

CRS Report for Congress

Received through the CRS Web

Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law

Updated February 9, 2005

(name redacted)
Legislative Attorney
American Law Division

Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law

Summary

On February 1, 2005, final regulations to implement a new human resources management system for the Department of Homeland Security (“DHS”) were published. The regulations provide for the organization of the new personnel system, describing, among other topics, the use of pay bands, how jobs will be evaluated, and how pay will be administered. In addition, subpart E of the final regulations defines the department’s labor relations system. This report compares the provisions of the final regulations with similar provisions from title 5, chapter 71 of the *U.S. Code*. Although the collective bargaining rights for employees of DHS will be subject to the new regulations, such rights for most federal employees are otherwise governed by 5 U.S.C. chapter 71. While some of the differences involve simply a change in diction, other changes are more significant. The establishment of a Homeland Security Labor Relations Board that will perform many of the duties otherwise undertaken by the Federal Labor Relations Authority, as well as a redefining of what constitutes certain unfair labor practices are examples of these more noteworthy changes. The regulations take effect on March 3, 2005.

Contents

Introduction 1

List of Tables

Department of Homeland Security Human Resources Management System
Comparison of Current Law and the Final Regulations 3

Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law

Introduction

Under 5 U.S.C. § 9701(a), the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management (“OPM”), “establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.” On February 20, 2004, proposed regulations to implement a new human resources management system for the Department of Homeland Security (“DHS”) were published.¹ DHS and OPM received over 3,800 comments on the proposed regulations during the public comment period.² Final regulations were published on February 1, 2005.

The final regulations provide for the organization of the new personnel system, describing, among other topics, the use of pay bands, how jobs will be evaluated, and how pay will be administered. In addition, subpart E of the final regulations defines the department’s labor relations system. Subpart E implements the requirements of 5 U.S.C. § 9701(b) by “ensuring the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to the limitations on negotiability established in law, including the authority that Congress delegated to OPM and DHS to promulgate [the] regulations.”³

While the collective bargaining rights of most federal employees are governed by the provisions of title 5, chapter 71 of the *U.S. Code*, such rights for employees of DHS will be subject to the regulations issued by the department and OPM. Title 5 U.S.C. chapter 71 was not among the provisions that were deemed nonwaivable by the Homeland Security Act.⁴ This report compares the provisions of the final regulations with similar provisions from 5 U.S.C. chapter 71. While some of the differences involve simply a change in diction, other changes are more significant.

¹ Department of Homeland Security Human Resources Management System, 69 Fed. Reg. 8030 (proposed Feb. 20, 2004) (to be codified at 5 C.F.R. pt. 9701).

² Department of Homeland Security Human Resources Management System, 70 Fed. Reg. 5272, 5275 (Feb. 1, 2005) (to be codified at 5 C.F.R. pt. 9701).

³ 69 Fed. Reg. at 8040-41.

⁴ See 5 U.S.C. § 9701(b)(3), (c).

The establishment of a Homeland Security Labor Relations Board that will perform many of the duties otherwise undertaken by the Federal Labor Relations Authority, as well as a redefining of what constitutes certain unfair labor practices are examples of these more noteworthy changes. The regulations take effect on March 3, 2005.

**Department of Homeland Security
Human Resources Management System
Comparison of Current Law and the Final Regulations**

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7103(a)(14) - Definition of “Conditions of Employment”</p> <p>Excludes from the definition policies, practices, and matters (1) relating to political activities prohibited under 5 U.S.C. chapter 73, subchapter III; (2) relating to the classification of any position; or (3) specifically provided for by Federal statute.</p>	<p>5 C.F.R. § 9701.504 - Definition of “Conditions of Employment”</p> <p>Excludes from the definition policies, practices, and matters (1) relating to political activities prohibited under 5 U.S.C. chapter 73, subchapter III; (2) relating to the classification of any position, including any classification determinations under subpart B of part 9701; (3) relating to the pay of any position, including any determinations regarding pay or adjustments thereto under subpart C of part 9701; or (4) specifically provided for by federal statute.</p>
<p>5 U.S.C. § 7103(a)(9) - Definition of “Grievance”</p> <p>A “grievance” means any complaint (1) by any employee concerning any matter relating to the employment of the employee; (2) by any labor organization concerning any matter relating to the employment of any employee; or (3) by any employee, labor organization, or agency concerning either the effect or interpretation or claim of breach of a collective bargaining agreement, or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.</p>	<p>5 C.F.R. § 9701.504 - Definition of “Grievance”</p> <p>A “grievance” means any complaint (1) by any employee concerning any matter relating to the <i>conditions of employment</i> of the employee; (2) by any labor organization concerning any matter relating to the <i>conditions of employment</i> of any employee; or (3) by any employee, labor organization, or agency concerning either the effect or interpretation or claim of breach of a collective bargaining agreement, or any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation <i>issued for the purpose of</i> affecting conditions of employment (emphasis added).</p>
<p>5 U.S.C. § 7103(a)(11) - Definition of “Management Official”</p> <p>Defines the term to mean an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency.</p>	<p>5 C.F.R. § 9701.504 - Definition of “Management Official”</p> <p>Defines the term to mean an individual employed by the Department in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the Department or who has the authority to recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires</p>

