of-living after 2006 to the extent provided under the Code

(C) Special Section 457 Catch-up Limitation. If the applicable year is one of a Participant's last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this subsection (3)(C) exceeds the amount computed under subsections (3)(A) and (3)(B), then the Annual Deferral limit under this section (3) shall be the lesser of:

1. An amount equal to two (2) times the subsection (3)(A) Applicable Dollar Amount for such year; or

2. The sum of:

A. An amount equal to (A) the aggregate subsection (3)(A) limit for the current year plus each prior calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus—

B. An amount equal to (A) the aggregate



gate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978 and before January 1, 2002 during which the Participant was an Employee (determined without regard to subsections (3)(B) and (3)(C)), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years. However, in no event can the deferred amount be more than the Participant's Compensation for the year.

(D) Special Rules. For purposes of this section (3), the following additional rules shall apply:

1. Participant covered by more than one (1) eligible plan. If the Participant is or has been a participant in one (1) or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this section (3). For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan;

2. Pre-participation years. In applying subsection (3)(C), a year shall be taken into account only if i) the Participant was eligible to participate in the Plan during all or a portion of the year and ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in subsection (3)(A) or any other plan ceiling required by section 457(b) of the Code;

3. Pre-2002 coordination years. For purposes of subparagraph (3)(C)2.B. "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of subparagraph (3)(C)2.B. to the extent that the total of such contributions does not exceed the aggregate

limit referred to in section 457(b)(2) of the Code for that year;

4. Disregard excess deferral. For purposes of subsections (3)(A), (3)(B) and (3)(C), an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in subsection (3)(E). To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

(E) Correction of Excess Deferrals. If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

(F) Protection of Persons Who Serve in a Uniformed Service. An employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

(4) Benefit distributions shall be in accordance with the following:

(A) Benefit Distributions at Retirement or Other Severance from Employment. Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account Balance under any form of distribution permitted under subsection (4)(C) commencing at the date elected under subsection (4)(B). If a Participant does not elect

otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in a lump sum.

(B) Election of Benefit Commencement Date. A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed at least thirty (30) days before the date on which benefits are to commence.

However, in no event may distribution of benefits commence later than the date described in subsection (4)(H).

(C) Forms of Distribution. In an election to commence benefits under subsection (4)(B), a Participant entitled to a distribution of benefits under this section (4) may elect to receive payment in such forms of distribution described in the Plan, to the extent the material terms and conditions for those forms are set forth in the Plan and the additional forms of payment satisfy the requirements of section 401(a)(9) of the Code and are not inconsistent with this section (4).

(D) Death Benefit Distributions. Commencing no later than the calendar year following the calendar year of the Participant's death, the Participant's Account Balance shall be paid to the Beneficiary in a lump sum.

(E) Account Balances of Five Thousand Dollars (\$5,000) or Less. Notwithstanding subsections (4)(B), (4)(C) and (4)(D), if the amount of a Participant's Account Balance is not in excess of five thousand dollars (\$5,000) (or the dollar limit under section 411(a)(11) of the Code, if greater) on the date that payments commence under subsection (4)(C) or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment; provided, however, that if the amount of a Participant's Account Balance is in excess of one thousand dollars (\$1,000), then any such lump sum payment to the Participant may not be made prior to the Participant's Normal Retirement Age without the Participant's written consent.

(F) Amount of Account Balance. Except as provided in subsection (4)(C), the amount of any payment under this section (5) shall be based on the amount of the Account Balance on the preceding Valuation Date.

(G) Revocation of Prior Election. Any election made under this section (4) may be revoked at any time.





(H) Latest Distribution Date. In no event shall any distribution under this section (4) begin later than the later of:

1. April 1 of the year following the calendar year in which the Participant attains age seventy and one-half (70 1/2); or

2. April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70 1/2) or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under subsection (4)(C) and an amount equal to the annual installment payment for the year after Severance from Employment determined under subsection (4)(C) must also be paid before the end of the calendar year of commencement.

(I) Unforeseeable Emergency Distribution.

1. Distribution. If the Participant has an unforeseeable emergency before retirement or other Severance from the Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this subsection (4)(I).

2. Unforeseeable emergency defined. An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including nonrefundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this subsection (4)(I), neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

3. Unforeseeable emergency distribution

standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

4. Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(J) Distributions for Certain Account Balances of Five Thousand Dollars (\$5,000) or Less. At the direction of the Administrator, a Participant's total Account Balance shall be paid in a lump sum as soon as practical following the direction if—

1. The total Account Balance does not exceed five thousand dollars (\$5,000) (or the dollar limit under section 411(a)(11) of the Code, if greater);

2. The Participant has not previously received a distribution of the total amount payable to the Participant under this subsection (4)(J);

3. No Annual Deferral has been made with respect to the Participant during the two (2)-year period ending immediately before the date of the distribution; and

4. The Participant elects to receive the distribution.

(K) Rollover Distributions.

1. A Participant or the surviving spouse of a Participant who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

2. For purposes of this subsection (4)(K), an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include—

A. Any installment payment under subsection (4)(C) for a period of ten (10) years or more;

B. Any distribution made under subsection (4)(I) as a result of an unforeseeable emergency; or

C. For any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account

described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(5) Rollovers to the Plan and transfers shall be in accordance with the following:

(A) Eligible Rollover Contributions to the Plan.

1. A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.

2. For purposes of paragraph (5)(A)1., an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include a) any installment payment for a period of ten (10) years or more, b) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

3. The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the Code;



(B) Plan-to-Plan Transfers to the Plan. At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under section 457(b) of the Code to transfer assets to the Plan as provided in this subsection (5)(B). Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457-10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457-2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under section (3);

(C) Plan-to-Plan Transfers from the Plan.

1. At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457-2(f) of the Income Tax Regulations. A transfer is permitted under this paragraph (5)(C)1. for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this paragraph (5)(C)1. only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

2. Upon the transfer of assets under this subsection (5)(C), the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this subsection

(5)(C)1. (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (5)(C)1., and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457-10(b) of the Income Tax Regulations.

(6) The Trust Funds shall be in accordance with the following:

(A) Trust Fund. All amounts of Annual Deferrals, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Missouri. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

(7) This 16 CSR 50-20.120 shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this 16 CSR 50-20.120.

*AUTHORITY: section 50.1300, RSMo 2000. \* Original rule filed Nov. 10, 2005, effective May 30, 2006.*

*\*Original authority: 50.1300, RSMo 1999.*