

## §9701.107

and pay system established under subparts B and C of this part, the following provisions do not apply:

(1) Time-in-grade restrictions that apply to competitive service GS positions under 5 CFR part 300, subpart F;

(2) Supervisory differentials under 5 U.S.C. 5755; and

(3) Law enforcement officer special rates and geographic adjustments under sections 403 and 404 of the Federal Employees Pay Comparability Act of 1990 (section 529 of Pub. L. 101-509).

(d) Nothing in this part waives, modifies or otherwise affects the employment discrimination laws that the Equal Employment Opportunity Commission (EEOC) enforces under 42 U.S.C. 2000e *et seq.*, 29 U.S.C. 621 *et seq.*, 29 U.S.C. 791 *et seq.*, and 29 U.S.C. 206(d). Employees and applicants for employment in DHS will continue to be covered by EEOC's Federal sector regulations found at 29 CFR part 1614.

### §9701.107 Program evaluation.

(a) DHS will establish procedures for evaluating the regulations in this part and their implementation. DHS will provide designated employee representatives with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations.

(b) Involvement of employee representatives under this section will occur at the following stages:

(1) Identification of the scope, objectives, and methodology to be used in program evaluation; and

(2) Review of draft findings and recommendations.

(c) Involvement in the evaluation process does not waive the rights of any party under applicable law or regulations.

## Subpart B—Classification

EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart B to part 9701 was rescinded.

### GENERAL

### §9701.201 Purpose.

(a) This subpart contains regulations establishing a classification structure and rules for covered DHS employees

## 5 CFR Ch. XCVII (1-1-12 Edition)

and positions to replace the classification structure and rules in 5 U.S.C. chapter 51 and the job grading system in 5 U.S.C. chapter 53, subchapter IV, in accordance with the merit principle of equal pay for work of equal value.

(b) Any classification system prescribed under this subpart must be established in conjunction with the pay system described in subpart C of this part.

### §9701.202 Coverage.

(a) This subpart applies to eligible DHS employees and positions listed in paragraph (b) of this section, subject to a determination by the Secretary or designee under §9701.102(b).

(b) The following employees and positions are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees and positions that would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376; and

(4) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to §9701.102(d).

### §9701.203 Waivers.

(a) When a specified category of employees is covered by a classification system established under this subpart, the provisions of 5 U.S.C. chapter 51 and 5 U.S.C. 5346, and related regulations, are waived with respect to that category of employees, except as provided in paragraph (b) of this section, §9701.106, and §9701.222(d) (with respect to OPM's authority under 5 U.S.C. 5112(b) and 5346(c) to act on requests for review of classification decisions).

(b) Section 5108 of title 5, U.S. Code, dealing with the classification of positions above GS-15, is not waived.

### §9701.204 Definitions.

In this subpart:

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