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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 special rate (as in effect immediately before the schedule change).

(d) *Employee receiving a retained rate.* When a special rate applicable to a position is discontinued or decreased, and the employee holding the position is receiving a retained rate immediately before the schedule change, the employee's rate of pay must be set 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 66152, Nov. 7, 2008]

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AUTHORITY: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a); E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart A [Reserved]

Subpart B—Determining Rate of Basic Pay

SOURCE: 70 FR 31291, May 31, 2005, unless otherwise noted.

GENERAL PROVISIONS

§ 531.201 Purpose.

This subpart contains regulations of the Office of Personnel Management (OPM) implementing 5 U.S.C 5332, 5333, and 5334, which deal with setting and adjusting rates of basic pay for General Schedule (GS) employees. These regulations are supplemented by regulations on GS within-grade increases in subpart D of this part; GS quality step increases in subpart E of this part; locality rates in subpart F of this part; special rates in 5 CFR part 530, subpart C; and grade and pay retention in 5 CFR part 536.

§ 531.202 Coverage.

This subpart covers employees who occupy positions classified and paid under the GS classification and pay system, as provided in 5 U.S.C. 5102 and 5331 or other applicable laws. Law enforcement officers (LEOs) receiving LEO special base rates are covered by the GS classification and pay system, but receive higher base rates of pay in lieu of GS rates at grades GS-3 through GS-10. This subpart also covers GS employees who receive special rates under 5 U.S.C. 5305 and 5 CFR part 530, subpart C.

§ 531.203 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105 or an agency in the legislative branch with employees covered by this subpart. To the extent that the regulations in this subpart relate to non-GS service in the Federal Government, *agency* includes any other agency in the Federal Government.

Demotion means a change of an employee, while continuously employed, from one GS grade to a lower GS grade, with or without a reduction in pay.

Employee means an employee as defined in 5 U.S.C. 2105 who is covered by

this subpart. For the purpose of determining eligibility under the superior qualifications and special needs pay-setting authority in § 531.212 and applying the maximum payable rate provisions in §§ 531.216 and 531.221 (which consider rates of pay received during non-GS service in the Federal Government), *employee* also includes any employee as defined in 5 U.S.C. 2105 and—

(1) An individual employed by the U.S. Postal Service or the Postal Rate Commission who would be considered an employee under 5 U.S.C. 2105 but for the exclusion in section 2105(e); and

(2) An individual employed by a Department of Defense or Coast Guard nonappropriated fund instrumentality (as described in 5 U.S.C. 2105(c)) for service covered by § 531.216 (for the purpose of applying that section and §§ 531.211 and 531.212).

Existing rate means the rate received immediately before a pay action takes effect, after processing a general pay adjustment and any other simultaneous pay action that is higher in the order of precedence under § 531.206. For example, the *existing rate* immediately before a promotion action must reflect any geographic conversion under § 531.205 and any simultaneous within-grade increase or quality step increase.

Federal Government means all entities of the Government of the United States, including the U.S. Postal Service and the Postal Rate Commission. The District of Columbia is deemed to be part of the Federal Government with respect to employees of the government of the District of Columbia (DC) who were first employed by that government before October 1, 1987. A Department of Defense or Coast Guard nonappropriated fund instrumentality (as described in 5 U.S.C. 2105(c)) is not considered part of the Federal Government except for the purpose of applying §§ 531.211 and 531.212 to employees covered by § 531.216 upon employment in a GS position.

General Schedule or *GS* means the classification and pay system established under 5 U.S.C. chapter 51 and subchapter III of chapter 53. It also refers to the pay schedule of GS rates established under 5 U.S.C. 5332, as adjusted under 5 U.S.C. 5303 or other law (including GS rates payable to GM em-

ployees). Law enforcement officers (LEOs) receiving LEO special base rates are covered by the GS classification and pay system but receive higher base rates of pay in lieu of GS rates at grades GS-3 through GS-10.

GM employee means a GS employee who was formerly covered by the Performance Management and Recognition System under 5 U.S.C. chapter 54 on October 31, 1993 (and therefore became covered on November 1, 1993, by section 4 of Pub. L. 103-89, the Performance Management and Recognition System Termination Act of 1993), and who continues thereafter to occupy a position as a supervisor or management official (as defined in 5 U.S.C. 7103(a)(10) and (11)) in the same grade of the General Schedule (GS-13, 14, or 15) and in the same agency without a break in service of more than 3 days. (See § 531.241.) Any reference to employees, grades, positions, or rates of basic pay under the General Schedule includes GM employees.

GS rate means a rate of basic pay within the General Schedule, excluding any LEO special base rate and additional pay of any kind such as locality payments or special rate supplements. A rate payable to a GM employee is considered a GS rate even though the rate may fall between GS step rates.

Highest applicable rate range means the rate range applicable to a GS employee based on a given position of record and official worksite that provides the highest rates of basic pay, excluding any retained rates. For example, a rate range of special rates may exceed an applicable locality rate range. In certain circumstances, the *highest applicable rate range* may consist of two types of pay rates from different pay schedules—e.g., a range where special rates (based on a fixed dollar supplement) are higher in the lower portion of the range and locality rates are higher in the higher portion of the range.

Law enforcement officer or *LEO* has the meaning given that term in 5 CFR 550.103.

LEO special base rate means a special base rate established for GS law enforcement officers at grades GS-3 through GS-10 under section 403 of the Federal Employees Pay Comparability

Act of 1990 (section 529 of Pub. L. 101-509, November 5, 1990, as amended) which is used in lieu of a GS rate.

Locality payment means a locality-based comparability payment payable to GS employees under 5 U.S.C. 5304 and 5 CFR part 531, subpart F.

Locality rate means a GS rate or an LEO special base rate, if applicable, plus any applicable locality payment.

Official worksite means the official location of the employee's position of record, as determined under 5 CFR 531.605.

OPM means the Office of Personnel Management.

Payable rate means the highest rate of basic pay to which an employee is entitled based on the employee's position of record, official worksite, and step (or relative position in range for a GM employee) or, if applicable, a retained rate.

Pay schedule means a set of rate ranges established for GS employees under a single authority—i.e., the General Schedule, an LEO special base rate schedule (for grades GS-3 through 10), a locality rate schedule based on GS rates, a locality rate schedule based on LEO special base rates (for grades GS-3 through 10), or a special rate schedule. A pay schedule applies to or covers a defined category of employees based on established coverage conditions (e.g., official worksite, occupation). A pay schedule is considered to apply to or cover an employee who meets the established coverage conditions even when a rate under that schedule is not currently payable to the employee because of a higher pay entitlement under another pay schedule.

Position of record means an employee's official position (defined by grade, occupational series, employing agency, LEO status, and any other condition that determines coverage under a pay schedule (other than official worksite)), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description. A position to which an employee is temporarily detailed is not documented as a position of record. For an employee whose change in official position is followed within 3 workdays by a reduction in force resulting in the

employee's separation before he or she is required to report for duty in the new position, the position of record in effect immediately before the position change is deemed to remain the position of record through the date of separation.

Promotion means a GS employee's movement from one GS grade to a higher GS grade while continuously employed (including such a movement in conjunction with a transfer).

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by a GS employee before any deductions, including a GS rate, an LEO special base rate, a special rate, a locality rate, and a retained rate, but exclusive of additional pay of any other kind. For the purpose of applying the maximum payable rate rules in §§ 531.216 and 531.221 using a rate under a non-GS pay system as an employee's highest previous rate, *rate of basic pay* means a rate of pay under other legal authority which is equivalent to a rate of basic pay for GS employees, as described in this definition, excluding a rate under § 531.223. (See also 5 CFR 530.308, 531.610, and 536.307.)

Rate range or *range* means a range of rates of basic pay for a grade within an established pay schedule, excluding any retained rate. A rate range may consist of GS rates, LEO special base rates, locality rates, special rates, or, for non-GS employees, similar rates under other legal authority.

Reassignment means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

Reemployment means employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

Retained rate means a rate above the maximum rate of the rate range applicable to a GS employee which is payable under 5 CFR part 536 or, for a former member of the Senior Executive Service, under 5 CFR 359.705.

Special rate means a rate of pay within a special rate schedule established under 5 CFR part 530, subpart C, or a similar rate for GS employees established under other legal authority (e.g., 38 U.S.C. 7455). The term *special rate*

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does not include an LEO special base rate or an adjusted rate including market pay under 38 U.S.C. 7431(c).

Special rate schedule means a pay schedule established under 5 CFR part 530, subpart C, to provide higher rates of pay for specified categories of GS positions or employees at one or more grades or levels or a similar schedule established for GS employees under other legal authority (e.g., 38 U.S.C. 7455).

Special rate supplement means the portion of a special rate paid above an employee's GS rate. However, for a law enforcement officer receiving an LEO special base rate who is also entitled to a special rate, the special rate supplement equals the portion of the special rate paid above the officer's LEO special base rate. When a special rate schedule covers both LEO positions and other positions, the value of the special rate supplement will be less for law enforcement officers receiving an LEO special base rate (since that rate is higher than the corresponding GS rate). The payable amount of a special rate supplement is subject to the Executive Schedule level IV limitation on special rates, as provided in 5 CFR 530.304(a).

Temporary promotion means a time-limited promotion with a not-to-exceed date or a specified term.

Transfer means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

Where different pay schedules apply means, in the context of applying the geographic conversion rule, that an employee's official worksite is changed to a new location that would cause the employee to lose or gain coverage under a location-based pay schedule (i.e., locality rate schedule or special rate schedule) if the employee were to remain in the same position of record.

Within-grade increase has the meaning given that term in § 531.403.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008; 73 FR 76847, Dec. 18, 2008]

§ 531.204 Entitlement to other rates of pay.

(a) A law enforcement officer is entitled to LEO special base rates in lieu of GS rates at grades GS-3 through GS-10. A law enforcement officer is entitled to the LEO special base rate that corresponds to his or her grade and step. If an employee loses LEO status, the employee is entitled to the GS rate for his or her grade and step unless a higher rate is set under the maximum payable rate rule in § 531.221 or under the pay retention rules in 5 CFR part 536, as applicable. LEO special base rates are used in computing locality rates, as provided in subpart F of this part. A law enforcement officer may be entitled to a special rate that is computed using the underlying GS rate for the LEO's grade and step.

(b) When an employee's GS rate or LEO special base rate is determined under the rules of this subpart, the agency must determine any other rate of basic pay to which the employee is entitled, including a locality rate under subpart F of this part and a special rate under 5 CFR part 530, subpart C, or other legal authority (e.g., 38 U.S.C. 7455). The employee is entitled to the highest applicable rate of basic pay as his or her payable rate. When an employee's special rate is surpassed by a higher locality rate, his or her entitlement to a special rate is terminated, as provided in § 530.303(d).

(c) When application of the rules in this subpart results in setting an employee's payable rate in the highest applicable pay schedule (e.g., a locality rate schedule or a special rate schedule), the agency must determine the employee's underlying GS rate or LEO special base rate, as applicable, based on that payable rate (i.e., by finding the corresponding underlying rate with the same grade and step (or relative position in range for a GM employee) as the payable rate).

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§ 531.205 Converting pay upon change in location of employee's official worksite.

When an employee's official worksite is changed to a new location where different pay schedules apply, the agency

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must convert the employee's rate(s) of basic pay to the applicable pay schedule(s) in the new location before processing any simultaneous pay action (other than a general pay adjustment, as provided in § 531.206). The agency must first set the employee's rate(s) of basic pay in the applicable pay schedule(s) in the new location based on his or her position of record (including grade) and step (or a GM employee's GS rate) immediately before the change in the employee's official worksite. The resulting rate must be used as the existing rate in processing the next simultaneous pay action in the order of precedence, using the applicable pay schedules in the new location. In conjunction with any simultaneous pay actions, the employee's rate(s) of basic pay will then be set based on the employee's new position of record and new official worksite.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§ 531.206 Order of processing simultaneous pay actions.

When multiple pay actions with the same effective date affect an employee's rate of basic pay, the actions will be processed in the following order:

(a) Process general pay adjustments before any individual pay action that takes effect at the same time. General pay adjustments include an annual adjustment in the General Schedule under 5 U.S.C. 5303; an adjustment in LEO special base rates; an adjustment of a locality pay percentage under subpart F of this part; the establishment or adjustment of a special rate schedule under 5 CFR part 530, subpart C, or similar legal authority (e.g., 38 U.S.C. 7455); and an adjustment of a retained rate under 5 CFR 359.705(d)(1) and 536.305(a)(1) based on the establishment or adjustment of a pay schedule.

