

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

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DPM LETTER: 531-2

SUBJECT: Departmental Supervisory
Differential Procedures

DATE: JUN - 4 1991

Attached are the Departmental procedures for Supervisory Differentials. These procedures supplement and should be used in conjunction with the attached Office of Personnel Management (OPM) interim regulation.

The interim regulation repeals 5 U.S.C. 5333(b) and authorizes payment of a supervisory differential to a General Schedule employee who has supervisory responsibility for employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee. This pay authority is delegated to the operating administrations for implementation.

The attached OPM regulation, effective May 4, 1991, was issued as interim with a 60 day period for public comment. Therefore, the Departmental policy is also interim and subject to change when OPM issues its final regulation. Please review the OPM regulation and send your comments to M-16 by COB June 21, 1991. We will consolidate all comments into a single Departmental package and forward to OPM by the July 2, 1991 deadline.

Questions may be directed to Nancy Hurmence, of my staff, on 366-4907.



Director of Personnel

Attachment

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SUPERVISORY DIFFERENTIALS

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SUPERVISORY DIFFERENTIALS

CHAPTER 1

INTRODUCTION

SECTION 1 - BACKGROUND

This directive establishes the Department of Transportation (DOT) interim procedures on supervisory differentials. It implements the provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA), and the governing regulations contained in Parts 531 and 575 of Title 5, Code of Federal Regulations. The authority to pay a supervisory differential is discretionary.

This directive replaces the previous authority under 5 U.S.C. 5333(b). The former authority permitted the adjustment of a supervisor's rate of basic pay, while the new authority permits the payment of a differential that is not considered part of basic pay. The former authority applied to a General Schedule employee who supervises one or more prevailing rate employees whereas the new authority applies to a General Schedule employee who supervises one or more employees not in the General Schedule. Finally, the former authority limited the supervisor's adjusted pay to a specific step rate whereas the new authority sets the supervisor's pay at 3 percent over that of the highest-paid subordinate.

SECTION 2 - DELEGATION

The approving official may pay a supervisory differential to a General Schedule supervisor, (including a position under the Performance Management and Recognition System), responsible for supervising one or more employees not under the General Schedule if one of the subordinate employees would, in the absence of a supervisory differential, be paid more than the supervisor.

The approving official may not pay a supervisory differential to a General Schedule supervisor on the basis of supervising an employee whose rate of basic pay exceeds the rate of GS-15, step 10, of the General Schedule.

SECTION 3 - DEFINITIONS. For purposes of this directive:

"Approving Official" means a Departmental Officer or Head of an operating administration, or his/her designee, who is delegated the authority to pay a supervisory differential.

"Continuing Pay" means the aggregate of all continuing payments and annual premium pay received by an employee at any one time.

"Continuing Payment" means basic pay and any other form of pay that is paid in the same manner and at the same time as basic pay. For a supervisor, continuing pay includes basic pay, a retained rate of pay, a locality-based payment or interim geographic adjustment, a staffing differential, a retention allowance, any other payment made in the same manner and at the same time as basic pay (including, but not limited to, a cost of living allowance, post differential, remote worksite allowance, or physicians comparability allowance) and premium pay paid on an annual basis, but excludes night, Sunday, or holiday premium pay and hazardous duty differentials. For a subordinate, continuing pay includes basic pay, a locality-based payment or interim geographic adjustment, any other payment made in the same manner and at the same time as basic pay (including, but not limited to, a cost of living allowance, post differential, remote worksite allowance, or physicians comparability allowance) and premium pay paid on an annual basis, but excludes a retained rate of pay, a retention allowance, Sunday or holiday pay.

"Department" means the Department of Transportation and all of its operating administrations.

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments or interim geographic adjustments.

"Supervisor" means an employee required to consistently exercise independent judgment and, in the interest of the agency, has authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action.

CHAPTER 2

PROCEDURES

SECTION 1 - PURPOSE

This chapter provides guidance necessary to implement the provisions of Title 5, Code of Federal Regulations, Parts 531 and 575, Pay Under the General Schedule; Supervisory Differentials.

SECTION 2 - COVERAGE

The approving official may pay a supervisory differential to a supervisor who is in a General Schedule (GS) position (including a position under the Performance Management and Recognition System) and responsible for supervising an employee(s) whose position is not under the General Schedule and who is paid more than the supervisor. In addition, a supervisory differential is not considered basic pay. As a result, the amount of a supervisory differential, when combined with the supervisor's rate of basic pay, may cause the total to exceed step 10 of the supervisor's grade.

A supervisory differential may not be paid on the basis of supervising an employee whose rate of basic pay exceeds the rate for GS-15, step 10, of the General Schedule.

SECTION 3 - ADJUSTMENT OR TERMINATION

The amount of a supervisory differential may not cause the continuing pay of the supervisor to exceed the continuing pay of the highest-paid subordinate by more than 3 percent. A supervisory differential may be authorized only when there is a significant pay disparity which will be ongoing in light of annual pay adjustments and other predictable changes in basic pay rates for both the supervisor and the subordinate. In addition, the amount of the supervisory differential should be set so as to minimize the necessity for frequent adjustments. The effective date of establishing or adjusting a supervisory differential will be on the first day of a pay period.

