

Proposed Rules

Federal Register

Vol. 72, No. 73

Tuesday, April 17, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 9501

RIN 3206-AL02

Office of Personnel Management Criteria for Internal Revenue Service Broadbanding Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to revise the criteria for Internal Revenue Service (IRS) broadbanding systems. The proposed regulations would provide the Department of the Treasury with the flexibility, in coordination with OPM, to establish broader bands for covered IRS employees. The proposed regulations also would establish a more direct relationship between pay and performance. Finally, the proposed regulations would revise the criteria consistent with the changes in the General Schedule pay administration rules made by the Federal Workforce Flexibility Act of 2004 and OPM implementing regulations.

DATES: Comments must be received on or before June 18, 2007.

ADDRESSES: Send or deliver written comments to Jerry Mikowicz, Deputy Associate Director for Pay and Leave Administration, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jeanne Jacobson, by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is

issuing proposed regulations to revise the criteria for Internal Revenue Service (IRS) broadbanding systems. Under 5 U.S.C. 9509, the Secretary of the Treasury may establish one or more broadbanding systems covering all or any portion of the IRS workforce under the General Schedule (GS). Note that under 5 U.S.C. 9501(c), employees within a unit to which a labor organization is accorded exclusive recognition under 5 U.S.C. chapter 71 will not be subject to the broadbanding flexibility provided by § 9509 unless the exclusive representative and IRS have entered into a written agreement that specifically provides for the exercise of the broadbanding flexibility. Section 9509(b) of title 5, United States Code, directs OPM to prescribe criteria for IRS broadbanding systems and specifies certain principles that such criteria must follow, at a minimum. OPM published the final criteria as a notice in the **Federal Register** on December 19, 2000 (65 FR 79433). We propose to issue these criteria as regulations in 5 CFR part 9501 with the revisions discussed in this Supplementary Information.

Under 5 U.S.C. 9508, the Secretary of the Treasury must develop a performance management system for the IRS. These criteria include the definition of certain performance appraisal terms consistent with the concepts and terminology found in 5 U.S.C. 9508. Any performance management system that supports broadbanding must include the concepts defined by these terms. However, in its operating instructions, the IRS may continue to use current terminology that captures these concepts or apply these definitions to currently used terms if it determines that such an approach is the most effective for employee understanding and acceptance. The supplemental information explaining the criteria contains language describing the relevant application of these concepts and terms as currently used by IRS, where applicable.

Maximum Number of Grades in a Band

We are proposing to revise the criteria to provide the Department of the Treasury additional flexibility in combining GS grades into bands under IRS broadbanding systems. Section 9501.203(a) of the proposed regulations (section V.B. of the current criteria)

provides the minimum and maximum number of GS grades that may be combined into bands. In § 9501.203(b), we propose to allow the Department of the Treasury, after coordination with OPM, to establish one or more bands that encompass grades not otherwise permitted by § 9501.203(a).

In addition, we propose to add a new provision in § 9501.203(c) to require each IRS broadbanding system to include at least one band that combines two or more General Schedule grades, consistent with the definition of “broadbanded system” in 5 U.S.C. 9509(a). We have also amended the definition of *broadbanding system* in § 9501.104 to provide that all positions covered by the regulations are considered to be in a single broadbanding system unless the Department of the Treasury determines that a separate system is needed for supervisors and managerial employees (as authorized in § 9501.206(a)).

Within-Band Pay Adjustments

The proposed regulations at § 9501.205 revise the criteria currently found in section V.D. concerning within-band pay adjustments. This section includes some minor wording changes for clarity, consistency, and regulatory formatting. As discussed further, the other changes in the criteria for within-band adjustments are intended primarily to establish a more direct relationship between pay and performance.

Section 9501.205(f)(1) of the proposed regulations requires IRS to use performance assessments derived under a performance appraisal system established under 5 U.S.C. 9508 (i.e., ratings of record as currently applied by IRS) as a basis for within-band pay increases. This paragraph provides that IRS policies for granting within-band pay increases on the basis of a positive assessment must provide for pay distinctions based on levels of performance and requires that a positive assessment in the IRS performance appraisal system supporting the broadbanding system must have two or more summary rating levels that represent performance equivalent to fully successful or better (i.e., a rating of record of “Fully Successful” or higher level as currently applied by IRS). In § 9501.104, we have added a definition of *positive assessment* to mean a

summary performance assessment documenting that employee performance is the equivalent of fully successful or better (i.e., a rating of record of "Fully Successful" or higher as currently applied by IRS). In addition, we have added a definition of negative assessment to mean a summary performance assessment documenting that employee performance is less than the equivalent of fully successful (i.e., a rating of record of "Minimally Successful" or "Unacceptable" as currently applied by IRS). Furthermore, for clarification and ease of reference, we have included definitions for *performance assessment* and *unacceptable performance*.

The proposed regulations at § 9501.205(f)(6) allow IRS to establish a separate pay progression plan and separate salary increase budget for entry/developmental employees in recognition of the fact that pay progression for entry/developmental employees is often designed to be more rapid (as with GS entry/developmental employees who are in career ladders and receive regular promotions providing sizable pay increases typically each year). Because of this additional flexibility, the proposed regulations at § 9501.401 require that, if IRS provides prorated career-ladder promotion payments to a group of employees converted to entry/developmental positions covered by a separate pay progression plan, the first salary increase budget for these entry/developmental employees following conversion must be determined after taking into account the length of time between the prorated promotion payments and the first performance-based payments under the IRS broadbanding system. Generally, the normal salary increase budget for entry/developmental employees should be reduced if that length of time is less than 52 weeks. Similarly, if an individual employee enters the broadbanding system by transfer or reassignment from another Federal position and receives a prorated within-grade increase or career-ladder promotion payment at conversion, the employee's first performance-based payment under the IRS broadbanding system may be reduced, as allowed under § 9501.205(f)(8) and discussed below.

Section 9501.205(f)(8) provides IRS with the flexibility to reduce an employee's performance-based within-band increase from that generally provided under the pay progression plan when, for example, an employee enters the broadbanding system during the appraisal period that is the basis for

the within-band increase, an employee was in a leave without pay status during the appraisal period (except for employees with restoration rights under 5 CFR part 353), or an employee entered the broadbanding system and received a prorated within-grade increase or career-ladder promotion payment less than 52 weeks before the performance-based within-band increase.

The proposed regulations provide IRS additional flexibility to grant within-band pay increases. For example, § 9501.205(f)(7) allows IRS to take into account an employee's position in the rate range in determining within-band pay increases. Section 9501.205(f)(5) continues to allow IRS to use other individual factors to provide within-band pay increases, such as the acceptance of a supervisory position within the same band. However, § 9501.205(f)(2) continues to prohibit within-band pay increases based solely on time at pay level.

