

be based only on duties and responsibilities existing at the time of demotion and cannot be based on duties and responsibilities assigned later.

(d) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved at the discretion of the Office, on a showing by the employee that he or she was not notified of the applicable time limit and was not otherwise aware of it, or that circumstances beyond his or her control prevented filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

Subpart A [Reserved]

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AUTHORITY: 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), 107 Stat. 981.

Subpart A [Reserved]

Subpart B—Aggregate Limitation on Pay

SOURCE: 56 FR 12835, Mar. 28, 1991, unless otherwise noted.

§ 530.201 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5307, which limits an employee's aggregate compensation to the rate payable for level I of the Executive Schedule at the end of the calendar year.

§ 530.202 Definitions.

In this subpart: *Agency* means an Executive agency, as defined in 5 U.S.C. 105.

Aggregate compensation means the total of—

(1) Basic pay received as an employee of the executive branch or as an employee outside the executive branch to whom chapter 51 of title 5, United States Code, applies;

(2) Locality-based comparability payments under 5 U.S.C. 5304; continued rate adjustments under subpart G of part 531 of this chapter; or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);

(3) Premium pay established by or under subchapter IV of chapter 53 of title 5, United States Code;

(4) Premium pay under subchapter V of chapter 55 of title 5;

(5) Incentive awards and performance-based cash awards under chapters 45, 53, and 54 of title 5, United States Code;

(6) Recruitment and relocation bonuses under 5 U.S.C. 5753;

(7) Retention allowances under 5 U.S.C. 5754;

(8) Supervisory differentials under 5 U.S.C. 5755;

(9) Post differentials under 5 U.S.C. 5925;

(10) Danger pay allowances under 5 U.S.C. 5928;

(11) Allowances based on environmental conditions for employees stationed outside the continental United States or in Alaska under 5 U.S.C. 5941(a)(2);

(12) Physicians comparability allowances under 5 U.S.C. 5948;

(13) Continuation of pay under 5 U.S.C. 8118; and

(14) Other similar payments authorized under title 5, United States Code, excluding back pay due to an unjustified personnel action under 5 U.S.C.

5596; overtime pay under the Fair Labor Standards Act of 1938, as amended, and part 551 of this chapter; severance pay under 5 U.S.C. 5595; and lump-sum payments for accumulated and accrued annual leave on separation under 5 U.S.C. 5551 or 5552.

Basic pay means the total amount of pay received during any 1 calendar year at the rate fixed by law or administrative action for the position held by an employee, including night and environmental differentials for prevailing rate employees under 5 U.S.C. 5343(f) and §532.511 of this part, respectively, but before any deductions and exclusive of additional pay of any other kind.

Discretionary payment means a payment included in an employee's aggregate compensation whose amount is not fixed in advance by law or regulation by virtue of the geographic location and/or pay system of the position held by an employee, or by the nature of work assigned to an employee, and which an agency has discretion to pay or not to pay to a particular employee.

Employee has the meaning given that term in 5 U.S.C. 2105.

Estimated aggregate compensation means the agency's projection of the aggregate compensation an employee actually will receive during a calendar year based upon known factors—i.e., the total amount of basic pay the employee will be paid, plus any lump-sum payment of excess amounts from a previous calendar year; the total amount of nondiscretionary payments to which the employee is entitled; and the total amount of discretionary payments the employee is authorized to receive.

[56 FR 12835, Mar. 28, 1991, as amended at 57 FR 3114, Jan. 28, 1992; 58 FR 50249, Sept. 27, 1993; 61 FR 3540, Feb. 1, 1996]

§ 530.203 Administration of aggregate limitation on pay.

(a) No executive branch employee (or General Schedule employee in the legislative or judicial branch) may receive any allowance, differential, bonus, award, or other similar cash payment under title 5, United States Code, in any calendar year to the extent such payment, in combination with the employee's basic pay (whether received under title 5 or otherwise), would cause

the employee's aggregate compensation to exceed the rate payable for level I of the Executive Schedule on the last day of that calendar year.

(b) The limitation described in paragraph (a) of this section applies to the total amount of aggregate compensation actually received by an employee during the calendar year without regard to the period of service for which such compensation is received.

(c) Except in the case of a retention allowance, at the time a discretionary payment is authorized for an employee, the employee may not receive any portion of such payment that, when added to the estimated aggregate compensation the employee is projected to receive, would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a discretionary payment deferred under this paragraph shall become available for payment as provided in §530.204. The authorization and payment of a retention allowance are governed by the rules set forth in subpart C of part 575 of this chapter.