(b) Convert the employee's rate(s) of pay to reflect any change in the location of the employee's official worksite, as prescribed in § 531.205 (or similar geographic conversion provision).

(c) Process any within-grade increase or quality step increase to which the employee is entitled.

(d) Process any promotion action using the rates of pay and rate ranges in the sequence prescribed in § 531.214.

(e) Except as otherwise provided in paragraphs (a) through (d) of this section or other regulation, process individual pay actions that take effect at the same time in the order that gives the employee the maximum benefit.

§ 531.207 Applying annual pay adjustments.

(a) Except as otherwise provided in this section, on the effective date of a GS pay adjustment under 5 U.S.C. 5303 or similar authority, an agency initially must set the GS rate of a GS employee at the new rate of the adjusted General Schedule corresponding to the employee's grade and step in effect immediately before the effective date of the pay adjustment. Any simultaneous pay actions must be processed after the pay adjustment, as provided in § 531.206.

(b) For employees receiving a retained rate immediately before the effective date of a GS annual pay adjustment, the agency must adjust the employee's rate of basic pay under the rules in 5 CFR 536.305 (or under 5 CFR 359.705 for former members of the Senior Executive Service receiving a retained rate under that section).

(c) For GM employees, the agency must follow the rules in § 531.244.

SETTING PAY WHEN APPOINTMENT OR POSITION CHANGES

§ 531.211 Setting pay for a newly appointed employee.

(a) *First appointment.* An agency must set the payable rate of basic pay for an employee receiving his or her first appointment (regardless of tenure) as a civilian employee of the Federal Government at the minimum rate of the highest applicable rate range for the employee's position of record, except as provided in § 531.212.

(b) *Reemployment.* For an employee who has previous civilian service in the Federal Government, an agency must set the payable rate of basic pay upon reemployment at the minimum rate of the highest applicable rate range for the employee's position of record unless—

(1) The employee meets the conditions in § 531.212 and an agency determines it is appropriate to set pay under that section; or

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(2) The employee is eligible for a higher payable rate under the maximum payable rate rule in § 531.221 and the agency chooses to apply that rule.

§ 531.212 Superior qualifications and special needs pay-setting authority.

(a) *Agency authority.* (1) An agency may use the superior qualifications and special needs pay-setting authority in 5 U.S.C. 5333 to set the payable rate of basic pay for an employee above the minimum rate of the highest applicable rate range for the employee's position of record. The superior qualifications and special needs pay-setting authority may be used for—

(i) A first appointment (regardless of tenure) as a civilian employee of the Federal Government; or

(ii) A reappointment that is considered a new appointment under 5 U.S.C. 5333 because it meets the conditions prescribed in paragraph (a)(2) and (3) of this section.

(2) An agency may use the superior qualifications and special needs pay-setting authority for a reappointment only when the employee has had a break in service of at least 90 days from the last period of civilian employment with the Federal Government, except as provided in paragraph (a)(3) of this section.

(3) An agency may use the superior qualifications and special needs pay-setting authority for a reappointment without requiring a 90-day break in service if the candidate's civilian employment with the Federal Government during the 90-day period immediately preceding the appointment was limited to one or more of the following:

(i) Employment under a time-limited appointment in the competitive or excepted service;

(ii) Employment under an appointment as an expert or consultant under 5 U.S.C. 3109 and 5 CFR part 304;

(iii) Employment under a provisional appointment designated under 5 CFR 316.403;

(iv) Employment under a non-permanent appointment (excluding a Schedule C appointment under 5 CFR part 213) in the competitive or excepted service; or

(v) Employment under the Student Career Experience Program under 5 CFR 213.3202(b).

(4) Service as an employee of a non-appropriated fund instrumentality (NAFI) of the Department of Defense or Coast Guard is not considered employment by the Federal Government under this section except for employees covered by § 531.216 upon appointment or reappointment (*i.e.*, employees who move from NAFI position to GS position with a break in service of 3 days or less and without a change in agency). Employees covered by § 531.216 upon appointment or reappointment to a GS position are not eligible to have pay set under the superior qualifications or special needs authority, since their NAFI employment is considered employment by the Federal Government. Otherwise, NAFI employment does not block application of this section.

(b) *Superior qualifications or special needs determination.* An agency may set the payable rate of basic pay of a newly appointed employee above the minimum rate of the grade under this section if the candidate meets one of the following criteria:

(1) The candidate has superior qualifications. An agency may determine that a candidate has superior qualifications based on the level, type, or quality of the candidate's skills or competencies demonstrated or obtained through experience and/or education, the quality of the candidate's accomplishments compared to others in the field, or other factors that support a superior qualifications determination. The candidate's skills, competencies, experience, education, and/or accomplishments must be relevant to the requirements of the position to be filled. These qualities must be significantly higher than that needed to be minimally required for the position and/or be of a more specialized quality compared to other candidates; or

(2) The candidate fills a special agency need. An agency may determine that a candidate fills a special agency need if the type, level, or quality of skills and competencies or other qualities and experiences possessed by the candidate are relevant to the requirements of the position and are essential to accomplishing an important agency

mission, goal, or program activity. A candidate also may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic human capital plan.

(c) *Pay rate determination.* An agency may consider one or more of the following factors, as applicable in the case at hand, to determine the step at which to set an employee's payable rate of basic pay using the superior qualifications and special needs pay-setting authority:

(1) The level, type, or quality of the candidate's skills or competencies;

(2) The candidate's existing salary, recent salary history, or salary documented in a competing job offer (taking into account the location where the salary was or would be earned and comparing the salary to payable rates of basic pay in the same location);

(3) Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled;

(4) Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions;

(5) The success of recent efforts to recruit candidates for the same or similar positions;

(6) Recent turnover in the same or similar positions;

(7) The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it;

(8) The desirability of the geographic location, duties, and/or work environment associated with the position;

(9) Agency workforce needs, as documented in the agency's strategic human capital plan; or

(10) Other relevant factors.

(d) *Consideration of recruitment incentive.* In determining whether to use the superior qualifications and special needs pay-setting authority and the level at which the employee's payable rate of basic pay should be set, an agency must consider the possibility of authorizing a recruitment incentive under 5 CFR part 575, subpart A.

(e) *Approval and documentation requirements.* (1) An agency must approve each determination to use the superior qualifications and special needs pay-

setting authority prior to the candidate entering on duty. Each determination must be made in writing and reviewed and approved by an official of the agency who is at least one level higher than the employee's supervisor, unless there is no official at a higher level in the agency.

(2) An agency must document all of the following for each determination to use the superior qualifications and special needs pay-setting authority sufficient to allow reconstruction of the action taken in each case:

(i) The superior qualifications of the candidate under paragraph (b)(1) of this section or the special agency need for the candidate's services under paragraph (b)(2) of this section which justifies a higher than minimum rate;

(ii) An explanation of the factor(s) and supporting documentation under paragraph (c) of this section which were used to justify the rate at which the employee's pay is set. The written documentation must explain how the factors directly relate to the rate approved; and

(iii) The reasons for authorizing a higher than minimum rate instead of or in addition to a recruitment incentive under 5 CFR part 575, subpart A.

(f) *Ensuring compliance.* An agency must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, this section of OPM regulations, and agency policies.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§531.213 Setting pay upon change in position without a change in grade.

For an employee who is moved laterally (by transfer, reassignment, change in type of appointment, change in official worksite, or other change in position) from one GS position to a different GS position without a change in grade or a break in service, the agency must determine the employee's payable rate of basic pay and any underlying rate(s) of basic pay based on the employee's new position of record, new official worksite, and the step (or relative position in range for a GM employee) in effect before the position change. If an employee is eligible to receive a higher rate under the maximum

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payable rate rule in § 531.221, the agency may choose to apply that rule. If an employee is entitled to pay retention, the agency must apply the rules in 5 CFR part 536.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§ 531.214 Setting pay upon promotion.

(a) *General.* An agency must set an employee's payable rate of basic pay upon promotion following the rules in this section, consistent with 5 U.S.C. 5334(b). The promotion rule in 5 U.S.C. 5334(b) and the implementing rules in this section apply only to a GS employee who is promoted from one GS grade to a higher GS grade. Consistent with § 531.206, any general pay adjustment that takes effect on the same day as a promotion action must be processed before applying the rules in this section.

(b) *Geographic conversion.* When an employee's official worksite is changed to a new location where different pay schedules apply, the agency must convert the employee to the applicable pay schedule(s) and rate(s) of basic pay for the new official worksite based on the employee's position of record before promotion as provided in § 531.205 before processing a simultaneous promotion action.

(c) *Simultaneous within-grade increase.* When an employee is entitled to a within-grade increase or a quality step increase that is effective at the same time as a promotion, the agency must process that increase before processing the promotion action.

(d) *Promotion rule—(1) General.* An agency must determine an employee's payable rate of basic pay upon promotion using the standard method in paragraph (d)(3) of this section or the alternate method in paragraph (d)(4) of this section, subject to the special rule in paragraph (d)(5) of this section for employees receiving a retained rate before promotion. A determination regarding whether the alternate method is used in place of the standard method depends on the pay schedules that

apply to an employee before and after promotion, as provided in paragraph (d)(2) of this section. In this paragraph (d), references to an employee's rate or range “before promotion” mean the rate or range before promotion but after any geographic conversion required by paragraph (b) of this section.

(2) *Determining applicable method.* The following rules govern determinations regarding which promotion method to use:

(i) Apply the standard method exclusively if the employee is covered by the same pay schedules before and after promotion. For example, an employee may be covered by the General Schedule and the same locality rate schedule before and after promotion.

(ii) Apply the alternate method if the employee is covered by different pay schedules before and after promotion and if the alternate method will produce a higher payable rate upon promotion than the standard method. For example, an employee may be covered after promotion by a special rate schedule that did not apply to him or her before promotion, and the alternate method will produce a higher rate.

(iii) Apply the standard method in all other circumstances, except that an agency may, at its sole and exclusive discretion, apply the alternate method for an employee covered by different pay schedules before and after promotion even though the method produces a lesser payable rate than the standard method, but only under the following conditions:

(A) The agency determines it would be inappropriate to use the standard method based on a finding that the higher pay for the position before promotion is not sufficiently related to the knowledge and skills required for the position after promotion; and

(B) The agency informs the employee of the determination to use the alternate method before the effective date of the promotion.

(3) *Standard method.* (i) The standard method of applying the promotion rule is presented in the following table:

Promotion Rule—Standard Method	
Step A	If applicable, apply the geographic conversion rule in §531.205 to determine the employee's rate(s) and range(s) of basic pay based on the employee's position of record before promotion and the new official worksite, as required by paragraph (b) of this section. Also, if applicable, provide any simultaneous within-grade increase or quality step increase, as required by paragraph (c) of this section. Use the resulting rate(s) of basic pay as the existing rate(s) in effect immediately before promotion in applying steps B and C.
Step B	Identify the employee's existing GS rate (or LEO special base rate) in the grade before promotion, and increase that rate by two GS within-grade increases for that grade.
Step C	Determine the payable (highest) rate of basic pay for the step or rate determined in step B by applying any locality payment or special rate supplement applicable to the given grade, based on the employee's position of record before promotion and official worksite after promotion. (If the rate determined in step B is above the range maximum, use the same locality payment or special rate supplement that applies to rates within the rate range.)
Step D	Identify the highest applicable rate range for the employee's position of record after promotion and find the lowest step rate in that range that equals or exceeds the rate determined in step C. This is the employee's payable rate of basic pay upon promotion. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)

(ii) Example of standard method: A GS-11, step 5, employee in Los Angeles is promoted to a GS-12 position in Kansas City. In Kansas City, a special rate schedule would apply to the employee's GS-11 position, but at GS-12 no special rate range applies; instead, just a locality rate range applies. Thus, different pay schedules apply to the employee in Kansas City before and after promotion. The agency determines that the standard method produces a higher rate than the alternate method because the employee is covered by a special rate schedule before promotion but not after promotion. The agency also determines it will not invoke the exception provision under paragraph (d)(2)(iii). The agency applies the standard method as follows:

Step A	Apply the geographic conversion rule to determine the rates of basic pay for the GS-11, step 5, position in Kansas City. The pay schedules applicable to the employee in Kansas City are the General Schedule, the locality rate schedule applicable in Kansas City, and the special rate schedule applicable to the employee's position in Kansas City.
Step B	Using the underlying General Schedule, increase the GS-11, step 5, rate by two within-grade increases, which produces the GS-11, step 7, rate.
Step C	The payable (highest) rate of basic pay for GS-11, step 7, is the corresponding GS-11, step 7, special rate that would be applicable to the GS-11 position in Kansas City.
Step D	The highest applicable rate range for the GS-12 position after promotion is the GS-12 locality rate range under the Kansas City locality rate schedule. Find the lowest step rate in that range that equals or exceeds the GS-11, step 7, special rate from step C. That step rate is the payable rate of basic pay upon promotion.