Section 9501.205(g) allows IRS to provide general pay increases to specified categories of employees with current positive assessments when band rate ranges are adjusted under § 9501.204. We added a definition of *general pay increase* to § 9501.104 to help clarify that general pay increases for employees under IRS broadbanding systems are different from General Schedule across-the-board increases under 5 U.S.C. 5303. Such general pay increases may be paid in combination with performance-based pay increases under § 9501.205(f). The amount of such pay increases may be any percentage amount up to the percentage amount by which band rate ranges are adjusted. IRS may authorize different general pay increases for different employee categories. However, if IRS provides an increase that is less than the band rate range adjustment, the resulting unused funds must be redirected and applied to performance-based pay increases. The proposed regulations also provide IRS the flexibility to forgo paying any general pay increase and to use performance-based pay increases exclusively. Under § 9501.205(f)(4), the pay of an employee with a positive assessment must not fall below the minimum rate of a band as a result of receiving a pay increase that is less than the band rate range increase.

Section 9501.205(h) prohibits IRS from providing any kind of pay increase (including a locality pay increase or a staffing supplement increase) to an employee with a negative assessment, even if it were to cause the employee to fall below the band minimum rate. This section requires IRS to establish procedures for dealing with employees

who do not receive a performance-based pay increase, a general pay increase, or other pay increase because of a negative assessment. Such procedures may allow an employee who later receives a positive assessment to receive such increases prospectively.

Section 9501.205(h) prescribes procedures for dealing with employees who do not receive a locality pay increase because of a negative assessment. The locality payment for such an employee must be frozen at its existing level. The regulations include provisions for adjusting a frozen locality payment when an employee moves to a new locality pay area and when an employee subsequently receives a positive assessment. The regulations include similar rules for employees receiving a frozen staffing factor under the staffing supplement provisions at § 9501.304(b).

Section 9501.205(i) provides the requirements for adjusting the pay of a retained rate employee, consistent with the proposed criteria in other paragraphs of § 9501.205. IRS must provide a retained rate employee a pay increase equal to 50 percent of the dollar increase in the maximum rate of the applicable band (including any locality payment or staffing supplement). A retained rate employee with a negative assessment may not receive a pay increase. This is a variation of the pay retention rules in 5 U.S.C. 5363, as authorized by 5 U.S.C. 9509(c).

Finally, § 9501.205(j) provides that within-band pay reductions authorized on the basis of unacceptable performance and/or conduct may not exceed 10 percent or cause an employee's rate of pay to fall below the minimum rate of his or her band. An employee's rate of pay may not be reduced more than once in a 12-month period based on unacceptable performance and/or conduct.

Pay Administration Changes

The proposed regulations contain changes in the IRS broadbanding criteria consistent with the changes in the GS pay administration rules made by sections 101 and 301 of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004) and OPM implementing regulations. Section 101 of the Federal Workforce Flexibility Act of 2004 amended 5 U.S.C. 5753 and 5754 by providing a new authority to make recruitment, relocation, and retention incentive payments. OPM issued interim regulations to implement the new authority on May 13, 2005 (70 FR 25732). We propose to amend the

criteria for IRS broadbanding systems to reflect the new terms “recruitment, relocation, and retention incentives,” as used in the interim regulations. The remaining proposed revisions in the criteria are a result of amendments made by section 301 of the Act and implementing regulations.

Section 301 of the Federal Workforce Flexibility Act of 2004 amended provisions in 5 U.S.C. chapter 53 relating to the administration of special rates, locality rates, and retained rates. These statutory amendments became effective on the first day of the first pay period beginning on or after April 28, 2005—i.e., May 1, 2005. OPM issued interim regulations to implement the amendments and revise the rules that govern pay setting for Federal employees covered by the GS pay system on May 31, 2005 (70 FR 31278).

We are proposing to revise the criteria for IRS broadbanding systems to be consistent with the Federal Workforce Flexibility Act of 2004 amendments because 5 U.S.C. 9509(b)(3) provides that “except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the law and regulations covering employees under the pay system that otherwise would apply to such employees.” That is, employees are to be treated as GS employees, except as otherwise provided by 5 U.S.C. 9509. For example, section V.G. of the current criteria, proposed in § 9501.208, states that the provisions in the criteria related to grade and pay retention are based on the current grade and pay retention authority in 5 U.S.C. chapter 53, subchapter VI, and 5 CFR part 536. Section 301 of the Federal Workforce Flexibility Act of 2004 amended 5 U.S.C. 5302 so that locality payments under 5 U.S.C. 5304 are no longer paid on top of a retained rate. Rather, an employee’s pay retention entitlement is derived by comparing an employee’s payable (highest) rate of basic pay (including any locality rate or special rate) to the highest applicable rate range (including a locality rate or special rate range) for the employee’s current position. Consistent with this change, we are proposing to revise the procedures for converting the pay of an employee to a retained rate under an IRS broadbanding system in § 9501.401 (Appendix B of the current criteria). We are also proposing to revise the procedures for determining the converted GS-equivalent pay rate for an employee who is retaining a band or pay rate under an IRS broadbanding system in § 9501.402 (Appendix C of the current criteria), consistent with the changes in the GS pay retention rules.

The Federal Workforce Flexibility Act of 2004 also amended 5 U.S.C. 5303 so that an employee is not entitled to a special rate if he or she is entitled to a higher rate of basic pay under another authority (e.g., a locality rate or retained rate). We are proposing to delete a reference in the current Appendix C to a situation where an employee who is entitled to a higher locality rate of pay also is entitled to a special rate. We are also proposing to revise terminology throughout the criteria to be consistent with new terminology in the interim regulations implementing the Federal Workforce Flexibility Act of 2004.

Publishing the Criteria in Regulations

The IRS broadbanding criteria were originally published in the **Federal Register** as a notice with three appendices. Since that time, significant developments have occurred to establish agency-specific personnel systems in regulations (e.g., the Department of Homeland Security Human Resources Management System in 5 CFR Chapter XCVII and part 9701 and the Department of Defense Human Resources Management and Labor Relations Systems in 5 CFR chapter XCIX and part 9901). Consequently, OPM proposes to pursue the option of organizing and establishing the criteria for the Internal Revenue Service broadbanding systems and related appendices as four subparts in a new 5 CFR chapter XCV and part 9501.. Subpart A of the proposed regulations provides the purpose and the general provisions governing the IRS broadbanding system and defines terms that are used throughout the new part 9501. Subpart A also clarifies the relationship of the regulations in part 9501 to other provisions of law and regulations. Subpart B of the proposed regulations provides the criteria for the IRS broadbanding system. The criteria follow the principles outlined in 5 U.S.C. 9509(b)(4)(A)–(F). Subpart C consists of the former Appendix A, but we are proposing to delete the formulas in the current Appendix A because the rules the formulas express are adequately described in proposed § 9501.303(a). Subpart D consists of the current Appendices B and C. We have also taken this opportunity to make other minor clarifications and formatting changes.