A supervisory differential must be reduced or terminated, as appropriate, by the approving official whenever the continuing pay of a supervisor exceeds that of a subordinate by more than 3 percent. This will occur, for example, when the supervisor receives an increase in his or her rate of basic pay.

Reduction or termination of a supervisory differential is also required when the subordinate employee leaves his or her position or is reduced in pay. The approving official is responsible for initiating the reduction or termination of a supervisory differential. The effective date of a reduction or termination in a supervisory differential shall be the first day of a pay period within 30 days after the date the continuing pay of the supervisor exceeded the continuing pay of the highest-paid subordinate by more than 3 percent.

The authority to pay a supervisory differential is discretionary, and may be reduced or terminated at any time considered appropriate. An operating administration may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so.

SECTION 4 - REQUEST PROCEDURES

Request for the establishment or adjustment of a supervisory differential shall be submitted in writing to the approving official by a management official at least one level above the affected supervisor. A request must include the:

1. Supervisor's name, salary and social security number;
2. Name and location of the supervisory position;
3. Pay plan, salary/wage, and name of each employee supervised by the supervisory position;
4. Percentage (whole number only) and dollar amount of the supervisory differential requested; and
5. The relationship in pay among the General Schedule supervisors who encumber similar supervisory positions within the organization.

An operating administration may develop additional criteria that may be unique to its function.

SECTION 5 - COMPARISON AND PAYMENT PROCEDURES

1. Comparison Procedures In determining whether to establish, adjust, or terminate a supervisory differential the approving official must consider and document the:
 - (a) Relationship in pay among the General Schedule supervisors who encumber similar supervisory positions within the same organization;

- (b) Amount of the continuing pay received by the supervisor and the subordinate employee, as defined;
- (c) Continuing pay of the subordinate employee increased by 3 percent. NOTE: Multiply the subordinate's continuing pay (if greater than that of the supervisor's pay) by 1.03 to calculate the maximum allowable rate of pay for the supervisor;
- (d) Impact of annual pay adjustments and other predictable changes in basic pay rates for both the supervisor and the subordinate employee, as defined;
- (e) The approved percentage (whole number only) and dollar amount of the supervisory differential which will minimize the necessity for frequent pay adjustments because of predictable changes in basic pay. NOTE: The supervisor's continuing pay with the supervisory differential may not exceed the maximum allowable rate of pay calculated in (c) above.

An operating administration may develop additional criteria that may be unique to its function.

2. Payment Procedures

- (a) A supervisory differential may be paid or terminated, on a case-by-case basis, after the approving official has completed the written documentation explaining the basis for the decision. The approving official is responsible for initiating the termination or reduction of a supervisory differential when circumstances change.
- (b) A supervisory differential shall be calculated as a percentage of the supervisor's rate of basic pay or as a dollar amount and it shall be paid in the same manner and at the same time as the supervisor's basic pay. The differential shall be paid at an hourly rate for each hour during which the supervisor receives basic pay.

5 CFR Parts 531 and 575

RIN 3206-AE35

**Pay Under the General Schedule;
Supervisory Differentials**

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 supervisory differentials under section 211 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). Section 211 of FEPCA also provides for the repeal of 5 U.S.C. 5333(b) upon the effective date of these regulations. These regulations authorize the payment of a supervisory differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee.

DATES: The amendments made by section 211 of FEPCA and the interim regulations set forth below are effective on May 4, 1991. Comments must be received on or before July 2, 1991.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Pay and Performance, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, (202) 606-2818 or (FTS) 266-2818.

SUPPLEMENTARY INFORMATION: Section 211 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) replaced the previous authority, 5 U.S.C. 5333(b), to adjust the pay of a General Schedule employee who supervises one or more prevailing rate employees with a new authority, 5 U.S.C. 5755, to establish supervisory differentials for certain supervisors paid under the General Schedule. The repeal of 5 U.S.C. 5333(b) is effective on the date the supervisory differential becomes effective. No further adjustments may be made under that authority on or after that date.

The two authorities differ in several respects. First, the former authority permitted the adjustment of a supervisor's rate of basic pay, while the new authority permits the payment of a differential that is not considered part of basic pay. Second, the former authority applied to a General Schedule employee who supervises one or more prevailing rate employees. The new authority applies to a General Schedule employee who supervises one or more civilian employees not covered by the General Schedule. Third, the former authority limited the supervisor's adjusted pay to one of the rates of the supervisor's grade. The new authority does not contain a statutory limit other than that the differential may not cause the supervisor's pay to exceed the pay of the highest paid subordinate by more than 3 percent.

