

accommodation requests. These instructions should be in writing to provide for consistency.

### Waiver of Notice of Proposed Rulemaking

In accordance with section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. An opportunity for public comment prior to issuing this rule is unnecessary and contrary to the public interest. In developing this regulation, OPM worked extensively with affected stakeholders.

### Regulatory Flexibility Act

I certify that these regulations would not have significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

### Executive Order 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Parts 302, 317, 330, 333, and 335

Armed forces reserves, Government employees, Individuals with disabilities.

U.S. Office of Personnel Management.

**Kay Coles James,**  
*Director.*

Accordingly, OPM is amending parts 302, 317, 330, 333, and 335 of title 5 of the Code of Federal Regulations as follows:

### PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

1. The authority citation in part 302 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95-454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 *et seq.*

2. In subpart A § 302.106 is added to read as follows:

#### Subpart A—General Provisions

##### § 302.106 Vacancy Announcements.

When an agency announces a vacancy in the excepted service, the announcement must contain a reasonable accommodation statement that complies with requirements in § 330.707 of subpart G of this chapter.

### PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

3. The authority citation in part 317 is revised to read as follows:

**Authority:** 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, 3595 and 3596.

4. In § 317.501, paragraph (b)(2) is revised to read as follows:

#### Subpart E—Career Appointments

**§ 317.501 Recruitment and selection for initial SES career appointment be achieved from the brightest and most diverse pool possible.**

\* \* \* \* \*

(b) \*\*\*

(2) Before an agency can fill an SES vacancy by career appointment, it must post a vacancy announcement in USAJOBS for at least 14 calendar days, including the date of publication. Each agency's SES vacancy announcement must comply with criteria in § 330.707 of subpart G of this chapter.

\* \* \* \* \*

### PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

5. The authority citation for part 330 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, 3327 and 3330; E.O. 10577, 3 CFR 1954-58 Comp., p.218.

Section 330.102 also issued under 5 U.S.C. 3327.

Subpart B also issued under 5 U.S.C. 3315 and 8151.

Section 330.401 also issued under 5 U.S.C. 3310.

Subpart G also issued under 5 U.S.C. 8337(h) and 8456(b).

Subpart K also issued under sec. 11203 of Pub. L. 105-33, 111 Stat. 738 and Pub. L. 105-274, 112 Stat. 2424.

Subpart L also issued under sec.1232 of Pub. L. 96-70, 93 Stat. 452.

#### Subpart G—Interagency Career Transition Assistance Plan for Displaced Employees

6. In § 330.707, paragraph (b)(14) is added to read as follows:

##### § 330.707 Reporting vacancies to OPM.

\* \* \* \* \*

(b)\*\*\*

(14) Reasonable accommodation statement.

(i) An agency may use wording of its choice that conveys the availability of reasonable accommodation. An agency must not list types of medical conditions or impairments as appropriate for accommodation, and must keep the wording simple.

(ii) We recommend using the following statement:

“This agency provides reasonable accommodation to applicants with disabilities where appropriate. If you need a reasonable accommodation for any part of the application and hiring process, please notify the agency. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.”

### PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

7. The authority citation for part 333 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, 3302, 3327, 3330; E.O. 10577, 3 CFR 1954-58 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104.

8. Section 333.102 is revised to read as follows:

##### § 333.102 Notice of job announcements to OPM.

Under 5 U.S.C. 3327, and 3330, agencies are required to report job announcements to OPM when recruiting outside the register. This requirement is implemented through § 330.707 of subpart G of this chapter.

### PART 335—PROMOTION AND INTERNAL PLACEMENT

9. The authority citation in part 335 continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, 3304(f), 3330; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; and Pub. L. 106-117.

10. Section 335.105 is revised to read as follows:

##### § 335.105 Notice of job announcements to OPM.

Under 5 U.S.C. 3330, agencies are required to report job announcements to OPM for vacancies for which an agency will accept applications from outside the agency's work force. This requirement is implemented through § 330.707 of subpart G of this chapter. [FR Doc. 01-30531 Filed 12-10-01; 8:45 am]

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### OFFICE OF PERSONNEL MANAGEMENT

#### 5 CFR Parts 534, 591, and 930

RIN 3206-AJ44

#### Pay for Administrative Appeals Judge Positions

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement a new pay system for administrative appeals judge positions. The administrative appeals judge pay system was recently authorized to cover positions which are not classifiable above GS-15 and for which the duties primarily involve reviewing decisions of administrative law judges. OPM is issuing interim regulations to ensure that agencies administer the new administrative appeals judge pay system in a consistent and equitable manner. These interim regulations also implement changes in law regarding the manner in which the administrative law judge basic pay schedule is adjusted.