Current Law	Final DHS Regulations
	the consistent exercise of independent judgment.
<p>5 U.S.C. § 7103(a)(2) - Definition of “Employee”</p> <p>The term “employee” means an individual (1) employed in an agency, or (2) whose employment in an agency has ceased because of any unfair labor practice under 5 U.S.C. § 7116 and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the FLRA.</p> <p>The term “employee” does not include the following:</p> <p>(1) an alien or noncitizen of the U.S. who occupies a position outside of the U.S.;</p> <p>(2) a member of the uniformed services;</p> <p>(3) a supervisor or a management official;</p> <p>(4) an officer or employee in the Foreign Service of the U.S. employed in the Dept. of State, the International Communication Agency, the Agency for International Development, the Dept. of Agriculture, or the Dept. of Commerce;</p> <p>or</p> <p>(5) any person who participates in a strike in violation of 5 U.S.C. § 7311.</p>	<p>5 C.F.R. § 9701.505 - Coverage</p> <p>Subpart E of part 9701 applies to eligible DHS employees, subject to a determination by the Secretary or designee under 5 C.F.R. § 9701.102(b). DHS employees who would otherwise be covered by 5 U.S.C. chapter 71 are eligible for coverage under subpart E. An employee whose employment has ceased because of an unfair labor practice and who has not obtained any other regular and substantially equivalent employment is also covered.</p> <p>Subpart E does not apply to the following:</p> <p>(1) an alien or noncitizen of the U.S. who occupies a position outside of the U.S.;</p> <p>(2) a member of the uniformed services;</p> <p>(3) a supervisor or management official;</p> <p>(4) an individual who participates in a strike in violation of 5 U.S.C. § 7311;</p> <p>(5) an employee of the U.S. Secret Service, including the U.S. Secret Service Uniformed Division;</p> <p>(6) an employee of the Transportation Security Administration; or</p> <p>(7) an employee excluded pursuant to 5 C.F.R. § 9701.514 or any other legal authority.</p>
<p>No similar provision involving a Homeland Security Labor Relations Board.</p>	<p>5 C.F.R. § 9701.508 - Homeland Security Labor Relations Board</p> <p>Provides for a Homeland Security Labor Relations Board composed of three members, each of whom would be appointed for a term not to exceed three years, except when extended to provide for an orderly transition. The members of the Board are appointed by the Secretary.</p>

