

§ 9701.314 DHS responsibilities.

DHS responsibilities in implementing this subpart include the following:

- (a) Providing OPM with information regarding the implementation of the programs authorized under this subpart at OPM's request;
- (b) Participating in any interagency pay coordination council or group established by OPM to ensure that DHS pay policies and plans are coordinated with other agencies; and
- (c) Fulfilling all other responsibilities prescribed in this subpart.

SETTING AND ADJUSTING RATE RANGES

§ 9701.321 Structure of bands.

(a) DHS may, after coordination with OPM, establish ranges of basic pay for bands, with minimum and maximum rates set and adjusted as provided in § 9701.322. Rates must be expressed as annual rates.

(b) For each band within an occupational cluster, DHS will establish a common rate range that applies in all locations.

§ 9701.322 Setting and adjusting rate ranges.

(a) Within its sole and exclusive discretion, DHS may, after coordination with OPM, set and adjust the rate ranges established under § 9701.321 on an annual basis. In determining the rate ranges, DHS and OPM may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.

(b) DHS may, after coordination with OPM, determine the effective date of newly set or adjusted band rate ranges. Unless DHS determines that a different effective date is needed for operational reasons, these adjustments will become effective on or about the date of the annual General Schedule pay adjustment authorized by 5 U.S.C. 5303.

(c) DHS may establish different rate ranges and provide different rate range adjustments for different bands.

(d) DHS may adjust the minimum and maximum rates of a band by different percentages.

§ 9701.323 Eligibility for pay increase associated with a rate range adjustment.

(a) When a band rate range is adjusted under § 9701.322, employees covered by that band are eligible for an individual pay increase. An employee who meets or exceeds performance expectations (*i.e.*, has a rating of record above the unacceptable performance level for the most recently completed appraisal period) must receive an increase in basic pay equal to the percentage value of any increase in the minimum rate of the employee's band resulting from a rate range adjustment under § 9701.322. The pay increase takes effect at the same time as the corresponding rate range adjustment, except as provided in §§ 9701.324 and 9701.325. For an employee receiving a retained rate, the amount of the increase under this paragraph is determined under § 9701.356.

(b) If an employee does not have a rating of record for the most recently completed appraisal period, he or she must be treated in the same manner as an employee who meets or exceeds performance expectations and is entitled to receive an increase based on the rate range adjustment, as provided in paragraph (a) of this section.

(c) An employee whose rating of record is unacceptable is prohibited from receiving a pay increase as a result of a rate range adjustment, except as provided by §§ 9701.324 and 9701.325. Because the employee's pay remains unchanged, failure to receive a pay increase is not considered an adverse action under subpart F of this part.

§ 9701.324 Treatment of employees whose rate of basic pay does not fall below the minimum rate of their band.

An employee who does not receive a pay increase under § 9701.323 because of an unacceptable rating of record and whose rate of basic pay does not fall below the minimum rate of his or her band as a result of that rating will receive such an increase if he or she demonstrates performance that meets or exceeds performance expectations, as reflected by a new rating of record issued under § 9701.409(b). Such an increase will be made effective on the

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first day of the first pay period beginning on or after the date the new rating of record is issued.

§9701.325 Treatment of employees whose rate of basic pay falls below the minimum rate of their band.

(a) In the case of an employee who does not receive a pay increase under §9701.323 because of an unacceptable rating of record and whose rate of basic pay falls below the minimum rate of his or her band as a result of that rating, DHS must—

(1) If the employee demonstrates performance that meets or exceeds performance expectations within 90 days after the date of the rate range adjustment, issue a new rating of record under §9701.409(b) and adjust the employee's pay prospectively by making the increase effective on the first day of the first pay period beginning on or after the date the new rating of record is issued; or

(2) Initiate action within 90 days after the date of the rate range adjustment to demote or remove the employee in accordance with the adverse action procedures established in subpart F of this part.

(b) If DHS fails to initiate a removal or demotion action under paragraph (a)(2) of this section within 90 days after the date of a rate range adjustment, the employee becomes entitled to the minimum rate of his or her band rate range on the first day of the first pay period beginning on or after the 90th day following the date of the rate range adjustment.

LOCALITY AND SPECIAL RATE SUPPLEMENTS

§9701.331 General.

The basic pay ranges established under §§9701.321 through 9701.323 may be supplemented in appropriate circumstances by locality or special rate supplements, as described in §§9701.332 through 9701.335. These supplements are expressed as a percentage of basic pay and are set and adjusted as described in §9701.334. As authorized by §9701.356, DHS implementing directives will determine the extent to which §§9701.331 through 9701.337 apply to employees receiving a retained rate.

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§9701.332 Locality rate supplements.

(a) For each band rate range, DHS may, after coordination with OPM, establish locality rate supplements that apply in specified locality pay areas. Locality rate supplements apply to employees whose official duty station is located in the given area. DHS may provide different locality rate supplements for different occupational clusters or for different bands within the same occupational cluster in the same locality pay area.

(b) For the purpose of establishing and modifying locality pay areas, 5 U.S.C. 5304 is not waived. A DHS decision to use the locality pay area boundaries established under 5 U.S.C. 5304 does not require separate DHS regulations. DHS may, after coordination with OPM and in accordance with the public notice and comment provisions of 5 U.S.C. 553, publish Departmental regulations (6 CFR Chapter I) in the FEDERAL REGISTER that establish and adjust different locality pay areas within the 48 contiguous States or establish and adjust new locality pay areas outside the 48 contiguous States. These regulations are subject to the continuing collaboration process described in §9701.105. As provided by 5 U.S.C. 5304(f)(2)(B), judicial review of any DHS regulation regarding the establishment or adjustment of locality pay areas is limited to whether or not the regulation was promulgated in accordance with 5 U.S.C. 553.

(c) Locality rate supplements are considered basic pay for only the following purposes:

(1) Retirement under 5 U.S.C. chapter 83 or 84;

(2) Life insurance under 5 U.S.C. chapter 87;

(3) Premium pay under 5 U.S.C. chapter 55, subchapter V, or similar payments under other legal authority;

(4) Severance pay under 5 U.S.C. 5595;

(5) Application of the maximum rate limitation set forth in §9701.312;

(6) Determining the rate of basic pay upon conversion to the DHS pay system established under this subpart, consistent with §9701.373(b);

(7) Other payments and adjustments authorized under this subpart as specified by DHS implementing directives;