(d) Nondiscretionary payments may not be deferred or discontinued for any period of time in order to make a discretionary payment that would otherwise cause an employee's pay to exceed any limitation described in or established by this section.

(e) If the estimated aggregate compensation to which an employee is entitled, after deferral of discretionary payments as required by paragraph (c) of this section, exceeds the rate in effect for level I of the Executive Schedule at the end of the calendar year, the agency shall defer all nondiscretionary payments (other than basic pay) at the time when otherwise continuing such payments would cause the aggregate compensation actually received by the employee during the calendar year to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year. Any portion of a nondiscretionary payment deferred under this paragraph shall become

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available for payment as provided in § 530.204.

[56 FR 12835, Mar. 28, 1991, as amended at 57 FR 3114, Jan. 28, 1992; 58 FR 50249, Sept. 27, 1993]

§ 530.204 Payment of excess amounts.

(a) Except as provided in paragraph (d) of this section, amounts in excess of the limitations described in or established by § 530.203 shall be paid to the employee in a lump-sum at the beginning of the following calendar year. The amount so paid shall be considered part of the employee's aggregate compensation for the new calendar year.

(b) If a lump-sum payment provided for in paragraph (a) of this section causes an employee's estimated aggregate compensation to exceed the rate payable for level I of the Executive Schedule at the end of the calendar year, the agency shall consider only the employee's basic pay in determining the extent to which the lump-sum payment may be paid and shall defer all other payments, as provided in § 530.203, in order to pay as much of the excess amount as possible. Any payments deferred under this paragraph, including any portion of the excess amount that was not payable, shall become payable at the beginning of the next calendar year, as provided in paragraph (a) of this section.

(c) If an employee transfers to another agency or leaves the Federal service, the agency responsible for making the payment is the agency that employed the individual when the excess amount was created.

(d) The following conditions permit payment of excess aggregate compensation without regard to the calendar year limitation:

(1) If an employee dies, the excess amount is payable immediately as part of the settlement of accounts, in accordance with 5 U.S.C. 5582.

(2) If an employee separates from the Federal service, the entire excess amount is payable following a 30-day break in service. If the individual is re-employed in the Federal service in the same calendar year as separation, any previous payment of an excess amount shall be considered part of that year's aggregate compensation for the purpose of applying the limitations de-

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scribed in § 530.203 of this part for the remainder of the calendar year.

[56 FR 12835, Mar. 28, 1991, as amended at 57 FR 3115, Jan. 28, 1992; 58 FR 50249, Sept. 27, 1993]

§ 530.205 Records.

Each agency shall maintain appropriate records to administer this subpart and shall transfer such records to any agency to which an employee may transfer and make such records available to any agency in which an employee may be reemployed during the same calendar year.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

SOURCE: 50 FR 32841, Aug. 15, 1985, unless otherwise noted.

§ 530.301 Applicability.

This subpart applies to agencies having positions paid under—

(a) A statutory pay system; or

(b) Any other pay system established by or under Federal statute for civilian positions within the executive branch.

[56 FR 20335, May 3, 1991]

§ 530.302 Authority.

In lieu of the pay schedules identified in § 530.301 of this part, the Office of Personnel Management (OPM) may establish, and agencies shall pay, special salary rates under section 5305 of title 5, United States Code, Executive Order 12748, and this subpart.

[56 FR 20335, May 3, 1991]

§ 530.303 Establishing and adjusting special salary rate schedules.

(a) OPM may increase the minimum rates otherwise payable under the pay schedules identified in § 530.301 of this part in one or more areas or locations to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well-qualified personnel when these handicaps are due to any of the circumstances described in paragraph (b) of this section. When a minimum rate is increased under this authority, increases may also be made in one or

more of the remaining rates of the affected grade or level. In no event may an increased minimum rate exceed the maximum rate prescribed by law for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level V of the Executive Schedule.

(b) The circumstances referred to in paragraph (a) of this section are the following:

(1) Rates of pay offered by non-Federal employers are significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) The remoteness of the area or location involved;

(3) The undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) Any other circumstances OPM considers appropriate.

(c) An agency may propose to OPM that special salary rates be established or adjusted. The agency initiating such a request and all other agencies wishing to be included are responsible for submitting complete supporting data, as specified by OPM, including, after consulting with OPM, a survey of prevailing non-Federal pay rates in the relevant labor market.

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include a certification by the head of the agency that special salary rates are necessary to ensure staffing adequate to the accomplishment of the agency's mission and that funds are available to cover the increased expenditures for salaries and benefits that would result from the approval of the request. If the special salary rate request covers fewer than 1,000 employees or would increase annual salary costs by less than \$4 million, this certification may be provided by a headquarters official designated to act on behalf of the head of the agency.