E.O. 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 would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 9501

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, under the authority of section 9509 of title 5, United States Code, OPM is proposing to amend title 5, Code of Federal Regulations, by establishing chapter XCV consisting of part 9501, as follows:

CHAPTER XCV—OFFICE OF PERSONNEL MANAGEMENT CRITERIA FOR INTERNAL REVENUE SERVICE BROADBANDING SYSTEMS

PART 9501—OFFICE OF PERSONNEL MANAGEMENT CRITERIA FOR INTERNAL REVENUE SERVICE BROADBANDING SYSTEMS

Subpart A—General Provisions

- Sec.
- 9501.101 Authority.
 - 9501.102 Applicability.
 - 9501.103 Broadbanding system plan.
 - 9501.104 Definitions.

Subpart B—Broadbanding Criteria

- 9501.201 General.
- 9501.202 Structure of broadbanding systems.
- 9501.203 Minimum and maximum number of grades in a band.
- 9501.204 Setting minimum and maximum rates of pay in a band.
- 9501.205 Adjusting an employee’s pay within a band.
- 9501.206 Setting the pay of a supervisor.
- 9501.207 Setting the pay of an employee.
- 9501.208 Related provisions.

Subpart C—Staffing Supplements

- 9501.301 Authority.
- 9501.302 Eligibility.
- 9501.303 Conversion to staffing supplement.
- 9501.304 Administration of staffing supplements.
- 9501.305 Treatment of staffing supplements as basic pay.
- 9501.306 New staffing supplements.

Subpart D—Conversion Rules

- 9501.401 Conversion into broadbanding systems.
- 9501.402 Conversion to the General Schedule pay system.

Authority: 5 U.S.C. 9509(b).

Subpart A—General Provisions**§ 9501.101 Authority.**

This part contains regulations providing the criteria for Internal Revenue Service (IRS) broadbanding systems, as authorized by 5 U.S.C. 9509(b). Section 9509 of title 5, United States Code, as added by the IRS Restructuring and Reform Act of 1998 (Pub. L. 105–206), provides the Secretary of the Treasury the authority to establish one or more broadbanding systems covering all or any portion of the IRS workforce under the General Schedule (GS). Section 9509(b) of title 5, United States Code, directs the Office of Personnel Management (OPM) to prescribe criteria for IRS broadbanding systems and specifies certain principles that such criteria must follow, at a minimum.

§ 9501.102 Applicability.

(a) A *broad-banded system* is defined in 5 U.S.C. 9509(a) as a system for grouping positions for pay, job evaluation, and other purposes that is different from the General Schedule pay and classification system established under 5 U.S.C. chapter 51 and chapter 53, subchapter III. Employees covered by IRS broadbanding systems are not covered by subchapter III of chapter 53 or by those provisions of chapter 51 that define General Schedule grades. However, selected provisions from those parts of law are used in applying parallel features to employees in IRS broadbanding systems, as provided in this part.

(b)(1) As required by 5 U.S.C. 9509(b)(3), employees covered by IRS broadbanding systems are to be treated as if they are General Schedule employees for the purpose of applying other laws and regulations governing General Schedule employees, except as otherwise provided in this part. Applicable laws and regulations include, but are not limited to 5 U.S.C. 5304, authorizing locality-based comparability payments (except as provided in § 9501.205(h)); 5 U.S.C. chapter 53, subchapter VI, authorizing grade and pay retention (except as otherwise provided in this part); and 5 U.S.C. 5753 and 5754, authorizing recruitment, relocation, and retention incentives. (Many title 5 provisions apply to Federal employees on a more general basis and do not base coverage on whether an employee is covered by the General Schedule system—e.g., aggregate pay limitation under 5 U.S.C. 5307; premium pay under 5 U.S.C. chapter 55, subchapter V; severance pay under 5 U.S.C. 5595; leave under 5 U.S.C. chapter 63; retirement under 5

U.S.C. chapters 83 and 84; and insurance under 5 U.S.C. chapter 87.)

(2) Employees in IRS broadbanding systems are not covered by the special rate program established under 5 U.S.C. 5305. However, IRS broadbanding systems may use a parallel authority to establish staffing supplements, which are linked to established special rates as described in subpart C of this part.

(c) The criteria in this part apply only to broadbanding systems that cover General Schedule positions. Section 9509(b)(1)(B) of title 5, United States Code, authorizes the Secretary of the Treasury, with the prior approval of the Director of OPM, to include in a broadbanding system positions that otherwise would be subject to 5 U.S.C. chapter 53, subchapter IV (prevailing rate systems), or 5 U.S.C. 5376 (senior-level positions). Including such positions requires OPM's separate review and approval of a specific plan for that purpose. The criteria in this part do not apply to broadbanding systems that include such positions.

§ 9501.103 Broadbanding system plan.

Before implementing any broadbanding system under this part, IRS must develop a written plan that includes policies and implementing procedures to address each criterion relevant to the broadbanding system, including descriptions of broadbanding structure(s), positions covered, classification criteria, the method of pay progression within a band, policies for setting and adjusting pay, policies for paying supervisors or managerial employees, and policies for converting positions into broadbanding systems.

§ 9501.104 Definitions.

In this part:

Band means a pay level or work level within a career path containing one or more General Schedule grades and related ranges of pay.

Broadbanding system means a system for grouping positions for pay, job evaluation, and other purposes that is different from the General Schedule system established under 5 U.S.C. chapter 51 and chapter 53, subchapter III, as a result of combining the grades and related ranges of pay for one or more occupational series. All positions covered by this part are considered to be in a single broadbanding system unless the Department of the Treasury determines that a separate system is needed for supervisors and managerial employees (as authorized in § 9501.206(a)).

Career path means a grouping of one or more occupational series into broad occupational families or career tracks

for job evaluation, pay, or other purposes. A career path may contain one or more bands.

Employee means an individual who otherwise would be covered by 5 U.S.C. chapter 51 and chapter 53, subchapter III, if not covered by a broadbanding system.

General pay increase means a pay increase IRS may provide to specified categories of employees when the minimum and maximum rates of pay for band rate ranges are adjusted under § 9501.204.

Managerial has the meaning given that term in OPM's General Schedule Supervisory Guide.

Negative assessment means a summary performance assessment consistent with 5 U.S.C. 9508 prepared at the end of the established period covering an employee's performance over the applicable period or to support a pay determination, including one granted in accordance with § 9501.205, and documenting that the employee's performance is less than the equivalent of fully successful.

Performance assessment has the meaning given that term in 5 U.S.C. 9508(b)(1).

Positive assessment means a summary performance assessment consistent with 5 U.S.C. 9508 prepared at the end of the established period covering an employee's performance over the applicable period or to support a pay determination, including one granted in accordance with § 9501.205, and documenting that the employee's performance is the equivalent of fully successful or better. Positive assessments must include a minimum of two levels of distinction and may include more than two.

Supervisor has the meaning given that term in OPM's General Schedule Supervisory Guide.