Current Law	Final DHS Regulations
<p>No similar provision dealing with a Homeland Security Labor Relations Board. 5 U.S.C. § 7105 identifies the powers and duties of the Federal Labor Relations Authority (“FLRA”), many of which would be held by the Homeland Security Labor Relations Board.</p>	<p>5 C.F.R. § 9701.509 - Powers and Duties of the Board</p> <p>The Board is responsible for resolving issues related to the scope of bargaining and the duty to bargain in good faith; conducting hearings and resolving complaints of unfair labor practices involving the duty to bargain in good faith, and strikes, work stoppages, slowdowns, picketing, or condoning such activities by failing to take action; resolving exceptions to arbitration awards; resolving negotiation impasses; and conducting de novo review of legal conclusions involving all matters within its jurisdiction.</p> <p>The Board may assume jurisdiction over any matter concerning DHS employees that has been submitted to the FLRA pursuant to 5 C.F.R. § 9701.510 if it determines that the matter affects homeland security. The Board may also issue department-wide opinions, which may be appealed in accordance with 5 C.F.R. § 9701.508(h). The Board may consult with the FLRA when issuing such opinions.</p>
<p>5 U.S.C. § 7105 - Powers and Duties of the FLRA</p> <p>The FLRA is authorized to determine whether a bargaining unit is appropriate, supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees, prescribe criteria and resolve issues related to the granting of national consultation rights, prescribe criteria and resolve issues related to determining compelling need for agency rules or regulations, resolve issues related to the duty to bargain in good faith, conduct hearings and resolve complaints of unfair labor practices, resolve exceptions to arbitration awards, and take such other actions as are necessary and appropriate to administer the provisions of 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.510 - Powers and Duties of the FLRA</p> <p>Authorizes the FLRA to determine the appropriateness of bargaining units pursuant to 5 C.F.R. § 9701.514; supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of employees; and otherwise administer the provisions of 5 U.S.C. § 7111 relating to the according of exclusive recognition to labor organizations, which are modified to apply to this section.</p> <p>The FLRA may conduct hearings and resolve complaints of unfair labor practices under 5 C.F.R. § 9701.517(a)(1) through (4) and (b)(1) through (4), and in accordance with the provisions of 5 U.S.C. § 7118, which is modified to apply to this section.</p>

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7106 - Management Rights</p> <p>Management officials retain the authority to determine the mission, budget, organization, number of employees, and internal security practices of an agency. In accordance with applicable laws, management officials also retain the authority to</p> <ul style="list-style-type: none"> (1) hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (2) assign work, make determinations with respect to contracting out, and determine the personnel by which agency operations shall be conducted; (3) with respect to filling positions, make selections for appointments from among properly ranked and certified candidates for promotion or from any other appropriate source; and (4) take whatever actions may be necessary to carry out the agency mission during emergencies. <p>An agency and a labor organization are not precluded from negotiating, at the election of the agency, the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work.</p> <p>An agency and a labor organization are not precluded from negotiating over procedures which management officials of the agency will observe in exercising any authority under 5 U.S.C. § 7106 and over appropriate arrangements for employees adversely affected by the exercise of any authority under the section by management officials (so-called “impact and implementation” bargaining).</p>	<p>5 C.F.R. § 9701.511 - Management Rights</p> <p>Expands existing management rights to include</p> <ul style="list-style-type: none"> (1) the ability to determine the numbers, types, grades, or occupational clusters and bands of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; (2) the ability to assign and deploy employees to meet operational demand; and (3) the ability to take whatever other actions may be necessary to carry out DHS’s mission. <p>Management is prohibited from bargaining over the exercise of its authorities under 5 C.F.R. § 9701.511(a) or the procedures that it will observe in exercising its authorities under 5 C.F.R. § 9701.511(a)(1) and (2) (e.g., assignments, deployments, other actions necessary to carrying out DHS’s mission). However, management will confer with an exclusive representative over such procedures.</p> <p>Management and an exclusive representative will bargain at the level of recognition, unless otherwise determined by the parties, over appropriate arrangements for employees adversely affected by the exercise of management’s authority under 5 C.F.R. § 9701.511(a)(3) (e.g., lay offs, suspensions, removals, other disciplinary actions) and the procedures which management will observe in exercising its authority.</p> <p>Management and an exclusive representative will bargain at the level of recognition, unless otherwise determined by the parties, over appropriate arrangements for employees adversely affected by the exercise of any authority under 5 C.F.R. § 9701.511(a)(1) or (2), provided that the effects of such exercise have a significant and substantial impact on the bargaining unit, or on those</p>