**DATES:** *Effective Date:* The regulations are effective on December 11, 2001.

*Applicability Date:* The regulations apply on the first day of the first applicable pay period beginning on or after December 11, 2001.

*Comments Date:* Comments must be received on or before February 11, 2002.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or email: [payleave@opm.gov](mailto:payleave@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeanne Jacobson, (202) 606-2858; FAX: (202) 606-0824; or email: [payleave@opm.gov](mailto:payleave@opm.gov).

#### **SUPPLEMENTARY INFORMATION:**

Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-544 by section 101(a)(3) of that Public Law, established a new pay system for administrative appeals judge (AAJ) positions effective on the first day of the first pay period beginning on or after April 20, 2001. The AAJ pay system is authorized under a new section 5372b of title 5, United States Code. New section 5372b authorizes the heads of Executive agencies (not including the U.S. General Accounting Office) to fix the rates of basic pay for AAJ positions. Section 5372b authorizes the Office of Personnel Management (OPM) to issue regulations under which the head of an Executive agency must fix the rate of basic pay for each AAJ position. The new regulations will appear in a new subpart F of part 534 of title 5, Code of Federal Regulations.

#### **Coverage**

Section 5372b of title 5, United States Code, defines an "administrative appeals judge position" as a position not classifiable above GS-15, the duties of which primarily involve reviewing decisions of administrative law judges (ALJs) appointed under 5 U.S.C. 3105. Section 534.601 of these interim regulations restates this statutory definition and clarifies that employees in AAJ positions review ALJ decisions and render final administrative decisions.

Section 534.601 of the interim regulations also provides that the AAJ pay system does not cover employees already excluded from the General Schedule (GS) classification system established under 5 U.S.C. chapter 51. Members of the Senior Executive Service (SES), employees in senior-level (SL) and scientific or professional positions, ALJs, and employees in positions whose pay is fixed by administrative action and limited to level IV of the Executive Schedule also are excluded from the AAJ pay system.

#### **Pay Structure**

Under 5 U.S.C. 5372b, the head of an Executive agency may set the rate of basic pay for employees in AAJ positions at a rate not less than the minimum rate of basic pay for level AL-3 and not more than the maximum rate of basic pay for level AL-3 of the ALJ pay system under 5 U.S.C. 5372. To be consistent with the law, § 534.603 of these interim regulations links the structure of the AAJ pay system directly to the structure of level AL-3 of the ALJ pay system. Since employees in AAJ positions review the decisions made by ALJs, linking to the ALJ basic pay structure also will help to ensure that employees in both pay systems are paid equitably.

Section 534.603 of the interim regulations establishes six rates of basic pay for the AAJ pay system—AA-1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F of the ALJ pay system under 5 U.S.C. 5372, as shown in the following table:

AAJ pay level	ALJ pay level	Rate of basic pay in 2001
AA-1 .....	AL-3/A .....	\$82,100
AA-2 .....	AL-3/B .....	\$88,300
AA-3 .....	AL-3/C .....	\$94,700
AA-4 .....	AL-3/D .....	\$101,000
AA-5 .....	AL-3/E .....	\$107,300
AA-6 .....	AL-3/F .....	\$113,600

The interim regulations provide that each of the rates of basic pay of the AAJ

pay system will be adjusted at the same time and in the same manner as the corresponding rates of basic pay of the ALJ pay system are adjusted under 5 U.S.C. 5372.

#### **Pay Administration**

Section 534.604 of these interim regulations provides the basic pay administration rules for the AAJ pay system. These provisions are consistent with the ALJ pay administration rules found in 5 U.S.C. 5372 and 5 CFR part 930, subpart B. Section 534.601(a) provides the head of each agency with authority to fix the rate of basic pay for each AAJ position within the agency. Section 534.604(b) requires the head of each agency to set the pay of an employee initially appointed to the AAJ pay system at rate AA-1, except as described below.

The regulations provide the following three exceptions for setting pay above rate AA-1, up to the maximum rate AA-6:

1. The regulations require agencies to set the pay of an employee under the GS pay system, who is appointed to an AAJ position without a break in service, at the lowest rate of basic pay of the AAJ pay system that equals or exceeds the employee's GS rate of basic pay immediately before the appointment. If the resulting basic pay increase is less than one-half of the dollar value of the employee's next within-grade increase, agencies must set the employee's rate of basic pay at the next higher rate of basic pay in the AAJ rate range.