Unacceptable performance has the meaning given that term in 5 U.S.C. 9508(b)(2).

Subpart B—Broadbanding Criteria**§ 9501.201 General.**

Under 5 U.S.C. 9509(b)(3), the criteria for IRS broadbanding systems in this subpart must—

(a) Ensure that the structure of any broadbanding system maintains the principle of equal pay for substantially equal work (see § 9501.202);

(b) Establish the minimum and maximum number of grades that may be combined into bands (see § 9501.203);

(c) Establish the requirements for setting the minimum and maximum rates of pay in a band (see § 9501.204);

(d) Establish the requirements for adjusting the pay of an employee within a band (see § 9501.205);

(e) Establish the requirements for setting the pay of a supervisory employee whose position is in a band or who supervises employees whose positions are in bands (see § 9501.206); and

(f) Establish the requirements and methodologies for setting the pay of an employee upon conversion to a broadbanding system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another broad band, or movement to a different geographic location), and movement between a broadbanding system and another pay system (see § 9501.207).

§ 9501.202 Structure of broadbanding systems.

(a) IRS broadbanding systems must—

(1) Link to the General Schedule;

(2) Assign occupations to career paths based on the nature of work performed, the qualifications required, the normal career and pay progression, and other characteristics of those occupations;

(3) Combine General Schedule grades into bands following the criteria in paragraph (b) of this section and § 9501.203;

(4) Place positions into bands within career paths in accordance with—

(i) Classification standards published by OPM under 5 U.S.C. 5105; or

(ii) Any agency guidance that places a position within its correct band and career path (but which need not be sufficient to determine a position's correct General Schedule grade);

(5) Not include law enforcement officers covered by special base rates under section 403 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Public Law 101–509, November 5, 1990, as amended) in the same band as non-law enforcement officers when the maximum grade in the band is any one of grades 3 through 10; and

(6) Use established General Schedule rates of pay (including any applicable locality rates or special rates) for premium pay purposes under 5 U.S.C. chapter 55, subchapter V, and 5 CFR part 550, subpart A (i.e., for the purpose of determining the maximum hourly overtime rate and the biweekly premium pay limitation).

(b) The range of difficulty and responsibility of each band must be the same as the range of difficulty and responsibility of the band's constituent grades (i.e., consistent with the grade level criteria in standards published by

OPM in accordance with 5 U.S.C. 5105) and must represent the normal range of work performed in the organization.

§ 9501.203 Minimum and maximum number of grades in a band.

(a) Except as provided in paragraphs (b) and (c) of this section, a band under an IRS broadbanding system must contain—

(1) At least one General Schedule grade; and

(2) Not more than—

(i) Eight General Schedule grades when grades 13, 14, and 15 are not included in the band;

(ii) Five General Schedule grades when grade 13 is included, but neither grade 14 nor 15 is included in the band;

(iii) Three General Schedule grades when grade 14 is included, but grade 15 is not included in the band; and

(iv) Two General Schedule grades when grade 15 is included in the band.

(b)(1) The Department of the Treasury may, after coordination with OPM (as defined in paragraph (b)(2) of this section), approve the establishment of one or more bands containing General Schedule grades not otherwise permitted under paragraph (a) of this section.

(2) For the purpose of applying paragraph (b)(1) of this section, coordination with OPM means the process by which the Department of the Treasury, after appropriate staff-level consultation, officially provides OPM with notice of a proposed band and its intended effective date. If OPM concurs, or does not respond to that notice within 30 calendar days, the Department of the Treasury may proceed to establish the proposed band. However, in the event that OPM objects to the combination of grades that would be grouped together in a proposed band, the Department of the Treasury may not proceed until the matter is resolved. OPM may condition its concurrence on the establishment of appropriate within-band control points, as provided in § 9501.205(d).

(c) Each IRS broadbanding system must include at least one band that combines two or more General Schedule grades subject to the limits in paragraph (a)(2) of this section.

§ 9501.204 Setting minimum and maximum rates of pay in a band.

(a)(1) The minimum rate of pay for each band must equal the minimum rate of pay payable under 5 U.S.C. 5332 for the lowest General Schedule grade in that band. The maximum rate of pay for each band must equal the maximum rate of pay payable under 5 U.S.C. 5332 for the highest General Schedule grade in

that band. Unless otherwise stated in this part, references in this part to the *minimum rate of pay* or *maximum rate of pay* for a band exclude any applicable locality payment or staffing supplement.

(2) Notwithstanding paragraph (a)(1) of this section, the minimum rates of pay and the maximum rates of pay for bands covering law enforcement officers must equal the minimum and maximum special base rates for grades 3 through 10 established under section 403 of the Federal Employees Pay Comparability Act of 1990, as applicable.

(3) The maximum rate of pay for any band may not exceed the maximum rate of pay for grade 15 under 5 U.S.C. 5332.

(b) The minimum rate of pay and maximum rate of pay that define each band must be adjusted at the same time and in the same manner as adjustments are made in the corresponding minimum and maximum General Schedule rates of pay under 5 U.S.C. 5303 or similar provision of law.

(c) Employees in IRS broadbanding systems are not covered by the special rate authority in 5 U.S.C. 5305.

However, IRS broadbanding systems may provide for the use of staffing supplements instead of special rates under subpart C of this part. If special rates are not replaced with staffing supplements, special rate employees must be converted into a broadbanding system under the procedures established in subpart D of this part.

(d) Only employees receiving retained rates of pay under 5 U.S.C. chapter 53, subchapter VI, as applied in the broadbanding system, may receive rates of pay that exceed the locality-adjusted or staffing supplement-adjusted band maximum rates.

(e) Only employees who fail to receive a pay increase under § 9501.205(h) may receive rates of pay that are less than the band minimum rate of pay (as a result of the rate range adjustment made under paragraph (b) of this section).

§ 9501.205 Adjusting an employee's pay within a band.

(a) IRS broadbanding systems must establish policies providing for pay adjustments within a band consistent with the requirements of this section.

(b) IRS must establish policies concerning which level of management will make pay adjustment decisions for employees.

(c) IRS must establish principles for managing pay progression and payroll costs associated with pay adjustments and provide funding for salary increases under its broadbanding systems. Because broadbanding systems provide more choices on how to distribute pay to employees, IRS must have an overall

budget to manage the costs associated with such choices. At a minimum, the salary increase budget must include funds approximately equal to the amounts that would be required for individual pay adjustments made at the time of schedule adjustments under 5 U.S.C. 5303 (or similar provision of law), locality-based comparability payments under 5 U.S.C. 5304, and staffing supplement adjustments under subpart C of this part, as applicable. A salary increase budget must meet salary cost objectives and be consistent with policies and procedures for adjusting pay under a broadbanding system that are established to ensure equal pay for work of equal value, as required by 5 U.S.C. 2301(b)(3).