(4) *Alternate method.* (i) The alternate method of applying the promotion rule, which involves using pay schedules applicable before promotion and then converting pay to a different schedule applicable after promotion, is presented in the following table:

Promotion Rule—Alternate Method	
Steps A, B, C	Same as standard method in paragraph (d)(3) of this section.
Step D	Identify the highest applicable rate range for the employee's grade after promotion based on consideration of any pay schedule that applied to the employee's position of record <i>before</i> promotion (after any geographic conversion). (Do not consider pay schedules that apply only to the employee's new position of record after promotion. For example, if a particular special rate schedule applies only to an employee's position of record after promotion, disregard that schedule in applying this step.) Find the lowest step in the highest applicable rate range that equals or exceeds the rate identified in step C. (If the rate identified in step C exceeds the maximum of the rate range identified in this step, the employee's payable rate is that maximum rate, or, if the employee's existing rate is higher than that maximum rate, a retained rate under 5 CFR part 536 equal to that existing rate.)
Step E	Convert the lowest step rate identified in step D to a corresponding step rate (same step) in the highest applicable rate range for the employee's new position of record after promotion. This is the employee's alternate payable rate of basic pay upon promotion. (If the rate derived under step D was a retained rate, determine the alternate payable rate of basic pay as provided in paragraph (d)(4)(ii) of this section.)

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Step F	If the alternate payable rate identified in step E exceeds the payable rate resulting from the standard method in paragraph (d)(3) of this section, the employee is entitled to the alternate rate upon promotion. Otherwise, the employee is entitled to the payable rate derived under the standard method, except as provided in paragraph (d)(2)(iii) of this section.
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(ii) In applying step E of the table in paragraph (d)(4)(i) of this section, if the rate derived under step D was a retained rate, compare the retained rate to the highest applicable rate range identified in step E. If the retained rate exceeds the maximum of that rate range, the retained rate continues and is the employee's alternate payable rate upon promotion. If the retained rate is below the rate range maximum, the employee's alternate payable rate upon promotion is the maximum rate of the range (step 10).

(iii) Example of alternate method: A GS-7, step 7, employee in Atlanta is promoted to a GS-9 position in Washington, DC. The promotion involves not only a change in grade but also a change in the employee's occupational series. In Washington, DC, no special rate schedule would apply to a GS-7 or GS-9 position in the old occupational series, but a special rate schedule does apply to the GS-9 position in the new occupational series. Thus, different pay schedules apply before and after promotion, and the alternate method would result in a higher rate than the standard method. As provided in paragraph (d)(2)(ii) of this section, the agency must apply the alternate method and compare the result to the result derived under the standard method, as follows:

Step A	Apply the geographic conversion rule in § 531.205 to determine the rates of basic pay for the GS-7, step 7, position in Washington, DC. Based on the GS-7 position before promotion (including the old occupational series), the pay schedules applicable to the employee in Washington, DC, would be the General Schedule and the locality rate schedule applicable in Washington, DC.
Step B	Using the underlying General Schedule, increase the GS-7, step 7, rate by two within-grade increases, which produces the GS-7, step 9, rate.
Step C	The payable (highest) rate of basic pay for GS-7, step 9, is the corresponding GS-7, step 9, locality rate in Washington, DC.

Step D	If the employee were promoted to a GS-9 position in the old occupational series, the highest applicable rate range for that GS-9 position after promotion would be the GS-9 locality rate range in Washington, DC. The GS-9, step 3, locality rate is the lowest step rate in that range that equals or exceeds the GS-7, step 9, locality rate from step C.
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Step E	Convert the GS-9, step 3, locality rate to the higher GS-9, step 3, special rate that applies to the employee's position after promotion (including the new occupational series). That GS-9, step 3, special rate is the payable rate of basic pay upon promotion.
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Step F	Assume that the standard method would have compared the GS-7, step 9, locality rate directly to the higher GS-9 range of special rates and produced a rate of GS-9, step 1. Since the rate produced by the alternate method (GS-9, step 3) is greater than the rate produced by the standard method, the result of the alternate method is used.
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(5) *If employee was receiving a retained rate before promotion.* (i) If an employee's existing payable rate of basic pay before promotion is a retained rate, apply the applicable promotion methods in paragraphs (d)(3) or (d)(4) of this section as if the employee were receiving the maximum rate of the employee's grade before promotion.

(ii) If the payable rate of basic pay after promotion determined under paragraph (d)(5)(i) of this section is greater than the employee's existing retained rate, the employee is entitled to that payable rate.

(iii) If the existing retained rate is greater than the rate determined under paragraph (d)(5)(i) of this section, the retained rate must be compared to the highest applicable rate range for the position after promotion, as provided in 5 CFR 536.304. The employee is entitled to the lowest step rate in the range that equals or exceeds the retained rate or, if the retained rate exceeds the range maximum, to the retained rate.

(6) *If employee is promoted from GS-1 or GS-2.* In applying the promotion rule to an employee who is promoted from step 9 or 10 of grade GS-1 or GS-2, the value of two within-grade increases is determined by doubling the within-grade increase between step 9 and 10 for the applicable grade.

(e) *Temporary promotions.* Pay is set for an employee receiving a temporary promotion on the same basis as a permanent promotion. Upon expiration or

termination of the temporary promotion, pay is set as provided in §531.215(c). If a temporary promotion is made permanent immediately after the temporary promotion ends, the agency may not return the employee to the lower grade; instead, the agency must convert the employee's temporary promotion to a permanent promotion without a change in pay.

(f) *Corrections of demotions.* The promotion rule in this section may not be used in correcting an erroneous demotion. (See §531.215(e).)

[70 FR 31291, May 31, 2005, as amended at 70 FR 74995, Dec. 19, 2005]

§531.215 Setting pay upon demotion.

(a) *General.* Except as otherwise provided in this section, an employee who is demoted is entitled to the minimum payable rate of basic pay for the lower grade unless the agency sets the employee's pay at a higher rate under—

(1) The grade and pay retention rules in 5 CFR part 536, as applicable; or

(2) The maximum payable rate rule in §531.221, as applicable.

(b) *Geographic conversion.* If the employee's official worksite after demotion is in a different geographic location where different pay schedules apply, the agency must first convert the employee's payable rate of pay as required by §531.205 before setting the demoted employee's pay using the grade and pay retention rules in 5 CFR part 536 or the maximum payable rate rule in §531.221.

(c) *Expiration or termination of a temporary promotion.* (1) When an employee is returned to the lower grade from which promoted on expiration or termination of a temporary promotion, the agency must set the employee's payable rate of basic pay in the lower grade as if he or she had not been temporarily promoted, unless the agency sets pay at a higher rate under the maximum payable rate rule in §531.221. As provided in subpart D of this part, time during the temporary promotion may be creditable service towards GS within-grade increases in the lower grade.

(2) If a temporary promotion is made permanent immediately after the temporary promotion ends, the agency

may not return the employee to the lower grade. (See §531.214(e).)

(d) *Demotion upon failure to complete a supervisory probationary period.* When an employee promoted to a supervisory or managerial position does not satisfactorily complete a probationary period established under 5 U.S.C. 3321(a)(2) and is returned to a position at the lower grade held before the promotion, the agency must set the employee's payable rate of basic pay upon return to the lower grade as if the employee had not been promoted to the supervisory or managerial position, unless the agency sets pay at a higher rate under the maximum payable rate rule in §531.221. As provided in subpart D of this part, time served following the promotion may be creditable service towards GS within-grade increases in the lower grade. However, nothing in this paragraph prohibits an agency from taking action against an employee serving under a probationary period under 5 U.S.C. 3321(a)(2) for cause unrelated to supervisory or managerial performance and setting pay in accordance with such action.

(e) *Correcting an erroneous demotion.* When a demotion is determined to be erroneous and is canceled, the agency must set the employee's rate of basic pay as if the employee had not been demoted. The action is a correction of the original demotion action and may not be treated as a promotion under §531.214. For example, when a demotion based on a reclassification of the employee's position is found to be erroneous and is corrected retroactively under 5 CFR 511.703, the corrective action is cancellation of the original demotion.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§531.216 Setting pay when an employee moves from a Department of Defense or Coast Guard non-appropriated fund instrumentality.

(a) *General.* This section governs the setting of pay for an employee who moves to a GS position in the Department of Defense or the Coast Guard from a position in a nonappropriated fund instrumentality (NAFI) (as described in 5 U.S.C. 2105(c)) of the Department of Defense or the Coast

Guard, respectively, without a break in service of more than 3 days. If an employee moves from a NAFI position to a GS position with a break of more than 3 days or moves from a NAFI position in the Department of Defense or the Coast Guard to a GS position outside of the Department of Defense or the Coast Guard, respectively, the employee has no special conversion rights and this section does not apply.

(b) *NAFI highest previous rate.* For the purpose of this section, the term “NAFI highest previous rate” means the highest rate of basic pay received by an employee during service in a NAFI position, as described in 5 U.S.C. 2105(c).

(c) *Voluntary move.* (1) For a Department of Defense or Coast Guard employee who moves voluntarily, without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position in the Department of Defense or the Coast Guard, respectively, the agency may set the employee’s initial payable rate of basic pay at the lowest step rate in the highest applicable rate range currently in effect for the employee’s GS position of record and official worksite which equals or exceeds the employee’s NAFI highest previous rate of pay, or any lower step rate, except as provided in paragraph (c)(2) or (3) of this section. The employee’s initial payable rate of basic pay may not exceed the maximum step rate (step 10).

(2) If the highest applicable rate range would be different if the official worksite for the employee’s position of record were located at the place where the employee was stationed while earning the NAFI highest previous rate, the agency must determine the employee’s maximum payable rate of basic pay as follows:

(i) Compare the NAFI highest previous rate to the highest applicable rate range currently in effect in the location where the employee was stationed while earning that rate. The highest applicable rate range is determined based on the pay schedules that would be applicable to the employee’s current GS position of record if the employee were stationed in that location. Identify the lowest step rate in the

highest applicable rate range that was equal to or exceeded the NAFI highest previous rate. If the NAFI highest previous rate is less than the range minimum, identify the minimum step rate (step 1). If the NAFI highest previous rate exceeds the range maximum, identify the maximum step rate (step 10).

(ii) Identify the step rate in the highest applicable rate range for the employee’s current official worksite and position of record that corresponds to the step rate derived under paragraph (c)(2)(i) of this section. That corresponding rate is the maximum payable rate at which the agency may set the employee’s pay under this section, except as provided by paragraph (c)(3) of this section. The agency may set the employee’s rate of basic pay at any step rate that does not exceed that maximum payable rate.

(3) An agency may choose to apply the maximum payable rate rule in § 531.221 based on a non-NAFI rate of basic pay if that rule provides a higher rate than provided by paragraph (c)(1) or (2) of this section.

(d) *Involuntary move.* (1) For a Department of Defense or Coast Guard employee who is moved involuntarily (as defined in paragraph (d)(3) of this section), without a break in service of more than 3 days, from a NAFI position in the Department of Defense or the Coast Guard to a GS position with substantially the same duties in the Department of Defense or the Coast Guard, respectively, the employee is entitled to an initial payable rate of basic pay at the lowest step rate of the grade that is equal to or greater than the employee’s rate of basic pay in the NAFI position immediately before the move. If the employee’s former NAFI rate exceeds the range maximum, identify the maximum step rate (step 10).