Current Law	Final DHS Regulations
	employees in that part of the bargaining unit affected by the action or event, and are expected to exceed or have exceeded 60 days.
No similar provision.	<p>5 C.F.R. § 9701.512 - Conferring on Procedures For the Exercise of Management Rights</p> <p>Management will confer at the level of recognition with an appropriate exclusive representative to consider its views and recommendations with regard to the procedures management will observe in exercising its rights under 5 C.F.R. § 9701.511(a)(1) and (2) (e.g., assignments, deployments, other actions necessary to carrying out DHS's mission). This section does not require that the parties reach agreement on any covered matter. The parties will meet at reasonable times and places for no longer than 30 days unless they mutually agree to extend this period. Management retains the sole, exclusive, and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in 5 C.F.R. § 9701.511(a)(1) and (2) and to deviate from such procedures, as necessary.</p>
<p>5 U.S.C. § 7112 - Determination of Appropriate Units For Labor Organization Representation</p> <p>The FLRA shall determine the appropriateness of any unit. The FLRA will find a unit to be appropriate only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.</p> <p>A bargaining unit may not include the following types of employees: (1) management officials or supervisors, except under certain specified circumstances; (2) confidential employees; (3) employees engaged in personnel work in other than a purely clerical capacity; (4) employees engaged in administering</p>	<p>5 C.F.R. § 9701.514 - Determination of Appropriate Units For Labor Organization Representation</p> <p>The FLRA will determine the appropriateness of any unit. The FLRA will find a unit to be appropriate only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of DHS, consistent with the agency's mission and organizational structure.</p> <p>A bargaining unit may not include the following types of employees: (1) management officials or supervisors, except as provided under 5 U.S.C. § 7135(a)(2), which is not waived for the purpose of subpart E of part 9701; (2) confidential employees; (3) employees engaged in personnel work</p>

Current Law	Final DHS Regulations
<p>the provisions of 5 U.S.C. chapter 71; (5) employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or (6) employees primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.</p>	<p>in other than a purely clerical capacity; (4) employees engaged in administering the provisions of subpart E; (5) professional and other employees, unless a majority of the professional employees vote for inclusion in the unit; (6) employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or (7) employees primarily engaged in investigation or audit functions relating to the work of individuals employed by DHS whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.</p>
<p>5 U.S.C. § 7114(a)(2) - Representation Rights and Duties (Representation at Discussions and Examinations)</p> <p>An exclusive representative shall be given the opportunity to be represented at any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment. An exclusive representative shall be given the opportunity to be represented at any examination of an employee in the unit by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.</p>	<p>5 C.F.R. § 9701.515(a)(2) - Representation Rights and Duties (Representation at Discussions and Examinations)</p> <p>An exclusive representative must be given the opportunity to be represented at the following:</p> <p>(1) any formal discussion between DHS representatives and bargaining unit employees, the purpose of which is to discuss and/or announce new or substantially changed personnel policies, practices, or working conditions; (2) any discussion between one or more DHS representatives and one or more bargaining unit employees concerning any grievance; (3) any examination of a bargaining unit employee by a representative of DHS in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests such representation; or (4) any discussion between a DHS representative and a bargaining unit employee in connection with a formal complaint of discrimination if the employee, at his or her sole discretion, requests such representation.</p>

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7114(a)(5) - Representation Rights and Duties (Grievance or Appellate Rights)</p> <p>The rights of an exclusive representative under 5 U.S.C. § 7114(a) shall not be construed to preclude an employee from (1) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action, or (2) exercising grievance or appellate rights established by law, rule, or regulation, except in the case of grievance or appeal procedures negotiated under 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.515(a)(5) - Representation Rights and Duties (Grievance or Appellate Rights)</p> <p>Except in the case of grievance procedures negotiated under subpart E of part 9701, the rights of an exclusive representative under this section may not be construed to preclude an employee from (1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance or appeal action, or (2) exercising other grievance or appellate rights established by law, rule, or regulation.</p>
<p>5 U.S.C. § 7114(b)(4) - Representation Rights and Duties (Furnishing of Data)</p> <p>The duty of an agency and exclusive representative to negotiate in good faith shall include the obligation, in the case of an agency, to furnish to the exclusive representative or its authorized representative, upon request and to the extent not prohibited by law, data which is normally maintained by the agency in the regular course of business, which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining, and which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining.</p>	<p>5 C.F.R. § 9701.515(b)(5) - Representation Rights and Duties (Furnishing of Data)</p> <p>The duty of DHS or appropriate component(s) of the agency and an exclusive representative to negotiate in good faith includes the obligation to furnish information to the exclusive representative or its authorized representative, when (1) such information exists, is normally maintained, and is reasonably available; (2) the exclusive representative has requested such information and demonstrated a particularized need for the information in order to perform its representational functions in grievance proceedings or in negotiations; and (3) disclosure is not prohibited by law.</p> <p>The disclosure of information does not include the following:</p> <ul style="list-style-type: none"> (1) disclosure prohibited by law or regulations; (2) disclosure of information if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information; (3) internal DHS guidance, counsel, advice, or training for managers and

