

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EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart B to part 9701 was rescinded.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

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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.

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.

Classification, also referred to as job evaluation, means the process of analyzing and assigning a job or position to an occupational series, cluster, and band for pay and other related purposes.

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

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.

Occupational series means the number OPM or DHS assigns to a group or family of similar positions for identification purposes (for example: 0110, Economist Series; 1410, Librarian Series).

Position or *Job* means the duties, responsibilities, and related competency requirements that are assigned to an employee whom the Secretary or designee approves for coverage under § 9701.202(a).

§ 9701.205 Bar on collective bargaining.

As provided in the definition of *conditions of employment* in § 9701.504, any classification system established under this subpart is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the classification system, including but not limited to coverage determinations, the design of the classification structure, and classification methods, criteria, and administrative procedures and arrangements.

CLASSIFICATION STRUCTURE

§ 9701.211 Occupational clusters.

For the purpose of classifying positions, DHS may, after coordination with OPM, establish occupational clusters based on factors such as mission or function; nature of work; qualifications or competencies; career or pay progres-

sion patterns; relevant labor-market features; and other characteristics of those occupations or positions. DHS must document in implementing directives the criteria and rationale for grouping occupations or positions into occupational clusters.

§ 9701.212 Bands.

(a) For purposes of identifying relative levels of work and corresponding pay ranges, DHS may, after coordination with OPM, establish one or more bands within each occupational cluster.

(b) Each occupational cluster may include, but is not limited to, the following bands:

(1) Entry/Developmental—work that involves gaining the competencies needed to perform successfully in a Full Performance band through appropriate formal training and/or on-the-job experience.

(2) Full Performance—work that involves the successful completion of any required entry-level training and/or developmental activities necessary to independently perform the full range of non-supervisory duties of a position in an occupational cluster.

(3) Senior Expert—work that involves an extraordinary level of specialized knowledge or expertise upon which DHS relies for the accomplishment of critical mission goals and objectives; reserved for a limited number of non-supervisory employees.

(4) Supervisory—work that may involve hiring or selecting employees, assigning work, managing performance, recognizing and rewarding employees, and other associated duties.

(c) DHS must document in implementing directives the definitions for each band which specify the type and range of difficulty and responsibility, qualifications, competencies, or other characteristics of the work encompassed by the band.

(d) DHS must, after coordination with OPM, establish qualification standards and requirements for each occupational cluster, occupational series, and/or band. DHS may use the qualification standards established by OPM or, after coordination with OPM, may establish different qualification standards. This paragraph does not