(d) IRS may use control points within bands. Control points are dollar points within bands that limit or restrict the movement of employees through the rate range of the band. They may be expressed as a percentage of the rate range or as a percentage of the range maximum rate of pay. If control points are used, IRS broadbanding systems must include policies governing the establishment of control points within bands including the circumstances under which an employee's rate of pay may be set or adjusted above a control point.

(e) IRS must provide for locality payments as if its employees were General Schedule employees covered by 5 U.S.C. 5304 and 5 CFR part 531, subpart F, except as provided by paragraph (h) of this section. (See subpart C of this part for information on possible staffing supplements.)

(f) IRS must establish policies for providing performance-based within-band pay increases to employees consistent with the criteria in this section, including the following:

(1) IRS must use employee performance assessments as a basis for within-band pay increases for employees. IRS policies for granting within-band pay increases on the basis of a positive assessment must provide for pay distinctions based on levels of performance. The IRS performance appraisal system supporting the IRS broadbanding system must have two or more summary rating levels that represent performance equivalent to fully successful or better.

(2) Within-band pay increases may not be based solely on time at pay level.

(3) As required by paragraph (h) of this section, an employee with a current negative assessment may not receive a pay increase under this paragraph.

(4) The rate of pay of an employee with a current positive assessment may

not fall below the band minimum rate of pay.

(5) IRS may also use other individual factors to provide additional within-band pay increases, such as the acceptance of a supervisory position within the same band.

(6) IRS may cover entry/developmental employees under a different pay progression plan than that which is applicable to employees at the full performance (journey) level. IRS may establish a tailored salary increase budget for entry/developmental employees who are covered by a separate pay progression plan.

(7) IRS policies may take into account an employee's position in the rate range in determining the amount of a within-band pay increase.

(8) IRS policies may provide for proration of an employee's performance-based within-band increase (*i.e.*, reduction from the amount generally provided under the pay progression plan) in specified appropriate circumstances, such as—

(i) An employee entered the broadbanding system during the appraisal period that is the basis for the within-band increase;

(ii) An employee was in leave-without-pay status during the appraisal period that is the basis for the within-band increase (except for employees covered by 5 CFR part 353); or

(iii) An employee entered the broadbanding system and received a prorated within-grade increase or career-ladder promotion payment under § 9501.401(b) less than 52 weeks before the within-band increase.

(g) IRS may provide general pay increases for specified categories of employees when the minimum and maximum rates of pay for band rate ranges are adjusted under § 9501.204, consistent with the following criteria:

(1) As provided in paragraph (h) of this section, an employee with a current negative assessment may not receive a pay increase under this paragraph.

(2) A pay increase under this paragraph may be used in combination with performance-based pay increases under paragraph (f)(1) of this section. Alternatively, IRS may exclusively use performance-based pay increases under paragraph (f)(1) of this section and not grant general pay increases under this paragraph.

(3) The amount of a pay increase under this paragraph for a specified category of employees may be any percentage amount up to the percentage amount by which band rate ranges are adjusted under § 9501.204. IRS may authorize different pay increases under this paragraph for different employee

categories. If IRS provides an increase under this paragraph that is less than the band rate range adjustment, the resulting unused funds must be redirected and applied to performance-based pay increases under paragraph (f) of this section.

(h) Except as provided in paragraph (h)(2) of this section and § 9501.304(b)(1), IRS may not provide any kind of pay increase to any employee who has a current negative assessment, even if this causes the employee's rate of pay to fall below the minimum rate of pay of the employee's band because of a simultaneous rate range adjustment. In addition, IRS may not allow such an employee to receive a pay increase as a result of a higher locality pay percentage (as described in paragraph (e) of this section). The locality pay percentage for that employee must be frozen at its existing level. IRS must apply the following rules for employees who do not receive pay increases under this paragraph:

(1) IRS must establish procedures for dealing with employees described in this paragraph who do not receive a pay increase under paragraphs (f) and/or (g) of this section because of a negative assessment. Those procedures may allow an employee who later receives a positive assessment to receive a pay increase. However, any such increase may not be retroactive and may not exceed the pay increase the employee would have received if the employee had a positive assessment at the time pay increases under paragraphs (f) and/or (g) of this section were determined.

(2) For an employee receiving a frozen locality payment because of a negative assessment, if such an employee moves to a new official worksite in a different locality pay area, the employee must receive the locality payment applicable in the new locality pay area as in effect on the day before the locality rate was frozen. See § 9501.304(b)(1) if the employee's position of record is covered by a staffing supplement at the new official worksite.

(3) If an employee receiving a frozen locality payment because of a negative assessment subsequently receives a positive assessment, the employee will become entitled to the currently applicable locality payment on the first day of the first pay period beginning on or after the date when he or she receives a positive assessment. See § 9501.304(b)(2) if the employee's position of record is covered by a staffing supplement when he or she receives a positive assessment.

(i) IRS policies on adjusting a retained rate for employees on pay retention must provide a retained rate employee

a pay increase equal to 50 percent of the dollar increase in the maximum rate of the applicable band (including any applicable locality payment or staffing supplement), except that a retained rate employee with a negative assessment may not receive a pay increase. (This is a variation of the pay retention rules in 5 U.S.C. 5363, as authorized by 5 U.S.C. 9509(c). See § 9501.208(b).)

(j) IRS may establish policies for reducing an employee's rate of pay within a band, but only for unacceptable performance and/or conduct, or the voluntary loss of supervisory status (if such loss results in a reversal of a within-band adjustment granted at the time of placement in a supervisory position). These reductions may be made effective at any time. However, reductions based on unacceptable performance, as defined in 5 U.S.C. 9508, and/or conduct may not occur more than once in a 12-month period. Any reductions in an employee's rate of pay based on unacceptable performance and/or conduct are adverse actions under 5 U.S.C. 7512 as long as the employee and the action are otherwise covered by that section. (See 5 CFR 752.401.) A reduction based on unacceptable performance and/or conduct may not exceed 10 percent of the employee's rate of pay or cause an employee's rate to fall below the minimum rate of pay of the employee's band.

§ 9501.206 Setting the pay of a supervisor.

(a) IRS broadbanding systems may provide for a separate broadbanding system or career path for supervisors and managerial employees.

(b) A supervisor's or managerial employee's rate of pay may not be based on the salaries of the employees he or she supervises or manages.

§ 9501.207 Setting the pay of an employee.

(a) IRS broadbanding systems must include policies for determining the career path, band, and rate of pay for employees upon conversion into the system consistent with the provisions in § 9501.401. IRS broadbanding systems may also include policies for making prorated within-grade increase or career-ladder promotion payments to employees as an adjustment in pay or a lump-sum payment upon conversion from the General Schedule to a broadbanding system consistent with the provisions in § 9501.401.

(b) IRS broadbanding systems must include policies for determining an employee's career path, band, and rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or placement in a

different band or career path. The methods used to set pay must be consistent with the principle of equal pay for substantially equal work and the following:

(1) Pay must be set at least at the minimum rate of pay and must not exceed the maximum rate of pay of the band to which assigned (except for employees who receive a rate below the minimum rate of pay as described in § 9501.205(h) or who receive a rate above the maximum rate of pay under pay retention provisions). (See § 9501.204(d) and (e).)

