

## § 530.308

## 5 CFR Ch. I (1–1–10 Edition)

rate range, OPM may require that special rate supplements generally be adjusted to reflect the increase in GS rates, unless OPM determines that a different adjustment is appropriate for one or more special rate schedules.

(e) If OPM determines that a special rate schedule, or a rate range within a special rate schedule, is no longer needed to ensure satisfactory recruitment or retention of qualified employees, OPM may discontinue the schedule or rate range. Consistent with § 530.303(d), if all employees and positions covered by a special rate schedule or rate range are entitled to a higher rate of basic pay, the schedule or rate range (as applicable) will be automatically discontinued.

(f) OPM may change the established conditions for coverage under a special rate schedule at any time based on a reevaluation of the circumstances and factors that led to establishing the schedule. Expansion of coverage is equivalent to establishing a special rate schedule for a category of affected employees. Reduction of coverage is the equivalent of discontinuing a special rate schedule for a category of affected employees.

(g) When a special rate schedule is adjusted or discontinued, or when there is a change in a schedule's coverage criteria, the rate of pay for affected employees must be set as provided in §§ 530.321 through 530.323.

### § 530.308 Treatment of special rate as basic pay.

Except as otherwise specifically provided under other legal authority, a special rate is considered a rate of basic pay only for the following purposes:

(a) The purposes for which a locality rate is considered to be a rate of basic pay in computing other payments or benefits, to the extent provided by 5 CFR 531.610, except as otherwise provided in paragraphs (b) through (d) of this section;

(b) Computation of nonforeign area cost-of-living allowances and post differentials under 5 U.S.C. 5941 and 5 CFR part 591, subpart B;

(c) Computation of foreign area post differentials under 5 U.S.C. 5925(a) and

danger pay allowances under 5 U.S.C. 5928; and

(d) Application of pay administration provisions for prevailing rate employees which consider rates of basic pay under the GS pay system in setting pay (except as otherwise provided in 5 CFR part 532), subject to the requirement that, if the employee's actual special rate would not apply at the official worksite for the prevailing rate position, a special rate may be used only if it is a corresponding special rate on a special rate schedule that would cover the employee if his or her GS position of record were located at the same official worksite as the prevailing rate position, consistent with the geographic conversion rule in 5 CFR 531.205.

### § 530.309 Miscellaneous provisions.

(a) A special rate may be paid only for those hours for which an employee is in a pay status.

(b) A pay increase caused by an employee becoming entitled to a new or higher special rate supplement is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335. (See 5 CFR 531.407(c).)

(c) A special rate is included in an employee's *total remuneration*, as defined in 5 CFR 551.511(b), and *straight time rate of pay*, as defined in 5 CFR 551.512(b), for the purpose of overtime pay computations under the Fair Labor Standards Act of 1938, as amended.

(d) Consistent with § 530.308, the reduction or termination of an employee's special rate supplement in accordance with the requirements of this subpart is not an adverse action under 5 CFR part 752, subpart D, or an action under 5 CFR 930.211.

[70 FR 31287, May 31, 2005, as amended at 73 FR 66151, Nov. 7, 2008]

#### SETTING AN EMPLOYEE'S RATE OF PAY

### § 530.321 General.

(a) This section and §§ 530.322 and 530.323 provide conversion rules for setting an employee's pay when a special rate schedule is established, increased, decreased, or discontinued, or when an employee's coverage under an existing special rate schedule is affected by a change in coverage criteria. These conversion rules do not apply to changes