

## Office of Personnel Management

## § 575.405

or any applicable special rate of pay under 5 U.S.C. 5305.

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992; 58 FR 65537, Dec. 15, 1993; 61 FR 3543, Feb. 1, 1996]

### § 575.403 Definitions.

In this subpart:

*Agency* has the meaning given that term in 5 U.S.C. 5102.

*Continuing pay* means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

*Continuing payment* means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay.

*Employee* has the meaning given that term in 5 U.S.C. 5102.

*Head of agency* means the head of an agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or special pay adjustments for law enforcement officers under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509).

*Supervisor* has the meaning given that term in 5 U.S.C. 7103(a)(10).

[56 FR 20338, May 3, 1991, as amended at 57 FR 2435, Jan. 22, 1992; 61 FR 3543, Feb. 1, 1996]

### § 575.404 Use of authority.

(a) Each determination to pay a supervisory differential shall be made in writing under procedures established by each agency.

(b) The procedures established by each agency under paragraph (a) of this section shall provide that—

(1) Each determination to pay a supervisory differential, including the amount of such differential, shall be reviewed and approved by an official of the agency who is at higher level than the official who made the initial decision, unless there is no official at a higher level in the agency; and

(2) In determining whether to use the authority under 5 U.S.C. 5755 and this subpart and in determining the amount of such differential, the relationship in pay among supervisors under the General Schedule in the same organizational component of the agency shall be considered, as well as the relationship in pay between the supervisor and his or her subordinate(s).

(3) Each determination to pay a supervisory differential shall be documented.

### § 575.405 Calculation and payment of supervisory differential.

(a) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and shall be paid in the same manner and at the same time as the supervisor's basic pay—i.e., the differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

(b) The amount of a supervisory differential shall not cause the supervisor's continuing pay, as determined under paragraph (c) of this section, to exceed the continuing pay of the highest paid subordinate not under the General Schedule, as determined under paragraph (d) of this section, by more than 3 percent.

(c) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the supervisor:

(1) Basic pay, including a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

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

(3) A staffing differential under section 209 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509);

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(4) A retention allowance under 5 U.S.C. 5754;

(5) Any other continuing payment, except night, Sunday, or holiday premium pay or a hazardous duty differential under chapter 55 of title 5, United States Code;

(6) Premium pay paid on an annual basis under 5 U.S.C. 5545(c); and

(7) Availability pay under 5 U.S.C. 5545a.

(d) For purposes of comparing the continuing pay of a supervisor whose position is under the General Schedule with the continuing pay of a subordinate whose position is not under the General Schedule, the following payments shall be included in determining the amount of continuing pay received by the subordinate:

(1) Basic pay, excluding a night or environmental differential under 5 U.S.C. 5343(f) or part 532 of this chapter, respectively, or other similar authority and a retained rate of pay under 5 U.S.C. 5363 and part 536 of this chapter or other similar authority;

(2) A locality-based comparability payment under 5 U.S.C. 5304, a special law enforcement adjusted rate of pay under section 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), or another locality-based payment under similar authority, excluding a continued rate adjustment under subpart G of part 531 of this chapter;

(3) Any other continuing payment, except Sunday or holiday pay or another similar payment under title 5, United States Code, or other similar authority and a retention allowance under 5 U.S.C. 5754 or other similar authority; and

(4) Premium pay paid on an annual basis under an authority similar to 5 U.S.C. 5545(c).

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

(f) Payment of a supervisory differential is subject to the aggregate limitation on pay under 5 U.S.C. 5307 and subpart B of part 530 of this chapter.

(g) A supervisory differential shall not be considered part of the super-

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visor's rate of basic pay for any purpose.

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### § 575.406 Adjustment or termination of supervisory differential.

(a) An agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.

(b) A supervisory differential shall be terminated when the continuing pay of the supervisor (not including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule.

(c) A supervisory differential shall be reduced or terminated, as appropriate, when the continuing pay of the supervisor (including the supervisory differential) exceeds the continuing pay of the highest paid subordinate whose position is not under the General Schedule by more than 3 percent.

(d) The effective date of a reduction or termination of a supervisory differential under paragraph (b) or (c) of this section shall be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs.

(e) Each determination to adjust a supervisory differential shall be made in writing under procedures established by each agency similar to those established under § 575.404 of this part.

(f) The reduction or termination of a supervisory differential may not be appealed. However, the preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any of the laws referred to in 5 U.S.C. 2302(d).

[56 FR 20338, May 3, 1991, as amended at 57 FR 37394, Aug. 19, 1992]

### § 575.407 Records.

(a) Each agency shall keep a record of each determination required by §§ 575.404(a) and 575.406(e) of this part. Each record shall contain sufficient information to allow reconstruction of