Delegation of authority. The interim regulations delegate authority to agencies to pay a supervisory differential to an employee who meets each of the following criteria: (1) The employee is in a General Schedule position, including a position under the Performance Management and Recognition System; (2) the employee is a supervisor, as defined in 5 U.S.C. 7103(a)(10); and (3) the employee is responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if one or more of the subordinates would, in the absence of the differential, be paid more than the supervisory employee. However, the interim regulations do not permit the payment of a supervisory differential based on supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS-15 of the General Schedule.

Payment of differential. The interim regulations require that a supervisory differential be paid in the same manner and at the same time as the supervisor's basic pay. That is, the differential is paid at an hourly rate for each hour during which the supervisor receives basic pay. The authority to pay a supervisory differential is discretionary.

and the interim regulations permit an agency to reduce or terminate the differential at any time the agency determines it is appropriate to do so.

Amount of differential. The interim regulations provide that the amount of a supervisory differential may not cause the continuing pay of the supervisor to exceed the continuing pay of the highest paid subordinate by more than 3 percent. Continuing pay is defined in the interim regulations as the aggregate of all continuing payments and annual premium pay received by an employee at any one time. "Continuing payments" consist of basic pay and other forms of pay that are paid in the same manner and at the same time as basic pay—i.e., for periods during which an employee receives basic pay. Examples of "continuing payments" include, but are not limited to, cost-of-living allowances, post differentials, remote worksite allowances, physicians comparability allowances, and retention allowances.

The methods for determining the amount of continuing pay for both the supervisor and subordinate are described in the interim regulations. Because it is not considered part of basic pay, the amount of a supervisory differential, when combined with the supervisor's rate of basic pay, may cause the total to exceed the maximum rate of basic pay of the supervisor's grade.

The interim regulations require that a supervisory differential be terminated whenever the continuing pay of a supervisor (not including the supervisory differential) exceeds that of the highest paid subordinate. In addition, the interim regulations require that a supervisory differential be reduced or terminated, as appropriate, whenever the continuing pay of a supervisor (including the supervisory differential) exceeds that of the highest paid subordinate by more than 3 percent. This may occur, for example, when the supervisor receives an increase in his or her rate of basic pay, such as an annual pay adjustment, a merit increase, a within-grade increase, or a quality step increase. Reduction or termination of a supervisory differential also may be required when a subordinate employee leaves his or her position or is reduced in pay. The interim regulations provide that the effective date of such a reduction or termination in a supervisory differential shall be not later than 30 days after the date on which the continuing pay of the supervisor exceeds the continuing pay of the highest paid subordinate by more than 3 percent. Effecting such changes at the beginning of a pay period would

simplify administration by personnel and payroll staffs.

Because of the potential for frequent changes in a supervisor's eligibility for a supervisory differential (based on annual pay adjustments and other predictable changes in basic pay rates for both supervisors and subordinates at different times of the year), agencies are encouraged to authorize supervisory differentials only when there is a significant pay disparity. In addition, the amount of a supervisory differential (computed as a percentage of the supervisor's rate of basic pay or as a dollar amount) should be set so as to minimize the necessity for frequent adjustments because of predictable changes in basic pay rates.

Basis for comparing continuing pay of supervisors and subordinates. The interim regulations list the components of continuing pay for both supervisors and subordinates that must be included in making a comparison. For supervisors, continuing pay includes basic pay (including retained rates of pay), locality-based comparability payments or interim geographic adjustments, staffing differentials (when authorized by OPM), retention allowances, other "continuing payments" (except night, Sunday, or holiday premium pay and hazardous duty differentials), and premium pay paid on an annual basis. For subordinates, continuing pay includes basic pay (except retained rates of pay and night or environmental differentials), locality-based payments, other "continuing payments" (except Sunday or holiday pay and retention allowances), and premium pay paid on an annual basis. A retained rate of pay is excluded because it is not related to the subordinate's current position. A retention allowance is excluded to remove any incentive for the supervisor to benefit by virtue of obtaining approval of such an allowance for a subordinate.

Documentation requirements. The interim regulations require that each determination to establish or adjust a supervisory differential be made in writing, include the basis for determining the amount of the differential, and contain sufficient information to allow reconstruction of the action.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30

days. The supervisory differential authority must be made effective no sooner than 90 days and no later than 180 days after enactment.

The notice is being waived and the regulation is being made effective in less than 30 days to make this new authority effective on the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management,
Constance Berry Newman,
Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5338, and chapter 54; E.O. 12748; subpart A issued under sec. 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509), 104 Stat. 1482, and E.O. 12736; subpart B also issued under 5 U.S.C. 5333, 5402, and 7701(b)(2); subpart D also issued under 5 U.S.C. 7701(b)(2); subpart E also issued under 5 U.S.C. 5336.

§§ 531.301 through 531.305 [Removed and Reserved]

2. Subpart C (§§ 531.301-531.305) is removed and reserved.

3. In Subpart D, § 531.407 is amended by revising paragraph (c)(3) to read as follows:

Subpart D—Within-Grade Increases

• • • • •

§ 531.407 Equivalent increase determinations

• • • • •

(c) • • •

(3) The establishment of higher minimum rates under section 5305 of title 5, United States Code, or an increase in such rates;

• • • • •