2. The regulations provide agencies with discretion to set pay at a higher rate based on a rate of basic pay the applicant received in a prior Federal position.

3. The regulations provide agencies with discretion to set the rate of basic pay of an applicant who is not a current Federal employee at a higher rate based on the superior qualifications of the applicant.

Section 534.604(c) of the interim regulations provides that employees in AAJ positions will advance successively to rates AA-2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Service time under a pay system outside the AAJ pay system does not count toward the required period of service, except for service under the ALJ pay system established under 5 U.S.C. 5372 when an employee moves from an ALJ position to an AAJ position without a break in service.

Section 534.604(d) provides procedures for converting the AAJ

annual rate of pay to an hourly, daily, weekly, or biweekly rate.

#### Conversion

On the first day of the first pay period beginning on or after December 11, 2001, agencies must convert the rate of basic pay of employees under the AAJ pay system to a rate of basic pay provided by these regulations. Section 534.605 requires agencies to set the rate of basic pay of an AAJ at the lowest rate of basic pay provided by § 534.603(a) that equals or exceeds the rate of basic pay the AAJ received immediately before this date.

#### Locality Payments and Non-Foreign Area Cost-of-Living Allowances

The President's Pay Agent (consisting of the Secretary of Labor and the Directors of the Office of Management and Budget and OPM) extended locality-based comparability payments to employees covered by the AAJ pay system under the authority of 5 U.S.C. 5304(h), effective on the first day of the first pay period beginning on or after April 20, 2001. Locality payments must be paid to employees in AAJ positions in accordance with 5 U.S.C. 5304 and 5 CFR part 531, subpart F. Under these rules, the locality rate of pay of employees in AAJ positions may not exceed the rate for level III of the Executive Schedule (\$133,700 in 2001).

The interim regulations amend 5 CFR 591.203 to allow any employees in AAJ positions who are employed in an area covered by a nonforeign area cost-of-living allowance or post differential to receive that benefit.

#### Administrative Law Judges

These interim regulations amend 5 CFR 930.210(a) to reflect changes in law concerning how the administrative law judge pay levels are set and adjusted. Section 1 of Public Law 106-97 (November 12, 1999) amended the ALJ pay law (5 U.S.C. 5372). Under this section, as amended, the rate of basic pay for AL-3/A may not be less than 65 percent of the rate for level IV of the Executive Schedule, and the rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule. (Section 5372(b)(4) gives the President authority to adjust the rates of basic pay for ALJs, subject to the pay range described above. Such adjustments are effective on the first day of the first applicable pay period beginning on or after the first day of the month in which General Schedule rates of basic pay are adjusted under 5 U.S.C. 5303.) Based on agency inquiries, we also added a provision to § 930.210(a) to clarify that agencies must use a 2,087-

hour payroll divisor to determine the hourly, daily, weekly, and biweekly pay rate of an ALJ in accordance with 5 U.S.C. 5504.

#### Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making these regulations effective in less than 30 days. Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-544 by section 101(a)(3) of that Public Law, became effective for service performed by an administrative appeals judge on the first day of the first applicable pay period beginning on or after April 20, 2001. These regulations must be issued as interim to ensure that agencies administer the new administrative appeals judge pay system in a consistent and equitable manner. These regulations must be made effective prior to January 1, 2002, to ensure that administrative appeals judges receive the January 2002 basic pay adjustment in a consistent and equitable manner.

#### Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### List of Subjects in 5 CFR Parts 534, 591, and 930

Administrative practice and procedure, Computer technology, Government employees, Hospitals, Motor vehicles, Students, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management

**Kay Coles James,**  
*Director.*

Accordingly, OPM is amending parts 534, 591, and 930 of title 5, Code of Federal Regulations, as follows:

#### PART 534—PAY UNDER OTHER SYSTEMS

1. The authority citation for part 534 is amended to read as follows:

**Authority:** 5 U.S.C. 1104, 5307, 5351, 5352, 5353, 5372b, 5376, 5384, 5541, and 5550a.

2. Subpart F is added to read as follows:

#### Subpart F—Pay for Administrative Appeals Judge Positions

Sec.

- 534.601 Coverage.
- 534.602 Definitions.
- 534.603 Rates of Basic Pay.
- 534.604 Pay Administration.
- 534.605 Conversion.

