

§ 9901.223

5 CFR Ch. XCIX (1–1–10 Edition)

(4) Classification of a position based on position-to-position comparisons rather than the NSPS classification criteria;

(5) Classification of a position for which a DoD or an OPM appeal decision was previously rendered unless there is a later change in the governing classification criteria or a material change in the requirements of the position; and

(6) The accuracy of career group, pay band, or pay schedule classification criteria or standards contained in DoD issuances.

(c) When the accuracy of the official position description is questioned by the employee, the employee will be advised to raise this issue informally with the employee's supervisor or file a grievance using the applicable administrative or negotiated grievance procedure. If the employee elects to first raise this issue with the employee's supervisor and the employee and the supervisor cannot resolve this issue, the accuracy of the position description may be determined using the applicable administrative or negotiated grievance procedure. If, after completing this procedure, the issue is not resolved, the classification appeal, if any, will be decided on the basis of the actual duties and responsibilities assigned by management and performed by the employee.

(d) An employee may request that OPM review a DoD determination made under paragraph (a) of this section. If an employee does not request an OPM review, DoD's classification determination is final and not subject to further review or appeal.

(e) Any determination made under this section will be based on criteria issued by the Secretary.

**§ 9901.223 Appeal to DoD for review of classification decisions.**

(a) *Employee representation.* An employee may designate in writing a representative of his or her choice to assist in the preparation and presentation of an appeal. A management official may disallow an employee's representative when—

(1) An individual's activities as a representative would cause a conflict of interest or position;

(2) An employee cannot be released from his or her official duties because of the priority needs of the Government; or

(3) An employee's release would give rise to unreasonable costs to the Government.

(b) *DoD classification appeal process.* (1) Employee appeals to DoD must be submitted through the employee's servicing Human Resources Office.

(2) An employee may file a classification appeal at any time. When the issue involves a classification action that resulted in a reduction in band or adjusted salary, to preserve any entitlement to retroactive pay, the employee must file any DoD classification appeal no later than 15 calendar days after the effective date of the personnel action. When an employee shows that he or she did not receive notice of the applicable time limit, or personnel action, or was prevented from timely filing by circumstances beyond the employee's control, the deciding official may grant an extension of the appeal period.

(3) An employee must provide the following documentation when filing an appeal:

(i) The employee's name, mailing address, and office telephone and fax numbers;

(ii) The employing Component and the exact location of the employee's position within the Component (installation name, mailing address, organization, division, branch, section, unit);

(iii) The name, address, and business telephone and fax numbers of the employee's representative, if any;

(iv) A statement of the employee's requested pay system, official position title, occupational series, pay schedule, and/or pay band; and

(v) Reasons why the employee believes the position is incorrectly classified.

(4) The employee must refer to classification standards that support the appeal and state specific points of disagreement with the current classification. The employee may also include a statement of facts that he or she thinks may affect the final classification decision.

(c) *Binding decisions.* DoD appeal decisions constitute certificates that are

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binding on all administrative, certifying, payroll, disbursing, and accounting offices within DoD.

(d) *Cancellation.* (1) An employee or representative may cancel an appeal at any time before DoD issues a decision by providing written notification to the DoD deciding official.

(2) DoD may cancel an appeal if any of the following occur:

(i) The employee, or his or her representative, does not furnish requested information within the required time period;

(ii) The employee is no longer officially assigned to, or is removed from, the position and there is no entitlement to retroactive benefits;

(iii) The duties and responsibilities of the position are significantly changed while the case is pending and there is no entitlement to retroactive benefits; or

(iv) The position is abolished and there is no entitlement to retroactive benefits.

### § 9901.224 Appeal to OPM for review of classification decisions.

(a) An employee's request for OPM review of DoD classification determination will follow the procedures in 5 CFR part 511, subpart F—Classification Appeals.

(b) Effective dates of OPM classification appeal decisions will be consistent with 5 CFR 511.702.

(c) Employee appeals to OPM may be submitted directly to OPM.

(d) OPM's final determination on an appeal made under this section is not subject to further review or appeal.

#### TRANSITIONAL PROVISIONS

### § 9901.231 Conversion of positions and employees to NSPS classification system.

(a) *Introduction.* This section describes the transitional provisions that apply when DoD positions and employees initially are converted to a classification system established under this subpart. (See § 9901.371 for conversion rules related to setting an employee's pay.) Positions and employees in affected organizational or functional units may convert from the GS system, the SL/ST system, the SES system, or such other DoD systems as may be des-

ignated by the Secretary, as provided in § 9901.202. For the purpose of this part, the terms "convert," "converted," "converting," and "conversion" refer to positions and employees that become covered by the NSPS classification system as a result of a coverage determination made under § 9901.102(b) and excludes employees who move from a noncovered position to a position already covered by NSPS.

(b) *Implementing issuances.* The Secretary will issue implementing issuances prescribing policies and procedures for converting DoD employees to a pay band upon initial implementation of the NSPS classification system. Those issuances will establish the work level conversion tables used to place an employee in a pay band based on the level of work of the employee's position in the formerly applicable pay system.

(c) *Temporary promotion prior to conversion.* An employee on a temporary promotion at the time of conversion will be returned to his or her official position of record prior to processing the conversion. That official position of record (including occupational series and grade) is used in determining the employee's career group, pay schedule, and band upon conversion.

(d) *Grade retention prior to conversion.* For an employee who is entitled to grade retention immediately before conversion, the grade of the actual position of record (not the grade being retained) is used in determining the employee's band upon conversion.

## Subpart C—Pay and Pay Administration

#### GENERAL

### § 9901.301 Purpose.

(a) This subpart contains regulations establishing pay structures and pay administration rules for covered DoD employees to replace the pay structures and pay administration rules established under 5 U.S.C. chapter 53 and 5 U.S.C. chapter 55, subchapter V, as authorized by 5 U.S.C. 9902 (subject to the limitations on waivers in § 9901.303).