§ 530.304 Establishing or increasing special rates.

(a) OPM may increase the minimum rates of pay otherwise payable to a category of employees in one or more areas or locations, grades or levels, occupational groups, series, classes, or subdivisions thereof, when it is necessary to address existing or likely significant recruitment or retention difficulties. OPM will consider the circumstances listed in paragraph (b) of this section and the factors listed in § 530.306 when evaluating the need for special rates. When OPM establishes a minimum special rate under this authority, corresponding increases also may be made in one or more of the remaining rates of the affected grade or level. For any given grade, a minimum special rate may not exceed the maximum rate of basic pay for the rate range (excluding any locality rate, other special rate, or similar payment under other legal authority) by more than 30 percent. A special rate may not exceed the rate for level IV of the Executive Schedule.

(b) The circumstances considered by OPM in evaluating the need for special rates are the following:

(1) Rates of pay offered by non-Federal employers which are significantly higher than those payable by the Government within the area, location, occupational group, or other category of positions under GS pay system;

(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) In setting the level of special rates within a rate range for a category of employees, OPM will compute the special rate supplement by adding a fixed dollar amount or a fixed percentage to all GS rates within that range, except that an alternate method may be used for grades GS–1 and GS–2, where within-grade increases vary throughout the range.

(d) If OPM establishes a special rate schedule that covers only law enforcement officers, OPM may compute the special rate supplement for grades GS–3 through 10 as a fixed percentage of LEO special base rates instead of GS rates. With respect to such a schedule, references to GS rates in § 530.307 are deemed to be references to LEO special base rates.

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

§ 530.305 Agency requests for new or increased special rates.

(a) An agency may request that a special rate schedule be established or increased or that its employees be covered by an existing special rate schedule at any time. An authorized agency official in the agency headquarters office must submit to OPM any request to establish or increase special rates for a category of agency employees. The request must include a certification by the authorized agency official that the requested special rates are necessary to ensure adequate staffing levels to accomplish the agency’s mission.

(b) The authorized agency official is responsible for submitting complete supporting data for any request for new or higher special rates. OPM may require that the supporting data include a survey of prevailing non-Federal pay rates in the relevant labor market.

(c) OPM may coordinate an agency special rate request with other agencies that have similar categories of employees. OPM may designate a lead agency to assist in coordinating the collection of relevant data. Each affected agency is responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate, unless the agency determines that a category of its employees will not be covered by the proposed special rate schedule, as provided in § 530.303(c).

§ 530.306 Evaluating agency requests for new or increased special rates.

(a) In evaluating agency requests for new or increased special rates, OPM may consider the following factors:
(1) The number of existing vacant positions and the length of time they have been vacant;
(2) The number of employees who have quit (i.e., voluntarily left Federal service), including, when available, a subcount of the number of employees who quit to take a comparable position offering higher pay;
(3) Evidence to support a conclusion that recruitment or retention problems likely will develop (if such problems do not already exist) or will worsen;
(4) The number of vacancies an agency tried to fill, compared to the number of hires and offers made;
(5) The nature of the existing labor market;
(6) The degree to which an agency has considered and used other available pay flexibilities to alleviate staffing problems, including the superior qualifications and special needs pay-setting authority in 5 CFR 531.212 and recruitment, relocation, and retention incentives under 5 CFR part 575;
(7) The degree to which an agency has considered relevant non-pay solutions to staffing problems, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning jobs, establishing training programs, and improving working conditions;
(8) The effect of the staffing problem on the agency’s mission; and
(9) 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 a non-GS pay system.

(b) In determining the level at which to set special rates, OPM may consider the following factors:
(1) The pay levels that, in OPM’s judgment, are necessary to recruit or retain an adequate number of qualified employees based on OPM’s findings with respect to the factors set forth in paragraph (a) of this section;
(2) The dollar costs that will be incurred if special rates are not authorized;
(3) The level of pay for comparable positions; and
(4) The need to provide for a reasonable progression in pay from lower grade levels to higher grade levels to avoid pay alignment problems (e.g., such as might result from applying the two-step promotion rule in 5 U.S.C. 5334(b)).
(c) No one factor or combination of factors specified in paragraph (a) or (b) of this section requires OPM to establish or increase special rates or to set special rates at any given level.

§ 530.307 OPM review and adjustment of special rate schedules.

(a) OPM may review an established special rate schedule at any time to determine whether that schedule should be increased, decreased, or discontinued, taking into account the circumstances listed in §530.304(b) and the factors listed in §530.306 that led to establishing the schedule. An authorized agency official may request that OPM conduct such a review of one or more special rate schedules.
(b) OPM may designate lead agencies to assist in the review of designated special rate schedules and to coordinate the collection of relevant data. Each affected agency is responsible for submitting complete supporting data upon request to OPM or the lead agency, as appropriate.
(c) OPM will adjust a special rate schedule by determining the amount of the special rate supplement to be paid on top of the current GS rate for each rate range within the schedule. OPM will determine the extent to which special rate supplements are to be adjusted (increased or decreased), if at all, and when the special rate supplements are to be adjusted. As provided in 5 U.S.C. 5305(d), special rate schedule adjustments made by OPM have the force and effect of statute.
(d)(1) For special rate schedules computed by applying a fixed-percentage supplement on top of each GS rate within a rate range, OPM may require that a change in the underlying GS rate automatically results in an adjusted special rate schedule, unless OPM determines that an adjustment in the supplement percentage is appropriate for one or more special rate schedules.
(2) For special rate schedules computed by applying a fixed-dollar supplement on top of each GS rate within a