

§ 9701.303

5 CFR Ch. XCVII (1–1–10 Edition)

§ 9701.303 Waivers.

(a) When a specified category of employees is covered by the pay system established under this subpart, the provisions of 5 U.S.C. chapter 53, and related regulations, are waived with respect to that category of employees, except as provided in § 9701.106 and paragraphs (b) through (f) of this section.

(b) The following provisions of 5 U.S.C. chapter 53 are not waived:

(1) Section 5307, dealing with the aggregate limitation on pay;

(2) Sections 5311 through 5318, dealing with Executive Schedule positions;

(3) Section 5371, insofar as it authorizes OPM to apply the provisions of 38 U.S.C. chapter 74 to DHS employees in health care positions covered by section 5371 in lieu of any DHS pay system established under this subpart or the following provisions of title 5, U.S. Code: Chapters 51, 53, and 61, and subchapter V of chapter 55. The reference to “chapter 51” in section 5371 is deemed to include a classification system established under subpart B of this part; and

(4) Section 5377, dealing with the critical pay authority.

(c) Section 5373 is modified. The limit on rates of basic pay, including any applicable locality payment or supplement, for DHS employees who are not covered by this subpart and whose pay is set by administrative action (e.g., Coast Guard Academy faculty) is increased to the rate for level III of the Executive Schedule.

(d) Section 5379 is modified. DHS may, after coordination with OPM, establish and administer a student loan repayment program for DHS employees, except that DHS may not make loan payments for any noncareer appointees to the SES (as defined in 5 U.S.C. 3132(a)(7)) or for any employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

Notwithstanding § 9701.302(a), any DHS employee otherwise covered by section 5379 is eligible for coverage under the provisions established under this paragraph, subject to a determination by the Secretary or designee under § 9701.102(b).

(e) In approving the coverage of employees who would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV, DHS may limit the waiver so that affected employees remain entitled to environmental or other differentials established under 5 U.S.C. 5343(c)(4) and night shift differentials established under 5 U.S.C. 5343(f) if such employees are grouped in separate occupational clusters (established under subpart B of this part) that are limited to employees who would otherwise be covered by a prevailing rate system.

(f) Employees in SL/ST positions and SES members who are covered by a basic pay system established under this subpart are considered to be paid under 5 U.S.C. 5376 and 5382, respectively, for the purpose of applying 5 U.S.C. 5307(d).

§ 9701.304 Definitions.

In this part:

48 contiguous States means the States of the United States, excluding Alaska and Hawaii, but including the District of Columbia.

Band means a work level or pay range within an occupational cluster.

Band rate range means the range of rates of basic pay (excluding any locality or special rate supplements) applicable to employees in a particular band, as described in § 9701.321. Each band rate range is defined by a minimum and maximum rate.

Basic pay means an employee’s rate of pay before any deductions and exclusive of additional pay of any kind, except as expressly provided by law or regulation. For the specific purposes prescribed in §§ 9701.332(c) and 9701.333, respectively, basic pay includes locality and special rate supplements.

Competencies means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position.

Day means a calendar day.

Demotion means a reduction to a lower band within the same occupational cluster or a reduction to a lower band in a different occupational cluster under implementing directives issued by DHS pursuant to § 9701.355.

Locality rate supplement means a geographic-based addition to basic pay, as described in § 9701.332.

Modal rating means the rating of record that occurs most frequently in a particular pay pool.

Occupational cluster means a grouping of one or more associated or related occupations or positions. An occupational cluster may include one or more occupational series.

Promotion means an increase to a higher band within the same occupational cluster or an increase to a higher band in a different occupational cluster under implementing directives issued by DHS pursuant to § 9701.355.

Rating of record means a performance appraisal prepared—

(1) At the end of an appraisal period covering an employee's performance of assigned duties against performance expectations (as defined in § 9701.404) over the applicable period; or

(2) To support a pay determination, including one granted in accordance with subpart C of this part, a within-grade increase granted under 5 CFR 531.404, or a pay determination granted under other applicable rules.

SES means the Senior Executive Service established under 5 U.S.C. chapter 31, subchapter II.

SL/ST refers to an employee serving in a senior-level position paid under 5 U.S.C. 5376. The term "SL" identifies a senior-level employee covered by 5 U.S.C. 3324 and 5108. The term "ST" identifies an employee who is appointed under the special authority in 5 U.S.C. 3325 to a scientific or professional position established under 5 U.S.C. 3104.

Special rate supplement means an addition to basic pay for a particular category of employees to address staffing problems, as described in § 9701.333. A special rate supplement is paid in place of any lesser locality rate supplement that would otherwise apply.

Unacceptable performance means the failure to meet one or more performance expectations, as described in § 9701.406.

§ 9701.305 Bar on collective bargaining.

As provided in the definition of *conditions of employment* in § 9701.504, any pay

program established under authority of this subpart is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the pay program, including but not limited to coverage decisions, the design of pay structures, the setting and adjustment of pay levels, pay administration rules and policies, and administrative procedures and arrangements.

OVERVIEW OF PAY SYSTEM

§ 9701.311 Major features.

Through the issuance of implementing directives, DHS will establish a pay system that governs the setting and adjusting of covered employees' rates of pay. The DHS pay system will include the following features:

(a) A structure of rate ranges linked to various bands for each occupational cluster, in alignment with the classification structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of basic pay rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§ 9701.321 and 9701.322;

(c) Policies regarding the setting and adjusting of supplements to basic pay based on local labor market conditions and other factors, as described in §§ 9701.331 through 9701.334;

(d) Policies regarding employees' eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§ 9701.323 through 9701.325 and 9701.335 through 9701.337;

(e) Policies regarding performance-based pay adjustments, as described in §§ 9701.341 through 9701.346;

(f) Policies on basic pay administration, including movement between occupational clusters, as described in §§ 9701.351 through 9701.356;

(g) Policies regarding special payments that are not basic pay, as described in §§ 9701.361 through 9701.363; and

(h) Linkages to employees' performance ratings of records, as described in subpart D of this part.

§ 9701.312 Maximum rates.

(a) DHS may not pay any employee an annual rate of basic pay in excess of