(e) In establishing or adjusting special salary rate schedules, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruiting problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit for comparable positions, including the number quitting for higher paying non-Federal positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies the agency tried to fill, compared with the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which the agency has considered and used other pay flexibilities available to the agency to alleviate its staffing problems, including above-minimum entry rates, recruitment and relocation bonuses, and retention allowances;

(6) The degree to which the agency has considered relevant non-pay solutions to the staffing problems, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on the agency's mission; and

(8) The level of non-Federal rates paid for comparable positions. (Data on non-Federal salary rates may be supplemented, if appropriate, by data on Federal salary rates for comparable positions established under independent statutory authority.)

(f) In determining at which level to set special salary rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified employees;

(2) The dollar costs that will be incurred if special salary rate schedules are not authorized; and

(3) The level of pay for comparable positions.

(g) No one factor or combination of factors specified in paragraph (e) or (f) of this section requires special salary rate schedules to be established at or

adjusted to any given level. Each agency request to establish or adjust special salary rate schedules shall be judged on its own merits based on the extent to which it meets these criteria.

(h) For newly established or existing special salary rate authorizations, OPM may establish GS-10 special salary rates for the purpose of computing overtime pay and annual premium pay for standby duty and for the purpose of applying the provisions of 5 U.S.C. 5543 governing compensatory time off. In determining the minimum special rate for grade GS-10 to be established for these purposes, OPM shall consider the following factors, as appropriate in each situation:

(1) The need to provide for a reasonable progression in basic pay rates from lower grade levels to higher grade levels; and

(2) The need to avoid pay alignment problems that would result from applying the two-step promotion rule in 5 U.S.C. 5334(b).

(i) The determination regarding whether an employee is covered by a special salary rate schedule is based on the employee's position of record and the official duty station for that position. For purposes of this subpart, the employee's position of record and corresponding official duty station are the position and station documented on the employee's most recent notification of personnel action. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the employee's position of record and official duty station.

[56 FR 20335, May 3, 1991, as amended at 57 FR 59276, Dec. 15, 1992; 62 FR 25425, May 9, 1997]

§ 530.304 Annual review.

(a) Prior to an adjustment in the scheduled rates of pay for one or more grades or levels for which special rates have been authorized under 5 U.S.C. 5305, but at least annually, OPM shall review special salary rate schedules to determine whether the factors in § 530.303 of this part and paragraph (b) of this section require those schedules

to continue, and, if they are to continue, the extent to which they are to be adjusted, if at all.

(b) In addition to the factors in § 530.303 of this part, OPM shall consider, for the purpose of making the determination required by paragraph (a) of this section—

(1) The former non-special pay rates of the special rate employees to ensure that any adjustment in the special rates of pay would not cause those rates to fall below the non-special rates of pay to which the special rate employees would otherwise have been entitled;

(2) The likelihood that the factors leading to a statutory adjustment in pay will affect special rate employees as well; and

(3) Other special rate pay adjustments that occurred prior to the date of the anticipated statutory pay adjustment.

(c) Any adjustment in the special rates of pay shall be based on the factors in paragraphs (a) and (b) of this section and shall not be made solely for mechanical reasons or for the purposes of providing automatic adjustments. Any adjustment must be based on the pay OPM determines is necessary in a given occupation and area to recruit or retain the special rate employees.

(d) In conducting the annual review, OPM shall designate lead agencies for assistance in coordinating the collection of relevant data. All agencies are responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.

(e) When special rates are adjusted as a result of this review, an employee's pay shall be fixed in the same manner as provided in § 530.307 of this part.

[57 FR 59276, Dec. 15, 1992]

§ 530.305 Revising or discontinuing special salary rate schedules.

OPM and agencies shall initiate action to discontinue or revise special salary rate schedules when it is determined that these schedules are no longer needed, or no longer needed at existing levels, to ensure satisfactory

recruitment or retention. No employee's pay shall be reduced because of such discontinuation or revision.

[50 FR 40178, Oct. 1, 1985, as amended at 51 FR 11007, Apr. 1, 1986; 51 FR 23036, June 25, 1986; 57 FR 59277, Dec. 15, 1992]

§ 530.306 Determining employee rates.

(a) *Initial establishment and increases.*

(1) Except as otherwise provided in this section, when an employee is in a position to which a special rate schedule becomes initially applicable or for which the special salary rate schedule is increased, the agency shall fix the employee's rate of basic pay at the step in the new or increased special salary rate schedule that corresponds to the employee's existing numerical step or rate of the grade or level.