#### Subpart F—Pay for Administrative Appeals Judge Positions

##### § 534.601 Coverage.

(a) This subpart implements 5 U.S.C. 5372b and applies to administrative appeals judge positions, the duties of which are not classifiable above GS-15 under 5 U.S.C. 5108 and which primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

(b) This subpart does not apply to—

- (1) Senior-level positions classified above GS-15 pursuant to 5 U.S.C. 5108;
- (2) Scientific or professional positions established under 5 U.S.C. 3104;
- (3) Senior Executive Service positions established under 5 U.S.C. 3132 or 3151;
- (4) Positions for which pay is fixed by administrative action and limited to level IV of the Executive Schedule under 5 U.S.C. 5373;
- (5) Administrative law judge positions appointed under 5 U.S.C. 3105; or
- (6) Positions in agencies that are excluded from chapter 51 of title 5, United States Code, by section 5102(a) or 5102(c) or other provision of law.

##### § 534.602 Definitions.

*Administrative appeals judge position* means a position not classified above GS-15 under 5 U.S.C. 5108 and for which the duties primarily involve reviewing decisions of administrative law judges appointed under 5 U.S.C. 3105 and rendering final administrative decisions.

*Administrative law judge* means an individual in an *administrative law judge* position as that term is defined in section 930.202 of this chapter.

*Agency* means an *Executive agency*, as defined in 5 U.S.C. 105, excluding the U.S. General Accounting Office.

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

##### § 534.603 Rates of Basic Pay.

(a) The administrative appeals judge pay system (AA) has six rates of basic pay—AA-1, 2, 3, 4, 5, and 6. These rates correspond to the rates of basic pay for AL-3/A, B, C, D, E, and F, respectively, of the administrative law judge pay

system established under 5 U.S.C. 5372 and part 930, subpart B, of this chapter.

(b) The rates of basic pay of the administrative appeals judge pay system will be adjusted at the same time and in the same manner as adjustments are made in the corresponding rates of basic pay for the administrative law judge pay system under 5 U.S.C. 5372.

#### **§ 534.604 Pay Administration.**

(a) The head of each agency must fix the rate of basic pay for each administrative appeals judge position within the agency.

(b) Upon initial appointment, an agency must set the rate of basic pay of an administrative appeals judge at the minimum rate AA-1 of the administrative appeals judge pay system, except as provided in paragraphs (b)(1), (b)(2), and (b)(3) of this section.

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

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

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

(c) Administrative appeals judges will advance successively to rates AA-2, 3, and 4 upon completion of 52 weeks of service in the next lower rate, and to rates 5 and 6 upon completion of 104 weeks of service in the next lower rate. Advancement to a higher rate takes effect on the first day of the first pay period beginning on or after completion of the required period of service. Time in a nonpay status is creditable service in the computation of a waiting period in so far as it does not exceed 2 weeks for each 52 weeks of service. Time in a nonpay status is fully creditable if the absence is due to military service, as defined in 5 U.S.C. 8331(13), or receipt of injury compensation under chapter 81 of title 5, United States Code. Time under pay systems outside the administrative appeals judge pay system is not creditable service in computing the required waiting period, except that time under the administrative law judge pay system established under 5 U.S.C. 5372 is creditable when an individual moves from that system to the administrative appeals judge pay system without a break in service.

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

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

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

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

#### **§ 534.605 Conversion.**

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

### **PART 591—ALLOWANCES AND DIFFERENTIALS**

#### **Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas**

3. The authority citation for subpart B continues to read as follows:

**Authority:** 5 U.S.C. 5941; E.O. 10000, 3 CFR 1943-1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

4. A new paragraph (a)(8) is added to § 591.203 to read as follows:

#### **§ 591.203 Employees covered.**

(a) \* \* \*  
(8) Administrative appeals judges paid under 5 U.S.C. 5372b.

\* \* \* \* \*

### **PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)**

#### **Subpart B—Appointment, Pay and Removal of Administrative Law Judges**

5. The authority citation for subpart B continues to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

6. In § 930.210, paragraph (a) is revised to read as follows:

#### **§ 930.210 Pay.**

(a) OPM will place each administrative law judges position in one of the three grades or levels of basic pay, AL-3, AL-2, or AL-1, of the Administrative Law Judge Pay System established under 5 U.S.C. 5372 in accordance with this section. AL-3 has six rates of basic pay, A, B, C, D, E, and F.

(1) The rate of basic pay for AL-3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule. The rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

(2) The President will determine the appropriate adjustment for each rate in the Administrative Law Judge Pay System, subject to paragraph (a)(1) of this section. Such adjustments will take effect on the first day of the first applicable pay period beginning on or after the first day of the month in which adjustments in the General Schedule rates of basic pay under 5 U.S.C. 5303 take effect.

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

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

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

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

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