

**§ 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 (or another official designated to act on

behalf of the head of the agency with respect to the given schedule) that the requested special salary rates are considered necessary to ensure staffing adequate to the accomplishment of the agency's mission.

(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;

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(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 as to whether an employee is covered by a special salary rate schedule must be based on the employee's position of record and the official duty station for that position. For the purpose 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, excluding a notification associated with a new assignment that is followed immediately (*i.e.*, within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. 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 as-

signment are the employee's position of record and official duty station.

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### § 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