(2) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by an employee who is receiving basic pay at a rate in excess of the maximum rate of the applicable rate schedule, the agency shall increase the employee's rate of basic pay as follows:

(i) If the employee is retaining a rate under part 536 of this chapter or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by an amount equal to 50 percent of the increase in the maximum rate of the applicable rate range, except as provided in § 536.205(d).

(ii) If the employee is retaining a rate under an authority other than part 536 of this chapter (including a retained special rate resulting from the reduction or termination of a special salary rate schedule before the first day of the first pay period beginning on or after January 11, 1979), or section 3594 of title 5, United States Code, the agency shall increase the employee's rate of basic pay by the amount of the increase in the maximum rate of the applicable rate range.

(3) When a special salary rate schedule becomes initially applicable to, or increased for, a position occupied by a GM employee (as defined in § 531.202 of this chapter), the employee's rate of basic pay shall be determined under § 531.205(a)(2) of this chapter.

(b) *Decreased and discontinued rates.*

(1) Except as provided in paragraph

(b)(2) of this section, when the special salary rate schedule for a position is discontinued or decreased, the agency shall determine the rate of basic pay for an employee in the position as follows:

(i) If the employee is receiving a rate of basic pay equal to one of the rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at that rate.

(ii) If the employee is receiving a rate of basic pay at a rate between two rates in the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at the higher of the two rates.

(iii) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular or decreased special salary rate schedule for the employee's grade or level, the agency shall fix the employee's rate of basic pay at his or her existing rate, and the employee shall be entitled to this rate as provided in § 536.104(a)(3).

(2) If the employee is receiving a rate of basic pay applicable to a GM employee (as defined in § 531.202 of this chapter), the employee shall receive his or her existing rate. This rate may be lower than the minimum rate for the regular schedule, as permitted by section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89). If the employee's existing rate exceeds the maximum rate for the regular or decreased special salary rate schedule, the employee shall be entitled to the existing rate, as provided in § 536.104(a)(3) of this chapter.

(c) *Initial appointments.* (1) The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the step or rate thus determined to fix the employee's rate at the corresponding step or rate in the special salary rate schedule.

(2) A special salary rate may not be considered an employee's highest previous rate, except as provided in § 531.203(d)(2)(vi).

(d) *General exception.* Except as provided in paragraphs (e), (f), and (g) of this section, all other actions of promotion, reduction in grade, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(e) *Reassignments and transfers.* When an employee is reassigned or transferred within the same pay system to a position to which a special salary rate schedule applies, the agency shall fix the employee's rate in the special salary rate schedule at the step or rate in the special salary rate schedule for the employee's grade or level which corresponds to the employee's existing numerical step or rate in the salary rate schedule for the employee's grade or level.

(f) *Promotions.* When an employee in a position to which a special salary rate schedule does not apply is promoted to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the higher grade or level without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which promoted.

(g) *Reductions in grade.* When an employee not entitled to a retained grade or rate under appropriate authority is reduced in grade to a position to which a special salary rate schedule applies, the agency shall first determine the employee's step or rate in the lower grade without regard to the special salary rate schedule, and then shall fix the employee's rate at the corresponding numerical step or rate in the special salary rate schedule for the grade to which reduced.

[50 FR 40178, Oct. 1, 1985, as amended at 56 FR 20335, May 3, 1991; 58 FR 65535, Dec. 15, 1993; 59 FR 40792, Aug. 10, 1994]

§ 530.307 Effect of an adjustment in scheduled rates of pay.

(a) Except as provided in paragraphs (b) and (c) of this section, when an employee was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay, the employee shall receive on that effective date the rate of basic pay for the numerical rank in the new special rate range established under § 530.304 of this part for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because a special rate schedule has been reduced under § 530.304 of this part, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

(b) If a special rate range is terminated under § 530.304 of this part, an employee who was receiving a special rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date the numerical rank in the new statutory pay schedule for the employee's grade or level that corresponds to the numerical rank of the special rate the employee was receiving immediately before that effective date. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under § 530.304 of this part, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

(c) A GM employee (as defined in § 531.202 of this chapter) receiving a special salary rate immediately before the effective date of an adjustment in scheduled rates of pay shall receive on that effective date a rate of basic pay determined under § 531.205(a)(2) of this chapter. However, in the case of an employee who becomes eligible for pay retention because the employee's pay would otherwise be reduced under § 530.304, the employee shall receive a rate of basic pay determined under § 536.205(b) of this chapter.

[57 FR 59277, Dec. 15, 1992, as amended at 58 FR 65535, Dec. 15, 1993]