(2) Policies must specify the conditions under which pay may be set above the minimum rate of pay upon initial placement in a band and the amount of any minimum or maximum pay increase upon promotion. The time-in-grade provisions in 5 CFR 300.601–605 do not apply to employees under a broadbanding system.

(3) Upon movement to a different official worksite, IRS must process a geographic conversion as provided in 5 CFR 531.205.

(4) Movement of an employee to a band with a lower maximum rate of pay than the employee's former band is equivalent to a reduction in grade for the purpose of applying 5 U.S.C. chapters 43 and 75.

(c) Agencies must use the procedures in § 9501.402 for determining an employee's GS equivalent grade and pay rate upon conversion from a broadbanding system to the General Schedule.

§ 9501.208 Related provisions.

(a) For provisions of 5 U.S.C. chapter 51 that apply to the determination of General Schedule grades, other than sections 5104 and 5105, the term *grade* is deemed to mean *band within a career path*.

(b) The provisions in this part related to grade and pay retention are based on the grade and pay retention authority in 5 U.S.C. chapter 53, subchapter VI, and 5 CFR part 536. When applying the grade and pay retention provisions, the term *band* has the same meaning as *grade* under the statute and regulations. Under 5 U.S.C. 9509(c), the Secretary of the Treasury may provide for variations from the grade and pay retention authority for employees who are covered by broadbanding systems with prior approval of the Director of OPM and in accordance with a plan for implementing such variations. Section 9501.205(i) is an implementation of this variation authority.

(c) When applying the severance pay provisions to employees covered by IRS broadbanding systems, the term *band*

has the same meaning as *grade* in paragraph (c)(4) of the definition of *reasonable offer* in 5 CFR 550.703. When applying this definition, IRS will also consider a position one band below the employee's current band level to be a *reasonable offer* in the case of a broadbanding system under which the next lower band comprises two or more grades.

Subpart C—Staffing Supplements

§ 9501.301 Authority.

IRS broadbanding systems may use staffing supplements under the terms and conditions in this subpart.

§ 9501.302 Eligibility.

If an employee is assigned to a position meeting the coverage requirements for a special rate under 5 U.S.C. 5305 and is in a band where the maximum rate for the banded GS grades is a special rate that exceeds the maximum GS rate of basic pay (including any applicable locality rate under 5 U.S.C. 5304 or similar provision of law) for the banded grades, the employee is eligible for a staffing supplement.

§ 9501.303 Conversion to staffing supplement.

(a) Upon conversion, the employee's broadbanding rate of pay is established by dividing the employee's former GS special rate or locality rate (whichever was higher) by the staffing factor. The staffing factor is determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate, excluding any locality payment). The employee's staffing supplement is derived by multiplying the employee's broadbanding rate of pay by the staffing factor minus one. The employee's final staffing supplement-adjusted rate equals the employee's broadbanding rate of pay plus the staffing supplement. This amount will equal the employee's former GS special rate or locality rate. Since the employee's total pay rate immediately after conversion into the broadbanding system will be the same as immediately before conversion, the provisions regarding adverse action under 5 U.S.C. chapter 75, subchapter II, and pay retention under 5 U.S.C. 5363 do not apply.

(b) If an employee is in a band where the maximum GS rate for the banded grades is a locality rate, the broadbanding rate upon conversion into a broadbanding system is derived by dividing the employee's former locality rate or special rate by the applicable

locality pay factor (e.g., 1.1750 in the Washington-Baltimore-Northern Virginia locality pay area in 2006). The employee's broadbanding locality-adjusted rate will equal the employee's former GS locality rate or special rate. Since there is no change in total pay rate, the provisions regarding adverse action under 5 U.S.C. chapter 75, subchapter II, and pay retention under 5 U.S.C. 5363 do not apply.

(c) The rules for converting an employee on pay retention who is in a position meeting the coverage requirements for a special rate under 5 U.S.C. 5305 are in § 9501.401(d).

§ 9501.304 Administration of staffing supplements.

(a) A staffing supplement is added to an employee's broadbanding rate much like a locality adjustment is added to a GS base rate, as follows:

(1) Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement under § 9501.303. Employees receiving a staffing supplement remain entitled to a locality rate, which may, over time, supersede the need for a staffing supplement. If the employee is entitled to a higher locality rate, the employee is not entitled to a staffing supplement for any purpose.

(2) If OPM discontinues or decreases a special rate schedule on which staffing supplements are based, pay retention rules will be applied, as appropriate.

(3) Upon geographic movement, an employee who receives a staffing supplement will have the supplement removed or recomputed to reflect any applicable staffing supplement or locality rate in the new official worksite, consistent with § 9501.303(a). Any resulting reduction in pay is not an adverse action under 5 U.S.C. chapter 75, subchapter II, or a basis for pay retention under 5 U.S.C. 5363.

(b) IRS may not allow an employee with a current negative assessment to receive a pay increase as a result of a staffing factor increase. The staffing supplement for that employee must be frozen at its existing level. IRS must apply the following rules for employees who do not receive pay increases under this paragraph:

(1) For an employee receiving a frozen staffing supplement because of a negative assessment, if such an employee moves to a new position of record or official worksite where a different staffing supplement applies, the employee must receive the staffing supplement applicable to the employee's new position of record and/or official worksite as in effect on the day before the staffing supplement was

frozen. If no staffing supplement applies to the employee's new position of record or official worksite, apply the rules in § 9501.205(h)(1) to determine the employee's entitlement to any locality payment.

(2) If an employee receiving a frozen staffing supplement because of a negative assessment subsequently receives a positive assessment, the employee will become entitled to the currently applicable staffing supplement on the first day of the first pay period beginning on or after the date when he or she receives a positive assessment. If no staffing supplement is applicable to the employee's position of record, the employee will become entitled to the currently applicable locality payment, as provided in § 9501.205(h)(2).

(c) An employee's broadbanding rate adjusted by a staffing supplement may not exceed the rate for level IV of the Executive Schedule.

§ 9501.305 Treatment of staffing supplements as basic pay.

The employee's broadbanding rate adjusted by the staffing supplement is basic pay for the same purposes as a special rate under 5 CFR 530.308—e.g., for retirement, life insurance, premium pay, pay retention, and severance pay purposes, and for determining recruitment, relocation, and retention incentives. The staffing supplement is also basic pay under 5 U.S.C. chapter 75, subchapter II, for the limited purpose of determining whether a reduction in pay occurs at the point of an employee's conversion into a broadbanding system. The staffing supplement will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave.

§ 9501.306 New staffing supplements.

OPM may approve staffing supplements for categories of employees within an IRS broadbanding system who are not in approved special rate categories for General Schedule employees, consistent with the provisions in 5 U.S.C. 5305(a) and (b).