(2) For an employee covered by paragraph (d)(1) of this section, the agency may set the initial payable rate of basic pay at any of the following rates, unless the employee is entitled to receive a higher rate of basic pay under paragraph (d)(1) of this section:

(i) The lowest step rate within the highest applicable rate range for the employee’s GS position of record and official worksite that equals or exceeds the employee’s NAFI highest previous

rate, or any lower step rate (consistent with the method prescribed in paragraphs (c)(1) and (2) of this section);

(ii) A rate determined under the maximum payable rate rule in §531.221 (using non-NAFI rates of basic pay); or

(iii) A rate determined under the authority to grant pay retention in 5 CFR 536.302(a).

(3) For the purpose of this paragraph (d), “moved involuntarily” means the movement of the incumbent of an NAFI position in the Department of Defense or the Coast Guard with the position when it is moved to the civil service employment system of the Department of Defense or the Coast Guard, respectively.

[70 FR 31291, May 31, 2005, as amended at 74 FR 23938, May 22, 2009]

§531.217 Special conversion rules for certain non-GS employees.

When an employee moves (without a break in service) to a GS position from a non-GS system under an authority in 5 U.S.C. chapters 47, 95, or similar provision of law, and that authority provides that an employee will be converted to GS-equivalent rates immediately before leaving the non-GS system, the employee is considered a GS employee in applying the provisions of this subpart.

USING A HIGHEST PREVIOUS RATE UNDER THE MAXIMUM PAYABLE RATE RULE

§531.221 Maximum payable rate rule.

(a) *General.* (1) An agency may apply the maximum payable rate rule as described in this section to determine an employee's payable rate of basic pay under the GS pay system at a rate higher than the otherwise applicable rate upon reemployment, transfer, reassignment, promotion, demotion, change in type of appointment, termination of a critical position pay authority under 5 CFR part 535, movement from a non-GS pay system, or termination of grade or pay retention under 5 CFR part 536. (NOTE: Special rules for GM employees are provided in §531.247.) A payable rate set under this section must take effect on the effective date of the action involved. This section may not be used to set an employee's rate of basic pay retroactively

unless a retroactive action is required to comply with a nondiscretionary agency policy.

(2) At its discretion, an agency may set an employee's rate(s) of basic pay at the maximum rate identified under this section or at a lower rate. However, the employee's rate may not be lower than the rate to which he or she is entitled under any other applicable pay-setting rule.

(3) In applying this section, an agency must use applicable annual rates of pay or, if a rate under a non-GS system is an hourly rate, convert the hourly rate to an annual rate.

(4) In applying this section, an agency must treat a critical position pay rate under 5 CFR part 535 as if it were a rate under a non-GS pay system, as described in paragraph (d) of this section.

(5) In applying this section, an agency must treat an adjusted GS rate that includes market pay under 38 U.S.C. 7431(c) as if it were a rate under a non-GS pay system, as described in paragraph (d) of this section.

(b) *When highest previous rate is based on a GS rate or LEO special base rate.* When an employee's highest previous rate (as determined under §531.222) is based on a GS rate or an LEO special base rate paid under the GS pay system, an agency must determine the maximum payable rate of basic pay that may be paid to the employee as follows:

(1) Compare the employee's highest previous rate with the GS rates for the grade in which pay is currently being set. For this comparison, use the schedule of GS rates in effect at the time the highest previous rate was earned. In applying this paragraph to an employee who was a law enforcement officer receiving an LEO special base rate when the highest previous rate was earned, compare the highest previous rate to the applicable LEO special base rates in lieu of GS rates if the grade in which pay is currently being set is one of the grades from GS-3 through GS-10.

(2) Identify the lowest step in the grade at which the GS rate (or LEO special base rate, if applicable) was equal to or greater than the employee's highest previous rate. If the employee's

highest previous rate was greater than the maximum GS rate (or LEO special base rate, if applicable) for the grade, identify the step 10 rate (*i.e.*, maximum rate of the grade).

(3) Identify the rate on the currently applicable range of GS rates or LEO special base rates for the employee's current position of record and grade that corresponds to the step identified in paragraph (b)(2) of this section. This rate is the maximum payable GS rate or LEO special base rate the agency may pay the employee under this section.

(4) After setting the employee's GS or LEO special base rate within the rate range for the grade (not to exceed the maximum payable rate identified in paragraph (b)(3) of this section), the agency must determine the employee's payable rate of basic pay based on the employee's GS or LEO special base rate.

(c) *When highest previous rate is based on a GS employee's special rate.* When a GS employee is reassigned under the conditions described in § 531.222(c), the employee's former special rate in effect immediately before the reassignment may be used as the employee's highest previous rate. If the employee's former special rate schedule is being adjusted on the effective date of the employee's reassignment, the agency must determine what the employee's special rate would have been on that adjusted schedule (before any other simultaneous action) and treat the resulting special rate as the employee's former special rate in applying paragraph (c)(1) and (2) of this section. The agency must apply the maximum payable rate rule as follows:

(1) When the employee is assigned to an official worksite within the geographic boundaries of a formerly applicable special rate schedule, compare the former special rate to the rates of basic pay in the highest applicable rate range for the employee's current position of record and current official worksite. Identify the lowest step rate in that range that equals or exceeds the former special rate (or the maximum step rate, if the former special rate exceeds the range maximum). That step rate is the employee's maximum payable rate of basic pay.

(2) When the employee is assigned to an official worksite outside the geographic boundaries of the formerly applicable special rate schedule, determine the maximum payable rate as follows:

(i) Convert the former special rate to a corresponding rate (same step) in the current highest applicable rate range for the new official worksite based on the employee's position of record immediately before the reassignment.

(ii) If the rate resulting from the geographic conversion under paragraph (c)(2)(i) of this section is a special rate, that converted special rate is deemed to be the employee's former special rate and highest previous rate in applying paragraph (c)(2)(iii) of this section. If the resulting rate is not a special rate, this paragraph (c) may not be used to determine the employee's maximum payable rate. Instead, paragraph (b) of this section must be used.

(iii) Compare the employee's highest previous rate (*i.e.*, the former special rate after the geographic conversion) with the rates on the current highest applicable rate range for the new official worksite based on the employee's position of record after the reassignment. Identify the lowest step rate in that range that equals or exceeds the highest previous rate (or the maximum step rate, if the highest previous rate exceeds the range maximum). That step rate is the employee's maximum payable rate of basic pay.

(3) After setting the employee's rate of basic pay in the highest applicable rate range (not to exceed the maximum payable rate), the agency must determine any underlying rate of basic pay to which the employee is entitled based on the employee's step rate.

(d) *When highest previous rate is based on a rate under a non-GS pay system.* When an employee's highest previous rate (as provided in § 531.222) is based on a rate of basic pay in a non-GS pay system, the agency must determine the maximum payable rate of basic pay that may be paid to the employee in his or her current GS position of record as follows:

(1) Compare the highest previous rate to the highest applicable rate range in effect at the time and place where the highest previous rate was earned. The

highest applicable rate range is determined as if the employee held the current GS position of record (including grade in which pay is being set) at that time and place. Identify the lowest step rate in that range that was equal to or higher than the highest previous rate (or the maximum step rate if the highest previous rate exceeded the range maximum).

(2) Convert the step rate identified in paragraph (d)(1) of this section to a corresponding rate (same step) in the current highest applicable rate range for the employee's current GS position of record and official worksite. That step rate is the employee's maximum payable rate of basic pay.

(3) After setting the employee's rate of basic pay in the current highest applicable rate range (not to exceed the maximum payable rate), the agency must determine any underlying rate of basic pay to which the employee is entitled at the determined step rate.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§ 531.222 Rates of basic pay that may be used as the highest previous rate.

(a)(1) Subject to the conditions in this section and § 531.223, the highest previous rate used in applying § 531.221 is—

(i) The highest rate of basic pay previously received by an individual while employed in a civilian position in any part of the Federal Government (including service with the government of the District of Columbia for employees first employed by that government before October 1, 1987), without regard to whether the position was in the GS pay system; or

(ii) The highest rate of basic pay in effect when a GS employee held his or her highest GS grade and highest step within that grade.

(2) The highest previous rate must be a rate of basic pay received by an employee while serving on a regular tour of duty—

(i) Under an appointment not limited to 90 days or less; or

(ii) For a continuous period of not less than 90 days under one or more appointments without a break in service.

(b) For periods of service as a GS employee, the highest previous rate may not be a special rate, except as provided in paragraph (c) of this section. If the highest previous rate is a locality rate, the underlying GS rate or an LEO special base rate associated with that locality rate must be used as the highest previous rate in applying § 531.221(b).

(c) An agency may use a GS employee's special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 as the highest previous rate when all of the following conditions apply:

(1) The employee is reassigned to another position in the same agency at the same grade level;

(2) The special rate is the employee's rate of basic pay immediately before the reassignment; and

(3) An authorized agency official finds that the need for the services of the employee, and the employee's contribution to the program of the agency, will be greater in the position to which reassigned. An agency must make such determinations on a case-by-case basis. In each case, the agency must document the determination to use the special rate as an employee's highest previous rate in writing.

(d) When an agency is barred from using a special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 as an employee's highest previous rate under § 531.223(g), the agency must consider a special rate employee's underlying GS rate (or LEO special base rate, if applicable) in determining the employee's highest previous rate for the purpose of applying paragraph (b) of this section.

[70 FR 31291, May 31, 2005, as amended at 70 FR 74995, Dec. 19, 2005]

§ 531.223 Rates of basic pay that may not be used as the highest previous rate.

The highest previous rate may not be based on the following:

(a) A rate received under an appointment as an expert or consultant under 5 U.S.C. 3109;

(b) A rate received in a position to which the employee was temporarily promoted for less than 1 year, except

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upon permanent placement in a position at the same or higher grade;

(c) A rate received in a position from which the employee was reassigned or reduced in grade for failure to satisfactorily complete a probationary period as a supervisor or manager;

(d) A rate received by an individual while employed by the government of the District of Columbia who was first employed by that government on or after October 1, 1987;

(e) A rate received by an individual while employed by a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(f) A rate received solely during a period of interim relief under 5 U.S.C. 7701(b)(2)(A);

(g) A special rate established under 5 U.S.C. 5305 and 5 CFR part 530, subpart C, or 38 U.S.C. 7455 (except as provided in § 531.222(c));

(h) A rate received under a void appointment or a rate otherwise contrary to applicable law or regulation;

(i) A rate received as a member of the uniformed services; or

(j) A retained rate under 5 U.S.C. 5363 or a similar rate under another legal authority.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66153, Nov. 7, 2008]

SPECIAL RULES FOR GM EMPLOYEES

§ 531.241 Retaining and losing GM status.

(a) An employee retains status as a GM employee (as defined in § 531.203) when detailed to any position or when reassigned to another GS position in which the employee continues to be a supervisor or management official (as defined in 5 U.S.C. 7103(a)(10) and (11)).

(b) An employee permanently loses status as a GM employee if he or she is promoted (including a temporary promotion), transferred, demoted, reassigned to a position in which the employee will no longer be a supervisor or management official, has a break in service of more than 3 days, or becomes entitled to a retained rate under 5 CFR part 536. (A retained grade is not considered in determining whether a GM employee has been reduced in grade. See 5 CFR 536.205.)

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§ 531.242 Setting pay upon loss of GM status.

(a) On loss of status as a GM employee under § 531.241 (except as provided in paragraph (b) of this section), an employee must receive his or her existing payable rate of basic pay, plus any of the following adjustments that may be applicable on the effective date of the loss of status, in the order specified:

(1) The amount of any annual adjustment in GS rates under 5 U.S.C. 5303, and the amount of any adjustment in locality payments or special rate supplements, to which the employee otherwise would be entitled on that date;

(2) The amount of any within-grade increase to which the employee otherwise would be entitled on that date under 5 U.S.C. 5335 and subpart D of this part;

(3) The amount resulting from a promotion effective on that date (consistent with § 531.243(c));

(4) In the case of an employee who loses GM status without a change of grade and whose GS rate falls between two steps of a GS grade, the amount of any increase needed to pay the employee the rate for the next higher step of that grade; and

(5) In the case of an employee whose resulting GS rate is below the minimum rate of a GS grade, the amount of any increase needed to pay the employee the minimum rate for that grade.

