

## § 530.308

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

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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

in an employee's special rate entitlements based on a change in the employee's position of record or official worksite. Pay-setting rules for other personnel actions affecting special rate employees are provided in 5 CFR parts 531 and 536. For example, if an employee becomes covered by a special rate schedule as a result of a change in the employee's official worksite, the geographic conversion rule in 5 CFR 531.205 must be used to set the employee's rate(s) of basic pay in the new location before considering any other simultaneous pay action (other than a general pay adjustment).

(b) The conversion rules in §§ 530.322 and 530.323 are considered general pay adjustments for the purpose of applying 5 CFR 531.206 (dealing with the order of precedence for processing simultaneous pay actions). The rate(s) of pay resulting from these conversion rules are considered the employee's existing rate(s) of pay before processing the next simultaneous pay action in the order of precedence.

**§ 530.322 Setting pay when a special rate schedule is newly established or increased.**

(a) *General rule.* When an employee holds a position that becomes covered by a newly established special rate schedule (including a schedule for which coverage is expanded) or increased special rate schedule (including an increased special rate range within a schedule), the agency must set the employee's special rate at the step (or relative position in range for a GM employee) of the grade on the new special rate schedule that corresponds to the employee's existing numerical step (or relative position in range for a GM employee) as in effect immediately before the new special rate schedule takes effect, except as otherwise provided in this section. The corresponding special rate is determined by adding the applicable special rate supplement on top of the employee's GS rate, subject to the limitation that no special rate may exceed the rate for level IV of the Executive Schedule. For an employee receiving an LEO special base rate, add the applicable special rate supplement to the GS rate for the employee's grade

and step, except as otherwise provided under § 530.304(d).

(b) *Employee entitled to a higher rate of basic pay.* As provided in § 530.303(d), if an employee meeting the coverage conditions for a newly established or increased special rate schedule is entitled to a higher rate of basic pay under other legal authority, the employee must be paid at that higher rate.

(c) *Employee receiving a retained rate.* When an employee is receiving a retained rate immediately before the employee's position is covered by a newly established or increased special rate schedule, the agency must determine the employee's rate of pay consistent with the requirements in 5 CFR part 536, subpart C (or 5 CFR 359.705 for a former member of the Senior Executive Service receiving a retained rate under that section).

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

**§ 530.323 Setting pay when a special rate is discontinued or decreased.**

(a) *General.* This section applies when a special rate applicable to a position is discontinued or decreased because of—

(1) A reduction or termination of the rates of the special rate schedule (or of rates of a rate range within a schedule); or

(2) The reduction in the scope of coverage of the special rate schedule.

(b) *Employee entitled to pay retention.* When a special rate applicable to a position is discontinued or decreased, and an employee holding the position is entitled to pay retention under 5 CFR part 536 as a result, the employee's rate of pay must be set consistent with the requirements in 5 CFR part 536, subpart C.

(c) *Employee not entitled to pay retention.* When a special rate applicable to a position is discontinued or decreased, and an employee holding the position is not entitled to pay retention under 5 CFR part 536, the employee's rate of pay is set in the highest applicable rate range at the grade and step (or relative position in range for a GM employee) that corresponds to the grade and step (or relative position in range for a GM employee) for the employee's existing