Subpart D—Conversion Rules

§ 9501.401 Conversion into broadbanding systems.

(a)(1) *General.* IRS broadbanding systems must include policies for determining the career path, band, and pay rate for employees upon conversion into a broadbanding system under the terms and conditions in this section.

(2) An employee may not suffer a reduction in his or her total pay rate upon initial conversion to a broadbanding system. For this purpose,

“total pay rate” includes any applicable locality payment, special rate supplement, and staffing supplement—each of which will be considered to be part of basic pay under 5 U.S.C. chapter 75, subchapter II, for the limited purpose of determining whether a reduction in pay occurs at conversion.

(3) If conversion into a broadbanding system is accompanied by any simultaneous pay action, the employee's General Schedule pay entitlements must be determined before converting the employee into the broadbanding system.

(b) *Prorated within-grade increase and career-ladder promotion payments.* IRS broadbanding systems may include policies for making prorated within-grade increase or career-ladder promotion payments to employees as an adjustment in pay or a lump-sum payment after conversion from the General Schedule to a broadbanding system under the following conditions:

(1) An employee may receive a prorated within-grade increase or a career-ladder promotion payment after conversion to an IRS broadbanding system under this section, but not both.

(2) The amount of any within-grade increase or career-ladder promotion payment may not be more than the prorated value of the employee's within-grade increase or career-ladder promotion at the time of conversion, based on the number of weeks of creditable service the employee has performed as of the date of initial conversion into the broadbanding system. There is no restriction on when such payments may be made.

(3) A prorated within-grade increase or career-ladder promotion payment may be made only to an employee with a positive assessment at the time of conversion into a broadbanding system.

(4) A within-grade increase payment may not be made to an employee receiving the maximum rate of pay for his or her grade or a retained rate immediately before conversion.

(5) If IRS provides career-ladder promotion payments to a group of employees converted to entry/developmental positions for which the IRS has established a special pay progression plan under § 9501.205(f)(6), the first salary increase budget for these entry/developmental employees following conversion must be determined after taking into account the length of time between the prorated career-ladder promotion payment and the first performance-based payments under an IRS broadbanding system.

(6) A within-grade increase or career-ladder promotion payment paid as an adjustment to pay after conversion into a broadbanding system may not cause

an employee's pay to exceed the maximum rate of pay of a band.

(c) *Special rate employees.* If an IRS broadbanding system uses staffing supplements instead of special rates under 5 U.S.C. 5305, special rate employees must be converted into the system consistent with the provisions in subpart C of this part. If an IRS broadbanding system eliminates special rates, a new locality-adjusted rate of pay must be derived for each employee, as follows:

(1) Divide the employee's special rate by the locality pay factor for the area (e.g., 1.1750 for the Washington-Baltimore-Northern Virginia locality pay area in 2006) to determine the new broadbanding rate of pay.

(2) Multiply the employee's new broadbanding rate of pay by the locality pay factor for the area to determine the employee's broadbanding locality rate of pay. If the employee's broadbanding locality rate of pay exceeds the maximum locality-adjusted rate for the employee's band, the employee must be placed on pay retention (if not otherwise excluded from the pay retention authority at 5 U.S.C. chapter 53, subchapter VI). The locality adjustment is basic pay under 5 U.S.C. chapter 75, subchapter II, for the limited purpose of determining whether a reduction in basic pay occurs at the point of an employee's conversion into a broadbanding system.

(d) *Employees on pay retention.* Upon conversion, employees on pay retention must be assigned to the band that encompasses the grade of their position. Determine the employee's broadbanding rate of pay as follows:

(1) Compare the employee's retained rate to the highest applicable maximum rate of pay for the employee's band (including any applicable locality payment or staffing supplement).

(2) If the employee's retained rate is higher than the highest applicable maximum rate of pay for the band, the employee will continue to receive a retained rate.

(3) If the employee's retained rate is less than the highest applicable maximum rate of pay for the band, divide the employee's retained rate by the applicable locality pay factor or staffing factor that applies to the employee's new position of record and official worksite to derive the employee's new broadbanding rate of pay. Multiply the employee's new broadbanding rate of pay by the applicable locality pay or staffing factor to derive the employee's broadbanding locality-adjusted or staffing supplement-adjusted rate of pay. The locality adjustment and staffing supplement are

basic pay under 5 U.S.C. chapter 75, subchapter II, for the limited purpose of determining whether a reduction in basic pay occurs at the point of an employee's conversion into a broadbanding system.

(e) *Employees on grade retention.*

Upon conversion, employees on grade retention must be assigned to the band that encompasses their retained grade until the original 2-year grade retention period expires. When the 2-year period expires, the employee's rate of pay must be determined under the pay retention rules at 5 CFR 536.304 in the band for his or her position of record.

§ 9501.402 Conversion to the General Schedule pay system.

(a)(1) Except as provided in paragraph (a)(2) of this section, when an employee covered by a broadbanding system moves voluntarily or involuntarily to a GS position, IRS must use the procedures in this section to convert the employee's band and pay rate to a GS-equivalent grade and rate of pay before the employee moves out of the system. IRS must determine the converted GS-equivalent grade and rate of pay before any accompanying geographic move, promotion, or other simultaneous action. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (e.g., rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and grade and pay retention under 5 CFR part 536). For the purpose of those rules, the converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the broadbanding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action.

(2) The conversion procedures in this section do not apply to employees who involuntarily move back to the same General Schedule career-ladder position they held immediately before conversion into the broadbanding system prior to any pay adjustment event under the system (including any promotion, demotion, or pay adjustment provided under § 9501.205). (A pay adjustment event does not include any prorated within-grade or career-ladder promotion pay increase received as part of conversion into the system.) For such employees, IRS must subtract any prorated within-grade or career-ladder promotion payment and reconstruct the employee's grade and rate of pay under

the General Schedule as if he or she had never entered the broadbanding system.

(3) The provisions regarding adverse action under 5 U.S.C. chapter 75, subchapter II, and pay retention under 5 U.S.C. 5363 do not apply to reductions in pay that occur when the IRS subtracts any prorated within-grade or career-ladder promotion increase from a career-ladder employee's rate of pay upon conversion back to the General Schedule as required by paragraph (a)(2) of this section.

(b) *GS grade level determination.* (1) Upon voluntary or involuntary conversion of an employee out of a broadbanding system to the GS pay system (other than an involuntary conversion covered by paragraph (a)(2) of this section), IRS must determine the employee's GS-equivalent grade level as follows (except as otherwise provided in paragraphs (b)(2), (b)(3), and (d) of this section):

(i) Convert an employee in a band encompassing a single GS grade to that grade.