(b) For an employee who loses status as a GM employee as a result of a demotion, pay must be set as provided in § 531.215. A GM employee's off-step GS rate at the grade before demotion is not converted to a GS step rate before the demotion, but the employee must be placed on a GS step rate when pay is set in the lower grade.

§ 531.243 Promotion of a GM employee.

(a) Upon promotion, an employee's status as a GM employee ends, as provided in § 531.241(b).

(b) When an employee loses status as a GM employee because of a temporary promotion and is returned to the lower grade upon expiration or termination of the temporary promotion under § 531.215(c)(1), he or she will be deemed to have been placed at the lowest step

rate that equals or exceeds the employee's former GS rate (as a GM employee) on the effective date of the temporary promotion, before applying any other step increases based on his or her service during the temporary promotion.

(c) A GM employee's GS rate is used as the existing rate of pay in applying the promotion rule in § 531.214. A GM employee's off-step GS rate in the grade before promotion is not converted to a GS step rate in applying the promotion rule, but the employee must be placed on a GS step rate in the post-promotion grade.

§ 531.244 Adjusting a GM employee's rate at the time of an annual pay adjustment.

(a) On the effective date of an annual pay adjustment under 5 U.S.C. 5303 or similar authority, an agency must set the new GS rate for a GM employee as follows:

(1) For a GM employee whose GS rate equals a regular GS step rate, set the employee's rate at the new step rate in the adjusted General Schedule that corresponds to the employee's grade and step as in effect immediately before the effective date of the pay adjustment.

(2) For a GM employee whose GS rate is below the minimum rate of the GS rate range for the employee's grade, increase the existing GS rate by the same percentage as the annual pay adjustment for the GS rate range applicable to the employee's grade, with the result rounded to the nearest dollar (not to exceed the minimum rate of the range).

(3) For a GM employee whose GS rate is between GS step rates, apply the following method:

Step A	Using the rates and ranges in effect immediately <i>before</i> the annual pay adjustment, find the difference between the GM employee's GS rate and the minimum rate of the GS rate range for the employee's grade.
Step B	Find the difference between the maximum rate and minimum rate of the GS rate range in effect immediately before the annual pay adjustment. (If the GS maximum rate was not payable because of the EX level V pay limitation in 5 U.S.C. 5303(f), use the uncapped maximum rate.)

Step C	Divide the result from step A by the result from step B. Carry this result to the seventh decimal place and truncate, rather than round, the result. This decimal factor represents the employee's relative position in the rate range.
Step D	Using rates and ranges in effect <i>after</i> the annual pay adjustment, find the difference between the maximum rate and minimum rate of the new GS rate range for the employee's grade. (If the GS maximum rate was not payable because of the EX level V pay limitation, use the uncapped maximum rate.)
Step E	Multiply the result from step D by the factor derived from step C.
Step F	Add the result from step E to the minimum rate of the employee's current GS rate range and round to the next higher whole dollar. The resulting rate is the GM employee's new GS rate (subject to the EX level V pay limitation).

(b) [Reserved]

[70 FR 31291, May 31, 2005, as amended at 73 FR 66153, Nov. 7, 2008]

§ 531.245 Computing locality rates and special rates for GM employees.

Locality rates and special rates are computed for GM employees in the same manner as locality rates and special rates for other GS employees. The applicable locality payment or special rate supplement is added on top of the GM employee's GS rate.

§ 531.246 Within-grade increases for GM employees.

GM employees are entitled to within-grade increases as provided under subpart D of this part. A within-grade increase may not cause a GM employee's GS rate to exceed the maximum GS rate of his or her grade. GM employees may receive quality step increases as provided in subpart E of this part.

[73 FR 66153, Nov. 7, 2008]

§ 531.247 Maximum payable rate rule for GM employees.

(a) A rate received by a GM employee may qualify as a highest previous rate under § 531.222.

(b) As provided in §§ 531.221(a) and 531.241(b), if an employee loses status as a GM employee because of a transfer, promotion, demotion, or reassignment to a position in which the employee will no longer be a supervisor or management official, and if the employing agency after the action chooses to apply the maximum payable rate

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rule, the agency must follow the rules in § 531.221.

(c) If an employee retains GM status after an action that allows application of the maximum payable rate rule in § 531.221 to set the employee's pay, the rules in § 531.221 must be applied in accordance with the following special provisions:

(1) In comparing the employee's highest previous rate to an applicable rate range for the grade in which pay is being set, do not identify the lowest step rate that equals or exceeds the highest previous rate. Instead, identify the rate in the rate range that equals the highest previous rate unless that highest previous rate is below the range minimum or above the range maximum. If the highest previous rate is below the range minimum, identify the minimum rate (step 1) of the grade. If the highest previous rate is above the range maximum, identify the maximum rate (step 10) of the grade.

(2) In applying § 531.221(b) for an employee whose highest previous rate is a GS rate, the highest previous rate must be compared to the GS rate range for the grade in which pay is currently being set, but which was in effect at the time the highest previous rate was earned. If the highest previous rate was earned while the current GS rate range was in effect, the rate identified under paragraph (c)(1) of this section is the maximum payable GS rate. Otherwise, based on the rate identified in paragraph (c)(1) of this section, the agency must determine the corresponding rate in the current GS rate range for the grade in which pay is currently being set. That corresponding rate is the maximum payable GS rate. If the highest previous rate was above the range minimum and below the range maximum, the corresponding rate in the current GS rate range must be derived as follows:

- Step A Find the difference between the employee's highest previous rate and the minimum rate for the GS rate range (for the employee's current grade) in effect at the time the highest previous rate was earned.
- Step B Find the difference between the maximum rate and the minimum GS rate for the rate range identified in step A. (If the GS maximum rate was not payable because of the EX level V pay limitation, use the uncapped maximum rate.)
- Step C Divide the result from step A by the result from step B. Carry this result to the seventh decimal place and truncate, rather than round, the result. This decimal factor represents the employee's relative position in the rate range.
- Step D Using the current GS rate range (for the employee's current grade), find the difference between the maximum rate and the minimum rate. (If the maximum GS rate was not payable because of the EX level V pay limitation, use the uncapped maximum GS rate.)
- Step E Multiply the result from step D by the factor derived under step C.
- Step F Add the result from step E to the minimum rate for the employee's current GS rate range and round to the next higher whole dollar. This rate is the maximum payable GS rate the agency may pay the employee (subject to the EX level V pay limitation).

(3) In applying § 531.221(c) for an employee whose highest previous rate is a special rate, the highest previous rate (after any geographic conversion) must be compared directly to the current highest applicable rate range for the employee's position of record and offi-

cial worksite after reassignment. Thus, the rate identified under paragraph (c)(1) of this section is the maximum payable rate of basic pay.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66153, Nov. 7, 2008]

Subpart C [Reserved]

Subpart D—Within-Grade
Increases

SOURCE: 46 FR 2319, Jan. 9, 1981, unless otherwise noted.

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) Section 2301(b)(3) of title 5, United States Code, provides in part that “appropriate incentives and recognition should be provided for excellence in performance.”

(b) Section 5301(a)(2) of title 5, United States Code, provides that “pay distinctions be maintained in keeping with work and performance distinctions.”

(c) Section 5338 of title 5, United States Code, provides that “The Office of Personnel Management may prescribe regulations necessary for the administration” of General Schedule pay rates, including within-grade increases.

(d) Section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89) provides that “the Office of Personnel Management shall prescribe regulations necessary for the administration of this section.”

[51 FR 8419, Mar. 11, 1986, as amended at 59 FR 40793, Aug. 10, 1994; 60 FR 33098, June 27, 1995]

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who—

(1) Are classified and paid under the General Schedule;

(2) Occupy permanent positions; and

(3) Are paid less than the maximum rate of their grade.

(b) This subpart does not apply to any employee who is appointed by the President, by and with the advice and consent of the Senate.

[70 FR 31301, May 31, 2005]

§ 531.403 Definitions.

In this subpart:

Acceptable level of competence means performance by an employee that war-

rants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart, as determined by the head of the agency (or designee).

Agency means an agency with employees covered by this subpart, as provided in § 531.402.

Calendar week means a period of any seven consecutive calendar days.

Critical element has the meaning given that term in § 430.203 of this chapter.

Employee has the meaning given that term in 5 U.S.C. 2105, except that for the purpose of applying the provisions regarding equivalent increases and creditable service with respect to non-GS service, *employee* also includes—

(1) An individual employed by the U.S. Postal Service or the Postal Rate Commission who would be considered an employee under 5 U.S.C. 2105 but for the exclusion in section 2105(e); and

(2) An individual employed by a non-appropriated fund instrumentality for service that is creditable under § 531.406(b)(4).

Equivalent increase means an increase in an employee's rate of basic pay, or an opportunity for such an increase under a non-GS pay system, as described in § 531.407.

Next higher rate within the grade for a GM employee means the rate of basic pay that exceeds the employee's existing rate of basic pay by one within-grade increase, not to exceed the maximum rate of the grade. For the purpose of this definition, a within-grade increase equals the dollar value of the GS within-grade increase for the applicable grade (excluding any locality payment, special rate supplement, or any other additional payment).

General Schedule or *GS* means the classification and pay system established under 5 U.S.C. chapter 51 and subchapter III of chapter 53. The term also refers to the pay schedule of GS rates established under 5 U.S.C. 5332, as adjusted under 5 U.S.C. 5303 or other law (including GS rates payable to GM employees). Law enforcement officers receiving LEO special base rates are covered by the GS classification and pay system, but receive higher base

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rates of pay in lieu of GS rates at grades GS–3 through GS–10.

GM employee has the meaning given that term in 5 CFR 531.203.

GS rate means a rate of basic pay within the General Schedule, excluding additional pay of any kind such as locality payments under subpart F of this part and special rate supplements under 5 CFR part 530, subpart C, or 38 U.S.C. 7455. A rate payable to a GM employee is considered a GS rate.

Law enforcement officer or *LEO* has the meaning given that term in 5 CFR 550.103.

LEO special base rate means a special base rate established for GS law enforcement officers at grades GS–3 through GS–10 under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101–509, November 5, 1990, as amended) which is used in lieu of a GS rate.

Next higher rate within the grade for a GM employee (as defined in § 531.202) means the rate of basic pay which exceeds an employee's existing rate of basic pay by one-ninth of the difference between the minimum and maximum rates of pay for the applicable General Schedule grade or special salary rate schedule established under section 5305 of title 5, United States Code, not to exceed the maximum rate for the grade.

Permanent position means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. “Permanent position” includes a position to which an employee is promoted on a temporary or term basis for at least one year.

Promotion means an employee's movement from one grade or level to a higher grade or level while continuously employed (including such a movement in conjunction with a transfer).

Rate of basic pay means 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. For an employee covered by the General Schedule, that *rate of basic pay* is the GS rate or, if applicable, an LEO special base rate.

Scheduled tour of duty means any work schedule established for an employee in accordance with the regular procedures for the establishment of workweeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour workweek. For a part-time employee this is any regularly scheduled work of less than 40-hours during the administrative workweek.

Temporary promotion means a time-limited promotion with a not-to-exceed date or a specified term.

Waiting period means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

Within-grade increase is synonymous with the term “step increase” used in 5 U.S.C. 5335 and means—* *

(1) A periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart; or

(2) For a GM employee whose rate does not equal a regular GS step rate (*i.e.*, an off-step rate), a periodic increase in an employee's rate of basic pay from the employee's current rate to the next higher rate within the grade (as defined in this section) consistent with section 4 of Public Law 103–89.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 48 FR 49486, Oct. 25, 1983; 51 FR 8420, Mar. 11, 1986; 58 FR 65536, Dec. 15, 1993; 59 FR 40793, Aug. 10, 1994; 60 FR 33098, June 27, 1995; 60 FR 43947, Aug. 23, 1995; 70 FR 31301, May 31, 2005]

§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart. To be determined at an acceptable level of

competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at least Level 3 ("Fully Successful" or equivalent).

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determination for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.

[51 FR 8420, Mar. 11, 1986, as amended at 58 FR 65536, Dec. 15, 1993; 60 FR 43948, Aug. 23, 1995]

§ 531.405 Waiting periods for within-grade increase.

