

the minimum rate AA-1 of the administrative appeals judge pay system, except as provided in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(1) An agency must set the pay of an employee under the General Schedule pay system who is appointed to an administrative appeals judge position without a break in service at the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the rate of basic pay the employee received immediately prior to such appointment, not to exceed the rate of basic pay for AA-6. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, the agency must set the employee's rate of basic pay at the next higher rate of basic pay in the basic rate range of the administrative appeals judge pay system.

(2) An agency may offer an administrative appeals judge applicant with prior Federal service a rate up to the lowest rate of basic pay of the administrative appeals judge pay system that equals or exceeds the employee's highest previous rate of basic pay in a Federal civil service position, not to exceed the rate of basic pay for AA-6.

(3) An agency may offer an administrative appeals judge applicant with superior qualifications who is not a current Federal employee a higher than minimum rate when such a rate is clearly necessary to meet the needs of the Government. An agency may pay a higher than minimum rate of pay that is next above the applicant's existing pay or earnings, up to the maximum rate AA-6. Superior qualifications for applicants include, but are not limited to, having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field.

(c) Administrative appeals judges will advance successively to rates AA-2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Advancement to a higher rate takes effect on the first day of the first pay period beginning on or after completion

of the required period of service. Time in a nonpay status is creditable service in the computation of a waiting period in so far as it does not exceed 2 weeks for each 52 weeks of service. Time in a nonpay status is fully creditable if the absence is due to military service, as defined in 5 U.S.C. 8331(13), or receipt of injury compensation under chapter 81 of title 5, United States Code. Time under pay systems outside the administrative appeals judge pay system is not creditable service in computing the required waiting period, except that time under the administrative law judge pay system established under 5 U.S.C. 5372 is creditable when an individual moves from that system to the administrative appeals judge pay system without a break in service.

(d) An agency must use the following procedures to convert an administrative appeals judge's annual rate of basic pay to an hourly, daily, weekly, or biweekly rate:

(1) To derive an hourly rate, divide the annual rate of pay by 2,087 and round to the nearest cent, counting one-half cent and over as the next higher cent.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required by the administrative appeals judge's basic daily tour of duty.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

#### **§ 534.605 Conversion.**

On the first day of the first pay period beginning on or after December 11, 2001, agencies must convert the rate of basic pay of an administrative appeals judge to the lowest rate of basic pay provided by § 534.603(a) of this subpart that equals or exceeds the rate of basic pay the administrative appeals judge received immediately before that date.

## **PART 536—GRADE AND PAY RETENTION**

### **Subpart A—Definitions; Coverage and Applicability**

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## § 536.101

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- 536.305–536.306 [Reserved]
- 536.307 Availability of information.
- 536.308 Applicability of retained grade.

AUTHORITY: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981;

§ 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

SOURCE: 45 FR 85656, Dec. 30, 1980, unless otherwise noted.

## Subpart A—Definitions; Coverage and Applicability

### § 536.101 General.

(a) Title VIII of Public Law 95–454 (The Civil Service Reform Act of 1978) provides that an employee who is placed in a lower grade as a result of reduction-in-force procedures, or whose position is reduced in grade as a result of reclassification of the position, is entitled to retain for a period of 2 years the grade held immediately before that placement or reduction. It also provides the authority for granting an employee indefinite pay retention. In addition to specifying criteria and conditions for the application of the grade

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and pay retention provisions, the law authorizes the Office of Personnel Management to extend the application of these provisions to other individuals and situations to which they would not otherwise apply.

(b) This part contains the regulations—including extensions, conditions, criteria, and procedures—which the Office of Personnel Management has prescribed for the administration of grade and pay retention. This part supplements and implements the provisions of 5 U.S.C. 5361–5366, and section 801(b) of Public Law 95–454, and must be read together with those sections of law.

### § 536.102 Definitions.

For the purposes of this part:

*Demotion at an employee's request* means a reduction in grade that is initiated by the employee for his or her benefit, convenience, or personal advantage. A demotion that is caused or influenced by a management action is not considered to be at an employee's request, except that a voluntary demotion in response to a management action directly related to personal cause is considered to be at the employee's request.

*Demotion for personal cause* means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.

*Employee* means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.

*Employment on a temporary or term basis* means employment under an appointment having a definite time limitation or designated as temporary or term.

*Rate of basic pay* means, for any pay system, the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind such as night or environmental differentials in the case of a prevailing rate employee.