(ii) For an employee in a band encompassing more than one GS grade, compare the employee's rate of pay (including any locality adjustment or staffing supplement, as applicable) with the rates of pay in the highest applicable GS rate range for each grade encompassed by the employee's band. If the employee's occupational series is a two-grade interval series, consider only odd-numbered grades between GS-5 and GS-11. In identifying the *highest applicable GS rate range* consider the following types of rate ranges:

(A) The GS base pay schedule;

(B) The LEO special base rate schedule;

(C) An applicable locality pay schedule for the locality pay area in which the employee's official worksite is located; or

(D) A special rate schedule for the employee's position and official worksite, as applicable.

(iii) If the employee's rate of pay (including any locality adjustment or staffing supplement) fits into an area of the highest applicable GS rate range for a GS grade that does not overlap with the rate range of the next higher or lower grade in the same band, convert the employee to that GS grade.

(iv) If the employee's rate of pay (including any locality adjustment or staffing supplement) fits into an area of the highest applicable GS rate range for a grade that overlaps with the highest applicable GS rate range of the next higher or lower grade in the same band, compare the employee's rate of pay with the dollar midpoint of the overlap area. If the employee's rate of pay is lower

than the dollar midpoint of the overlap area, convert the employee to the lower grade. If the employee's rate of pay is equal to or higher than the dollar midpoint of the overlap area, convert the employee to the higher grade.

(v) If an employee's rate of pay (including any locality payment or staffing supplement) is lower than the minimum rate of the highest applicable GS rate range for the lowest GS grade in the band, convert the employee to the lowest grade.

(2) Notwithstanding paragraphs (b)(1)(i)–(b)(1)(v) of this section, upon voluntary or involuntary conversion of an employee out of a broadbanding system to the GS pay system (other than an involuntary conversion covered by paragraph (a)(2) of this section), an employee's converted GS grade may not be lower than the GS grade held by the employee immediately preceding a lateral conversion into the broadbanding system, unless the employee was retaining a GS grade immediately before conversion or the employee underwent a reduction in band while in the broadbanding system.

(3) Notwithstanding paragraphs (b)(1)(i) through (b)(1)(v) of this section, upon voluntary or involuntary conversion of an employee out of a broadbanding system to the GS pay system (other than an involuntary conversion covered by paragraph (a)(2) of this section), if an employee moves back to the General Schedule before any pay adjustment event under the broadbanding system (including any promotion, demotion, or pay adjustment provided under § 9501.205), the employee's converted GS grade is the grade the employee held immediately before conversion into the broadbanding system. (A pay adjustment event does not include any prorated within-grade or career-ladder promotion pay increase received as part of conversion into the system.)

(c) *GS pay rate determination.* Upon voluntary or involuntary conversion of an employee out of a broadbanding system to the GS pay system (other than an involuntary conversion covered by paragraph (a)(2) of this section), IRS must determine the employee's GS-equivalent rate of pay under the rules in this paragraph (except as otherwise provided in paragraph (d) of this section). If an employee voluntarily moves back to the General Schedule before any pay adjustment event under the broadbanding system (including any promotion, demotion, or pay adjustment provided under § 9501.205), IRS must subtract any prorated pay increase received as part of conversion into the broadbanding system (including any

applicable locality payment or staffing supplement associated with that increase) before applying the rules in this paragraph. (The preceding sentence does not apply to an employee who involuntarily moves back to the General Schedule.) As provided in paragraph (a)(3) of this section, any resulting reduction in pay is not an adverse action.

(1) Convert the employee's rate of pay under the broadbanding system (including any locality adjustment or staffing supplement) to a rate on the highest applicable GS rate range for the converted GS grade derived under paragraph (b) of this section. In identifying the *highest applicable GS rate range* consider the following types of rate ranges:

- (i) The GS base pay schedule;
- (ii) The LEO special base rate schedule;
- (iii) An applicable locality pay schedule for the locality pay area in which the employee's official worksite is located; or
- (iv) A special rate schedule for the employee's position and official worksite, as applicable.

(2) If the highest applicable GS rate range is under a locality pay schedule, convert the employee's rate of pay (including any locality adjustment or staffing supplement) to a GS locality rate of pay. Since this converted rate is used only as a basis for setting the employee's rate in the new position, do not adjust the converted rate to equal a standard step rate. The rate of pay underlying the converted GS locality rate of pay becomes the employee's converted GS base rate.

(3) If the highest applicable GS rate range is a special rate range, convert the employee's rate of pay (including any locality adjustment or staffing supplement) to a special rate. The converted special rate may fall between the standard step rates. The rate of pay underlying the converted GS special rate becomes the employee's converted GS base rate.

(4) If the employee's rate of pay (including any locality adjustment or staffing supplement) exceeds the maximum rate of the highest applicable GS rate range, convert the rate of pay to a retained rate (if not otherwise excluded from the pay retention authority at 5 U.S.C. chapter 53, subchapter VI).

(5) If the employee's rate of pay (including any locality adjustment or staffing supplement) is lower than the minimum rate of the highest applicable GS rate range, convert the employee's rate of pay to a GS locality rate, or special rate, as applicable. Since this

converted rate is used only as a basis for setting the employee's rate in the new position, do not adjust the converted rate to equal a standard step rate. If the employee's converted rate is a locality rate, the rate of pay underlying the locality rate becomes the employee's GS base rate.

(d) *Employees on band or pay retention.* Apply the following procedures to determine the converted GS-equivalent grade and pay rate upon voluntary or involuntary conversion of an employee from a broadbanding system to the GS system (other than an involuntary conversion covered by paragraph (a)(2) of this section) when the employee is retaining a band or pay rate under the broadbanding system:

(1) If an employee is retaining a band, apply the procedures in paragraphs (b) and (c) of this section using the grades encompassed by the employee's retained band to determine the employee's GS-equivalent retained grade and pay rate. The time in a retained band counts toward the 2-year limit on grade retention in 5 U.S.C. 5362. (If the employee is also receiving a retained rate, apply the procedures in paragraph (d)(2) of this section instead of paragraph (c) of this section to determine the employee's GS-equivalent rate of pay.)

(2) If the employee's rate of pay under the broadbanding system is a retained rate, the employee's GS-equivalent grade is the highest grade encompassed in his or her band (unless the employee is also retaining a band in which case apply paragraph (d)(1) of this section to determine the employee's GS-equivalent grade). If the employee's retained rate is less than the maximum rate of the highest applicable GS rate range for the employee's GS-equivalent grade, apply the procedures in paragraph (c)(1)–(c)(3) of this section to determine the employee's GS-equivalent pay rate. If the employee's retained rate exceeds the maximum rate of the highest applicable GS rate range for the employee's GS-equivalent grade, convert the employee's broadbanding retained rate to an equal GS-equivalent retained rate.

(e) *Within-grade increase equivalent increase determinations.* Service under a broadbanding system is creditable for within-grade increase purposes upon conversion to the GS pay system. (See 5 CFR 531.407(b) for additional information on equivalent increase determinations.)

[FR Doc. E7–7255 Filed 4–16–07; 8:45 am]

BILLING CODE 6325–39–P