(a) *Length of waiting period.* (1) For an employee with a scheduled tour of duty, the waiting periods for advancement to the next higher step in all General Schedule grades (or the next higher rate within the grade, as defined in § 531.403) are:

(i) Rate of basic pay less than the rate of basic pay at step 4-52 calendar weeks of creditable service;

(ii) Rate of basic pay equal to or greater than the rate of basic pay at step 4 and less than the rate of basic pay at step 7-104 calendar weeks of creditable service; and

(iii) Rate of basic pay equal to or greater than the rate of basic pay at step 7-156 calendar weeks of creditable service.

(2) For an employee without a scheduled tour of duty, the waiting periods for advancement to the next higher step of all General Schedule grades (or the next higher rate within the grade, as defined in § 531.403) are:

(i) Rate of basic pay less than the rate of basic pay at step 4-260 days of creditable service in a pay status over a period of not less than 52 calendar weeks;

(ii) Rate of basic pay equal to or greater than the rate of basic pay at step 4 and less than the rate of basic pay at step 7-520 days of creditable service in a pay status over a period of not less than 104 calendar weeks; and

(iii) Rate of basic pay equal to or greater than the rate of basic pay at step 7-780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) *Commencement of a waiting period.* A waiting period begins:

(1) On the first appointment as an employee of the Federal Government, regardless of tenure;

(2) On receiving an equivalent increase; or

(3) After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under § 531.406 of this subpart.

(c) A waiting period is not interrupted by non-workdays intervening between an employee's last scheduled workday in one position and his or her first scheduled workday in a new position.

[46 FR 2319, Jan. 9, 1981, as amended at 58 FR 65536, Dec. 15, 1993; 59 FR 40794, Aug. 10, 1994]

§ 531.406 Creditable service.

(a) *General.* Civilian employment in any branch of the Federal Government (executive, legislative, or judicial) or with a Government corporation as defined in section 103 of title 5, United States Code, is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; service under a temporary or term appointment; and service under an interim appointment made under § 772.102 of this chapter. Depending on the specific provision of law or regulation, service may be creditable for the completion of one waiting period or for the completion of successive waiting periods. Paragraph (b) of this section identifies service which is creditable in the computation of a single waiting period. Paragraph (c) identifies service which is creditable in the computation of successive waiting periods.

(b) *Service creditable for one within-grade increase.* (1) Military service as defined in section 8331(13) of title 5, United States Code, is creditable service in the computation of a waiting period when an employee is reemployed with the Federal Government not later than 52 calendar weeks after separation from such service or hospitalization continuing thereafter for a period of not more than one year.

(2) Time in a nonpay status (based upon the tour of duty from which the time was charged) is creditable service in the computation of a waiting period for an employee with a scheduled tour of duty when it does not exceed an aggregate of:

(i) Two workweeks in the waiting period for an employee whose rate of basic pay is less than the rate of basic pay for step 4 of the applicable grade;

(ii) Four workweeks in the waiting period for an employee whose rate of basic pay is equal to or greater than the rate of basic pay for step 4 of the applicable grade and less than the rate of basic pay for step 7 of the applicable grade; and

(iii) Six workweeks in the waiting period for an employee whose rate of basic pay is equal to or greater than the rate of basic pay for step 7 of the applicable grade.

(3) Except as provided in paragraph (c) of this section, time in a nonpay status (based upon the tour of duty from which the time was charged) that is in excess of the allowable amount shall extend a waiting period by the excess amount.

(4) Service by an employee of a non-appropriated fund instrumentality of the Department of Defense or the Coast Guard, as defined in 5 U.S.C. 2105(c), who moves, within the civil service employment system of the Department of Defense or the Coast Guard, respectively, and without a break in service of more than 3 days, to a position classified and paid under the General Schedule, is creditable service in the computation of a waiting period.

(c) *Service creditable for successive within-grade increases.* (1) A leave of absence from a position in which an employee is covered by this subpart, whether the employee is on leave without pay or is considered to be on furlough, is cred-

itable service in the computation of waiting periods for successive within-grade increases when:

(i) The employee is absent for the purpose of engaging in military service as defined in section 8331(13) of title 5, United States Code, and returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation;

(ii) The employee is receiving injury compensation under subchapter I of chapter 81 of title 5, United States Code;

(iii) The employee is performing service that is creditable under section 8332(b) (5) or (7) of title 5, United States Code;

(iv) The employee is temporarily employed by another agency in a position covered by this subpart; or

(v) The employee is assigned to a State or local government or institution of higher education under sections 3371–3376 of title 5, United States Code.

(2) The period from the date of an employee's separation from Federal service with a restoration or reemployment right granted by law, Executive order, or regulation to the date of restoration or reemployment with the Federal Government through the exercise of that right is creditable service in the computation of waiting periods for successive within-grade increases.

(3) The period during which a separated employee is in receipt of injury compensation under subchapter I of chapter 81 of title 5, United States Code, as a result of an injury incurred by the employee in the performance of duty is creditable service in the computation of waiting periods for successive within-grade increases when the employee is reemployed with the Federal Government.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41019, Aug. 14, 1981; 46 FR 43371, Aug. 28, 1981; 46 FR 45747, Sept. 15, 1981; 57 FR 3712, Jan. 31, 1992; 57 FR 12404, Apr. 10, 1992; 59 FR 40794, Aug. 10, 1994; 59 FR 66332, Dec. 28, 1994; 73 FR 66153, Nov. 7, 2008]

§ 531.407 Equivalent increase determinations.

(a) *GS employees.* For a GS employee, an equivalent increase is considered to occur at the time of any of the following personnel actions:

(1) A within-grade increase, excluding a quality step increase granted under subpart E of this part or an interim within-grade increase if that increase is later terminated under § 531.414;

(2) A promotion (permanent or temporary) to a higher grade, including the promotion of an employee receiving a retained rate under 5 CFR 359.705 or 5 CFR part 536 that does not result in a pay increase, but excluding—

(i) A temporary promotion if, at the end of the that temporary promotion, the employee is returned to the grade from which promoted; or

(ii) A promotion to a higher-graded supervisory or managerial position when the employee does not satisfactorily complete a probationary period established under 5 U.S.C. 3321(a)(2) and is returned to a position at the lower grade held before promotion;

(3) Application of the maximum payable rate rule in § 531.221 that results in a higher step rate within the employee's GS grade (or an increase for a GM employee to the next higher rate within the grade), except for application of that rule in a demotion to the extent that the employee's rate of basic pay after demotion does not exceed the lowest step rate that equals or exceeds the employee's rate of basic pay immediately before the demotion;

(4) Application of the superior qualifications and special needs pay-setting authority in § 531.212 that results in a higher step rate within the employee's GS grade (or an increase for a GM employee to the next higher rate within the grade); or

(5) Application of the qualifications pay authority in 5 U.S.C. 9814 to an employee of the National Aeronautics and Space Administration, when the employee fulfills the 1-year service requirement in the position for which qualifications pay was paid or in a successor position.

(b) *Non-GS employees who move to the GS pay system.* When an employee performs service under a non-GS pay system for Federal employees and that service is potentially creditable towards a GS within-grade increase waiting period, an equivalent increase is considered to occur at the time of any of the following personnel actions in the non-GS pay system:

(1) A promotion to a higher grade or work level within the non-GS pay system (unless the promotion is cancelled and the employee's rate of basic pay is redetermined as if the promotion had not occurred); or

(2) An opportunity to receive a within-level or within-range increase that results in forward movement in the applicable range of rates of basic pay (including an increase granted immediately upon movement to the non-GS pay system from another pay system—e.g., to account for the value of accrued within-grade increases under the former pay system or to provide a promotion-equivalent increase), where “forward movement in the applicable range” means any kind of increase in the employee's rate of basic pay other than an increase that is directly and exclusively linked to—

(i) A general structural increase in the employee's basic pay schedule or rate range (including the adjustment of a range minimum or maximum); or

(ii) The employee's placement under a new basic pay schedule within the same pay system, when such placement results in a nondiscretionary basic pay increase to account for occupational pay differences.

(c) *Locality rates and special rates.* Since locality rates under subpart F of this part and special rates under 5 CFR part 530, subpart C, and similar rates under other legal authority (e.g., 38 U.S.C. 7455) are not rates of basic pay for the purpose of this subpart, increases in pay resulting from an adjustment in an employee's locality payment or special rate supplement or from placement on a new locality rate or special rate schedule are not considered in making equivalent increase determinations.

[70 FR 31301, May 31, 2005, as amended at 70 FR 74995, Dec. 19, 2005; 73 FR 66153, Nov. 7, 2008]

§ 531.408 [Reserved]

§ 531.409 Acceptable level of competence determinations.

(a) *Responsibility.* The head of the agency or other agency official to whom such authority is delegated shall

determine which employees are performing at an acceptable level of competence.

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter. For those agencies not covered by chapter 43 of title 5, United States Code, and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on performance appraisal requirements established by the agency. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least the minimum period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* (1) An acceptable level of competence determination shall be delayed when, and only when, either of the following applies:

(i) An employee has not had the minimum period of time established at § 430.207(a) of this chapter to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within the minimum period of time (as established at § 430.207(a) of this chapter) before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period as established at § 430.207(a) of this chapter.

(2) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and the appraisal period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made based on the employee's rating of record completed at the end of the extended appraisal period.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(d) *Waiver of requirement for determination.* (1) An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum period under an applicable agency performance appraisal program during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

(i) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(ii) Because of paid leave;

(iii) Because the employee received service credit under the back pay provisions of subpart H of part 550 of this chapter;

(iv) Because of details to another agency or employer for which no rating has been prepared;

(v) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization under chapter 71 of title 5, United States Code); or

(vi) Because of long-term training.

(2) When an acceptable level of competence determination has been waived and a within-grade increase granted under paragraph (d)(1) of this section, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his

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or her position of record for the minimum period under the applicable agency performance appraisal program.

(e) *Notice of determination.* (1) A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based.

(2) When the head of an agency or his or her designee determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall:

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under §531.411 of this subpart.

(ii) Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.

[46 FR 2319, Jan. 9, 1981, as amended at 51 FR 8420, Mar. 11, 1986; 60 FR 43948, Aug. 23, 1995; 62 FR 62503, Nov. 24, 1997]

§531.410 Reconsideration of a negative determination.

(a) When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of title 5, United States Code for reconsideration of the negative determination:

(1) An employee or an employee's personal representative may request reconsideration of a negative determination by filing, not more than 15 days after receiving notice of determination, a written response to the negative determination setting forth the reasons the agency shall reconsider the determination;

(2) When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the following:

(i) The written negative determination and the basis therefore;

(ii) The employee's written request for reconsideration;

(iii) The report of investigation when an investigation is made;

(iv) The written summary or transcript of any personal presentation made; and

(v) The agency's decision on the request for reconsideration.

The file shall not contain any document that has not been made available to the employee or his or her personal representative with an opportunity to submit a written exception to any summary of the employee's personal presentation;

(3) An employee in a duty status shall be granted a reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination; and

(4) The agency shall provide the employee with a prompt written final decision.

(b) The time limit to request a reconsideration may be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration within the time limit.

(c) An agency may disallow as an employee's personal representative an individual whose activities as a representative would cause a conflict of interest of position, an employee whose release from his or her official duties and responsibilities would give rise to unreasonable costs to the Government, or an employee whose priority work assignment precludes his or her release from official duties and responsibilities. Section 7114 of title 5, United States Code, and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(d) When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit Systems Protection Board. However, for an employee covered by a

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collective bargaining agreement a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

[46 FR 2319, Jan. 9, 1981, as amended at 50 FR 45389, Oct. 31, 1985]

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, prepare a new rating of record for the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

[51 FR 8421, Mar. 11, 1986]

§ 531.412 Effective date of a within-grade increase.

(a) Except as provided in paragraph (b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-grade increases shall become effective as provided in § 541.414(b).

(b) When an acceptable level of competence is achieved at some time after a negative determination, the effective date is the first day of the first pay period after the acceptable determination has been made.

[46 FR 2319, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981; 59 FR 24029, May 10, 1994]

§ 531.413 Reports and evaluation of within-grade increase authority.

(a) *Reports.* The Office of Personnel Management may require agencies to maintain records and report on the use of the authority to grant or withhold within-grade increases.

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(b) *Evaluation.* The Office of Personnel Management may evaluate an agency's use of the authority to grant or withhold within-grade increases. An agency shall take any corrective action required by the Office.

§ 531.414 Interim within-grade increase.

(a) An interim within-grade increase shall be granted to an employee who has:

(1) Appealed a negative within-grade increase determination to the Merit Systems Protection Board under 5 U.S.C 5335(c); and

(2) Been granted a favorable within-grade increase determination under the interim relief provisions of 5 U.S.C. 7701(b)(2).

(b) An interim within-grade increase granted under paragraph (a) of this section shall become effective on the date of the appellate decision ordering interim relief under 5 U.S.C. 7701(b)(2)(A).

(c) If the final decision of the Merit Systems Protection Board upholds the negative within-grade increase determination, an interim within-grade increase granted under this section shall be terminated on the date of the Board's final decision.

(d) If the final decision of the Merit Systems Protection Board overturns the negative within-grade increase determination, an interim within-grade increase granted under this section shall be made permanent and shall be granted retroactively to the first day of the first pay period beginning on or after completion of the applicable waiting period.

(e) An employee may not appeal the termination of an interim within-grade increase under paragraph (c) of this section.

[57 FR 3712, Jan. 31, 1992, as amended at 59 FR 24030, May 10, 1994; 59 FR 65703, Dec. 21, 1994]

Subpart E—Quality Step Increases

SOURCE: 33 FR 12448, Sept. 4, 1968, unless otherwise noted.

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United

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States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases.

[60 FR 43948, Aug. 23, 1995]

§ 531.502 Definitions.

Agency means an agency defined in section 5102 of title 5, United States Code.

Employee means an employee of an agency.

Quality step increase is synonymous with the term “step increase” used in section 5336 of title 5, United States Code, and means an increase in an employee’s rate of basic pay from one step or rate of the grade of his or her position to the next higher step of that grade or next higher rate within the grade (as defined in § 531.403) in accordance with section 5336 of title 5, United States Code, section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89), and this subpart.

[46 FR 2322, Jan. 9, 1981, as amended at 46 FR 41020, Aug. 14, 1981; 58 FR 65537, Dec. 15, 1993; 59 FR 40794, Aug. 10, 1994]

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to provide appropriate incentives and recognition for excellence in performance by granting faster than normal step increases.

[60 FR 43948, Aug. 23, 1995]

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to—

(a) An employee who receives a rating of record at Level 5 (“Outstanding” or equivalent), as defined in part 430, subpart B, of this chapter; or

(b) An employee who, when covered by a performance appraisal program that does not use a Level 5 summary—

(1) Receives a rating of record at the highest summary level used by the program; and

(2) Demonstrates sustained performance of high quality significantly above that expected at the “Fully Successful” level in the type of position concerned, as determined under per-

formance-related criteria established by the agency.

[60 FR 43948, Aug. 23, 1995]

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

[51 FR 8421, Mar. 11, 1986]

§ 531.506 Effective date of a quality step increase.

The quality step increase should be made effective as soon as practicable after it is approved.

[60 FR 43948, Aug. 23, 1995]

§ 531.507 Agency responsibilities.

(a) Agencies shall maintain and submit to OPM such records as OPM may require.

(b) Agencies shall report quality step increases to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents.

[60 FR 43948, Aug. 23, 1995]

§ 531.508 Evaluation of quality step increase authority.

The Office of Personnel Management may evaluate an agency’s use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

[60 FR 43948, Aug. 23, 1995]

Subpart F—Locality-Based Comparability Payments

SOURCE: 58 FR 69174, Dec. 30, 1993, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart F of part 531 appear at 70 FR 31305, May 31, 2005.

§ 531.601 Purpose.

This subpart contains Office of Personnel Management (OPM) regulations

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implementing 5 U.S.C. 5304, which authorizes locality payments in defined geographic areas for GS employees and other categories of employees to whom locality payments are extended. These regulations must be read together with 5 U.S.C. 5304.

[70 FR 31302, May 31, 2005]

§ 531.602 Definitions.

In this subpart:

CSA means the geographic scope of a Combined Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 04–03, plus any areas subsequently added to the CSA by OMB.

Employee means—

(1) An employee in a position to which 5 U.S.C. chapter 53, subchapter III, applies, including a GM employee, and whose official worksite is located in a locality pay area; and

(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(D) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official worksite is located in a locality pay area.

General Schedule or *GS* means the classification and pay system established under 5 U.S.C. chapter 51 and subchapter III of chapter 53. It also refers to the pay schedule of GS rates established under 5 U.S.C. 5332, as adjusted under 5 U.S.C. 5303 or other law (including GS rates payable to GM employees). Law enforcement officers (LEOs) receiving LEO special base rates are covered by the GS classification and pay system, but receive higher base rates of pay in lieu of GS rates at grades GS–3 through GS–10.

GM employee has the meaning given that term in 5 CFR 531.203.

GS rate means a rate of basic pay within the General Schedule, excluding any LEO special base rate and additional pay of any kind such as locality payments or special rate supplements. A rate payable to a GM employee is considered a GS rate.

Law enforcement officer or *LEO* has the meaning given that term in 5 CFR 550.103.

LEO special base rate means a special base rate established for GS law enforcement officers at grades GS–3

through GS–10 under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101–509, November 5, 1990, as amended) which is used in lieu of a GS rate.

Locality pay area means an area listed in § 531.603 of this part, as established and modified under 5 U.S.C. 5304 by the Pay Agent designated by the President under 5 U.S.C. 5304(d)(1).

Locality payment means a locality-based comparability payment payable under 5 U.S.C. 5304 and this subpart. An employee's locality payment is the difference between the employee's locality rate and the employee's scheduled annual rate of pay.

Locality pay percentage means the percentage authorized for a locality pay area under 5 U.S.C. 5304 or 5304a which is used to compute a locality payment (before applying any maximum pay limitations under § 531.606).

Locality rate means a scheduled annual rate of pay plus an applicable locality payment. An employee's locality rate is computed under § 531.604.

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in OMB Bulletin No. 04–03, plus any areas subsequently added to the MSA by OMB.

Official worksite means the official location of an employee's position of record as determined under § 531.605.

Position of record means an employee's official position (defined by grade, occupational series, employing agency, LEO status, and any other condition that determines coverage under a pay schedule (other than official worksite)), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description. A position to which an employee is temporarily detailed is not documented as a position of record. For an employee whose change in official position is followed within 3 workdays by a reduction in force resulting in the employee's separation before he or she is required to report for duty in the new position, the position of record in effect immediately before the position change is deemed to remain the position of record through the date of separation.

Rate range or range means a range of rates of basic pay for a grade within an established pay schedule, excluding any retained rate. A rate range may consist of GS rates, LEO special base rates, locality rates, special rates, or, for non-GS employees, similar rates under other legal authority.

Retained rate means a rate above the maximum rate of the rate range applicable to the employee which is payable under 5 CFR part 536 or similar legal authority.

Scheduled annual rate of pay means, as applicable—

(1) The annual GS rate payable to an employee;

(2) An annual LEO special base rate; or

(3) For an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(D) for which the President (or designee) has authorized locality payments under 5 U.S.C. 5304(h)(2), the annual rate of pay fixed by law or administrative action, exclusive of any locality-based adjustments (including adjustments equivalent to local special rate supplements under 5 CFR part 530, subpart C) or additional pay of any other kind.

Special rate means a rate of pay within a special rate schedule established under 5 CFR part 530, subpart C, or a similar rate established under other legal authority (e.g., 38 U.S.C. 7455). The term *special rate* does not include an LEO special base rate.

Special rate schedule means a pay schedule established under 5 CFR part 530, subpart C, to provide higher rates of pay for specified categories of positions or employees at one or more grades or levels or a similar schedule established under other legal authority (e.g., 38 U.S.C. 7455).

Special rate supplement means the portion of a special rate paid above an employee's scheduled annual rate of pay. However, for a law enforcement officer receiving an LEO special base rate who is also entitled to a special rate, the special rate supplement equals the portion of the special rate paid above the officer's LEO special base rate. When a special rate schedule covers both LEO positions and other positions, the value of the special rate supplement will be less for law enforcement officers re-

ceiving an LEO special base rate (since that rate is higher than the corresponding GS rate). The payable amount of a special rate supplement is subject to the Executive Schedule level IV limitation on special rates, as provided in 5 CFR 530.304(a).

Telework agreement means a formal oral or written agreement between a supervisor and an employee to permit the employee to work at an alternative worksite (i.e., telework) instead of the location of the employee's assigned organization.

[58 FR 69174, Dec 30, 1993, as amended at 59 FR 67605, Dec. 30, 1994; 61 FR 3540, Feb. 1, 1996; 62 FR 25425, May 9, 1997; 64 FR 69173, Dec. 10, 1999; 66 FR 67070, Dec. 28, 2001; 68 FR 19708, Apr. 22, 2003; 69 FR 2050, Jan. 13, 2004; 69 FR 75453, Dec. 17, 2004; 70 FR 31302, May 31, 2005; 70 FR 74995, Dec. 19, 2005; 73 FR 66153, Nov. 7, 2008; 76 FR 32862, June 7, 2011]

§ 531.603 Locality pay areas.

(a) Locality rates of pay under this subpart shall be payable to employees whose official worksites are located in the locality pay areas listed in paragraph (b) of this section.

(b) The following are locality pay areas for the purposes of this subpart:

(1) Alaska—consisting of the State of Alaska;

(2) Atlanta-Sandy Springs-Gainesville, GA-AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA-AL CSA;

(3) Boston-Worcester-Manchester, MA-NH-RI-ME—consisting of the Boston-Worcester-Manchester, MA-RI-NH CSA, plus Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(4) Buffalo-Niagara-Cattaraugus, NY—consisting of the Buffalo-Niagara-Cattaraugus, NY CSA;

(5) Chicago-Naperville-Michigan City, IL-IN-WI—consisting of the Chicago-Naperville-Michigan City, IL-IN-WI CSA;

(6) Cincinnati-Middletown-Wilmington, OH-KY-IN—consisting of the Cincinnati-Middletown-Wilmington, OH-KY-IN CSA;

(7) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

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(8) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(9) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(10) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(11) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA;

(12) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(13) Hartford-West Hartford-Willimantic, CT-MA—consisting of the Hartford-West Hartford-Willimantic, CT CSA, plus the Springfield, MA MSA and New London County, CT;

(14) Hawaii—consisting of the State of Hawaii;

(15) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(16) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(17) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(18) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria-Goleta, CA MSA and all of Edwards Air Force Base, CA;

(19) Miami-Fort Lauderdale-Pompano Beach, FL—consisting of the Miami-Fort Lauderdale-Pompano Beach, FL MSA, plus Monroe County, FL;

(20) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(21) Minneapolis-St. Paul-St. Cloud, MN-WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN-WI CSA;

(22) New York-Newark-Bridgeport, NY-NJ-CT-PA—consisting of the New York-Newark-Bridgeport, NY-NJ-CT-PA CSA, plus Monroe County, PA, Warren County, NJ, and all of Joint Base McGuire-Dix-Lakehurst;

(23) Philadelphia-Camden-Vineland, PA-NJ-DE-MD—consisting of the Philadelphia-Camden-Vineland, PA-NJ-DE-MD CSA excluding Joint Base

McGuire-Dix-Lakehurst, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(24) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ MSA;

(25) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(26) Portland-Vancouver-Hillsboro, OR-WA—consisting of the Portland-Vancouver-Hillsboro, OR-WA MSA, plus Marion County, OR, and Polk County, OR;

(27) Raleigh-Durham-Cary, NC—consisting of the Raleigh-Durham-Cary, NC CSA, plus the Fayetteville, NC MSA, the Goldsboro, NC MSA, and the Federal Correctional Complex Butner, NC;

(28) Richmond, VA—consisting of the Richmond, VA MSA;

(29) Sacramento—Arden-Arcade—Yuba City, CA-NV—consisting of the Sacramento—Arden-Arcade—Yuba City, CA-NV CSA, plus Carson City, NV;

(30) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(31) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(32) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA, plus Whatcom County, WA;

(33) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA—consisting of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA, plus the Hagerstown-Martinsburg, MD-WV MSA, the York-Hanover-Gettysburg, PA CSA, and King George County, VA; and

(34) Rest of U.S.—consisting of those portions of the United States and its territories and possessions as listed in 5 CFR 591.205 not located within another locality pay area.

[58 FR 69174, Dec. 30, 1993, as amended at 61 FR 42939, Aug. 19, 1996; 65 FR 75154, Dec. 1, 2000; 70 FR 31302, May 31, 2005; 72 FR 34362, June 22, 2007; 74 FR 49308, Sept. 28, 2009; 75 FR 60286, Sept. 30, 2010; 76 FR 32862, June 7, 2011]

§ 531.604 Determining an employee's locality rate.

(a) An annual locality rate consists of a scheduled annual rate of pay plus an applicable locality payment (representing an annual dollar amount), as determined under paragraph (b) of this section.

(b) An agency determines an employee's locality rate by—

(1) Determining the employee's official worksite consistent with the rules in § 531.605;

(2) Determining the locality pay area in which the employee's official worksite is located, consistent with the locality pay areas established in § 531.603;

(3) Identifying the locality pay percentage in effect in the applicable locality pay area;

(4) Increasing the employee's scheduled annual rate of pay by the applicable locality pay percentage and rounding the result to the nearest whole dollar (counting 50 cents and over as the next higher dollar); and

(5) Applying any applicable limitation as described in § 531.606.

(c) A locality rate may be expressed as an hourly, daily, weekly, or bi-weekly rate, as provided in § 531.607.

[70 FR 31303, May 31, 2005]

§ 531.605 Determining an employee's official worksite.

(a)(1) Except as otherwise provided in this section, the official worksite is the location of an employee's position of record where the employee regularly performs his or her duties.

(2) If the employee's work involves recurring travel or the employee's work location varies on a recurring basis, the official worksite is the location where the work activities of the employee's position of record are based, as determined by the employing agency, subject to the requirement that the official worksite must be in a locality pay area in which the employee regularly performs work.

(3) An agency must document an employee's official worksite on an employee's Notification of Personnel Action (Standard Form 50 or equivalent).

(b) For an employee who is relocated and authorized to receive relocation expenses under 5 U.S.C. chapter 57, subchapter II (or similar authority), the

official worksite is the established worksite for the position in the area to which the employee has been relocated. For an employee authorized to receive relocation expenses under 5 U.S.C. 5737 in connection with an extended assignment resulting in a temporary change of station, the worksite associated with the extended assignment is the official worksite. (See 41 CFR 302-1.1.)

(c) For an employee whose assignment to a new worksite is followed 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, the official worksite in effect immediately before the assignment remains the official worksite through the date of separation.

(d) For an employee covered by a telework agreement, the following rules apply:

(1) If the employee is scheduled to work at least twice each biweekly pay period on a regular and recurring basis at the regular worksite for the employee's position of record, the regular worksite (where the employee's work activities are based) is the employee's official worksite. However, in the case of such an employee whose work location varies on a recurring basis, the employee need not work at least twice each biweekly pay period at the regular official worksite (where the employee's work activities are based) as long as the employee is regularly performing work within the locality pay area for that worksite.

(2) An authorized agency official may make an exception to the twice-in-a-pay-period standard in paragraph (d)(1) of this section in appropriate situations of a temporary nature, such as the following:

(i) An employee is recovering from an injury or medical condition;

(ii) An employee is affected by an emergency situation, which temporarily prevents the employee from commuting to his or her regular official worksite;

(iii) An employee has an extended approved absence from work (e.g., paid leave);

(iv) An employee is in temporary duty travel status away from the official worksite; or

(v) An employee is temporarily detailed to work at a location other than a location covered by a telework agreement.

(3) If an employee covered by a telework agreement does not meet the requirements of paragraphs (d)(1) or (d)(2) of this section, the employee's official worksite is the location of the employee's telework site.

(4) An agency must determine a telework employee's official worksite on a case-by-case basis. A determination made under this paragraph (d) is within the sole and exclusive discretion of the authorized agency official, subject only to OPM review and oversight.

(e) In applying paragraph (d) of this section for the purpose of other location-based pay entitlements under other regulations that refer to this section, the reference to a *locality pay area* is deemed to be a reference to the applicable geographic area associated with the given pay entitlement. For example, for the purpose of special rates under 5 CFR part 530, subpart C, the reference to a *locality pay area* is deemed to be a reference to the geographic area covered by a special rate schedule.

[73 FR 66154, Nov. 7, 2008]

§ 531.606 Maximum limits on locality rates.

(a) Except as provided by paragraph (b) of this section, a locality rate may not exceed the rate of basic pay payable for level IV of the Executive Schedule.

(b)(1) A locality rate for an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A) and 5304(h)(1)(B) may not exceed the rate for level III of the Executive Schedule.

(2) A locality rate for an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(C) may not exceed—

(i) The rate for level III of the Executive Schedule, when the positions are not covered by an appraisal system certified under 5 U.S.C. 5307(d); or

(ii) The rate for level II of the Executive Schedule, when the positions are covered by an appraisal system certified under 5 U.S.C. 5307(d).

(3) A locality rate for an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(D) may not exceed—

(i) The rate for level IV of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15; or

(ii) The rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule.

(4) If initial application of paragraph (b)(3) of this section otherwise would reduce an employee's existing locality rate, the employee's locality rate is capped at the higher of—

(i) The amount of the employee's locality rate on the day before paragraph (b)(3) of this section was initially applied; or

(ii) The rate for level IV of the Executive Schedule.

(c) Paragraph (b) of this section does not apply to experts and consultants appointed under 5 U.S.C. 3109 if the pay for those experts and consultants is limited to the highest rate payable under 5 U.S.C. 5332 (*i.e.*, the unadjusted maximum GS–15 rate). Such experts and consultants are subject to the pay limitations established in 5 CFR 304.105.

(d) A portion of a locality payment that is not payable because of an applicable limitation is not considered in applying any other provision of law or regulation.

[70 FR 31304, May 31, 2005, as amended at 76 FR 32863, June 7, 2011]

§ 531.607 Computing hourly, daily, weekly, and biweekly locality rates.

(a) Apply the following methods to convert an annual locality rate to an hourly, daily, weekly, or biweekly rate:

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

Example:

Annual locality rate = \$50,000
Computation of hourly rate: \$50,000 ÷ 2,087
= 23.957 or \$23.96.

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

Example:

Hourly rate = \$23.96

Daily hours = 8

Computation of daily rate: $\$23.96 \times 8 = \191.68

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

Example:

Hourly rate = \$23.96

Biweekly hours = 80

Computation of biweekly rate: $\$23.96 \times 80 = \$1,916.80$

(b) Notwithstanding paragraph (a) of this section, for a firefighter whose pay is computed under 5 U.S.C. 5545b, a firefighter hourly locality rate is computed using a divisor of 2,756 hours instead of 2,087, as prescribed in 5 CFR part 550, subpart M. Also, such a firefighter's weekly and biweekly locality rates must be based on the firefighter's extended tour of duty as prescribed in that subpart.

[70 FR 31304, May 31, 2005]

§ 531.608 Relationship of locality rates to other pay rates.

(a) An employee must receive the greatest of the following rates of pay, as applicable—

(1) The scheduled annual rate of pay payable to the employee;

(2) A locality rate under this subpart;

(3) A special rate under 5 CFR part 530, subpart C, or a similar rate under other legal authority (e.g., 38 U.S.C. 7455); or

(4) A retained rate under 5 CFR part 536 or a similar rate under other legal authority.

(b) A GS employee receiving a special rate is entitled to any applicable locality payment on the same basis as any other GS employee. The locality payment is computed based on the employee's scheduled annual rate of pay, which excludes any special rate. The employee is entitled to the higher of the locality rate or the corresponding special rate. As provided in 5 U.S.C. 5305(h) and 5 CFR 530.303(d), when an employee's locality rate exceeds a corresponding special rate, the employee's

entitlement to the special rate is terminated.

[70 FR 31304, May 31, 2005]

§ 531.609 Adjusting or terminating locality rates.

(a) When an employee's official worksite is changed to a different locality pay area, the employee's entitlement to the locality rate for the new locality pay area begins on the effective date of the change in official worksite.

(b) A locality rate must be adjusted as of the effective date of any change in the applicable scheduled annual rate of pay or any change in the applicable locality percentage.

(c) Except as provided in paragraph (d) of this section, entitlement to a locality rate associated with a particular locality pay area under this subpart terminates on the date—

(1) An employee's official worksite is no longer in the locality pay area;

(2) An employee is no longer in a position covered by this subpart; or

(3) An employee separates from Federal service.

(d) In the event of a change in the geographic coverage of a locality pay area as a result of the addition by OMB of a new area(s) to the definition of an MSA or CSA, the effective date of any change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first pay period beginning on or after January 1 of the next calendar year. Any area removed by OMB from coverage within an MSA or CSA that serves as the basis for defining a locality pay area must be reviewed by the Federal Salary Council and the President's Pay Agent before a decision is made regarding the locality pay status of that area.

(e) As provided in § 531.205, when an employee becomes covered by one or more different pay schedule(s) because the employee is stationed at a new official worksite in a different geographic location, the employee's pay (including a locality rate) must first be converted to the applicable pay schedule(s) in the new location before applying any other pay action (other than a general pay adjustment).

[70 FR 31304, May 31, 2005, as amended at 72 FR 34363, June 22, 2007]

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§ 531.610 Treatment of locality rate as basic pay.

A locality rate is considered to be an employee's rate of basic pay only for the purpose of computing or applying—

(a) Retirement deductions, contributions, and benefits under 5 U.S.C. chapters 83 and 84;

(b) Life insurance premiums and benefits under 5 U.S.C. chapter 87;

(c) Premium pay under 5 U.S.C. chapter 55, subchapter V, and 5 CFR part 550, subparts A and I (including the computation of limitations on premium pay);

(d) Severance pay under 5 U.S.C. 5595 and 5 CFR part 550, subpart G;

(e) Advances in pay under 5 U.S.C. 5524a and 5 CFR part 550, subpart B;

(f) Post differentials under 5 U.S.C. 5925(a) and danger pay allowances under 5 U.S.C. 5928 for an employee temporarily working in a foreign area when the employee's official worksite is located in a locality pay area;

(g) Nonforeign area cost-of-living allowances and post differentials under 5 U.S.C. 5941 and 5 CFR part 591, subpart B;

(h) Recruitment, relocation, and retention incentives, supervisory differentials, and extended assignment incentives under 5 U.S.C. chapter 57, subchapter IV, and 5 CFR part 575;

(i) Performance-based cash awards under 5 U.S.C. 4505a and 5 CFR part 451, subpart A, when such awards are computed as a percentage of an employee's rate of basic pay;

(j) GS pay administration provisions (e.g., GS promotion provisions) to the extent provided in subpart B of this part;

(k) 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 locality rate would not apply at the official worksite for the prevailing rate position, that locality rate must be converted to a corresponding rate on the locality rate schedule for that official worksite;

(l) Lump-sum payments under 5 CFR part 550, subpart L, for accumulated and accrued annual leave;

(m) Grade and pay retention under 5 U.S.C. chapter 53, subchapter VI, to the extent provided by 5 CFR part 536;

(n) Other provisions as specified in other statute or OPM regulations; and

(o) Payments or benefits equivalent to those listed in this section under other legal authority, as determined by the head of the agency or other authorized official responsible for administering such payments or benefits.

[70 FR 31304, May 31, 2005, as amended at 70 FR 74996, Dec. 19, 2005; 73 FR 66154, Nov. 7, 2008; 76 FR 68634, Nov. 7, 2011]

§ 531.611 Miscellaneous provisions.

(a) A locality rate may be paid only for those hours for which an employee is in a pay status.

(b) Payment of, or an increase in, a locality rate is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335. (See § 531.407(c).)

(c) A locality 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 § 531.610, a reduction or termination of a locality rate under § 531.609 is not an adverse action for the purpose of 5 CFR part 752, subpart D, or an action under 5 CFR 930.211.

[70 FR 31305, May 31, 2005, as amended at 73 FR 66154, Nov. 7, 2008]

Subpart G [Reserved]

PART 532—PREVAILING RATE SYSTEMS

Subpart A—General Provisions

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Subpart B—Prevailing Rate Determinations

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