Current Law	Final DHS Regulations
	supervisors relating to collective bargaining; (4) any disclosure that would compromise DHS's mission, security, or employee safety; and (5) home addresses, telephone numbers, email addresses, or any other information not related to an employee's work.
<p>5 U.S.C. § 7115 - Allotments to Representatives</p> <p>If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Subject to 5 U.S.C. § 7115(c)(2), if a petition has been filed with the FLRA by a labor organization alleging that 10 percent of the employees in an appropriate unit have membership in the labor organization, the FLRA shall investigate the petition to determine its validity.</p>	<p>5 C.F.R. § 9701.516 - Allotments to Representatives</p> <p>Similar regulatory language.</p>
<p>5 U.S.C. § 7116(a)(4) - Unfair Labor Practices (Complaints and Petitions)</p> <p>It shall be an unfair labor practice for an agency to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(a)(4) - Unfair Labor Practices (Complaints and Petitions)</p> <p>It is an unfair labor practice for DHS to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information or testimony under subpart E of part 9701.</p>
<p>5 U.S.C. § 7116(a)(5) - Unfair Labor Practices (Agency Refusal to Consult or Negotiate in Good Faith)</p> <p>It shall be an unfair labor practice for an agency to refuse to consult or negotiate in good faith with a labor organization as required by 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(a)(5) - Unfair Labor Practices (Agency Refusal to Consult or Negotiate in Good Faith)</p> <p>It is an unfair labor practice for DHS to refuse, as determined by the Board, to consult or negotiate in good faith with a labor organization as required by subpart E of part 9701.</p>

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7116(a)(6) - Unfair Labor Practices (Agency Failure or Refusal to Cooperate in Impasse Procedures and Decisions)</p> <p>It shall be an unfair labor practice for an agency to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(a)(6) - Unfair Labor Practices (Agency Failure or Refusal to Cooperate in Impasse Procedures and Decisions)</p> <p>It is an unfair labor practice for DHS to fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions as required by subpart E of part 9701.</p>
<p>5 U.S.C. § 7116(a)(7) - Unfair Labor Practices (Enforcement of Conflicting Rule or Regulation)</p> <p>It shall be an unfair labor practice for an agency to enforce any rule or regulation (other than a rule or regulation implementing 5 U.S.C. § 2302) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.</p>	<p>No similar provision.</p>
<p>5 U.S.C. § 7116(b)(5) - Unfair Labor Practices (Labor Organization Refusal to Consult or Negotiate in Good Faith)</p> <p>It shall be an unfair labor practice for a labor organization to refuse to consult or negotiate in good faith with an agency as required by 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(b)(5) - Unfair Labor Practices (Labor Organization Refusal to Consult or Negotiate in Good Faith)</p> <p>It is an unfair labor practice for a labor organization to refuse, as determined by the Board, to consult or negotiate in good faith with the Department as required by subpart E of part 9701.</p>
<p>5 U.S.C. § 7116(b)(6) - Unfair Labor Practices (Labor Organization Failure or Refusal to Cooperate in Impasse Procedures and Decisions)</p> <p>It shall be an unfair labor practice for a labor organization to fail or refuse to cooperate in impasse procedures and impasse decisions as required by 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(b)(6) - Unfair Labor Practices (Labor Organization Failure or Refusal to Cooperate in Impasse Procedures and Decisions)</p> <p>It is an unfair labor practice for a labor organization to fail or refuse, as determined by the Board, to cooperate in impasse procedures and impasse decisions as required by subpart E of part 9701.</p>
<p>5 U.S.C. § 7118(a)(4)(A) - Unfair Labor Practices (Filing Deadlines)</p> <p>Except as provided in 5 U.S.C. § 7118(a)(4)(B), the General Counsel of the FLRA shall not issue a complaint based on any alleged unfair labor practice which occurred more than 6 months</p>	<p>5 C.F.R. § 9701.517(e) - Unfair Labor Practices (Filing Deadlines)</p> <p>The Board will not consider any unfair labor practice allegation filed more than six months after the alleged unfair labor practice occurred, unless it determines, pursuant to its regulations, that there is</p>

Current Law	Final DHS Regulations
<p>before the filing of the charge with the FLRA.</p>	<p>good cause for the late filing.</p>
<p>5 U.S.C. § 7116(e) - Unfair Labor Practices (Personal Expressions)</p> <p>The expression of any personal view, argument, or opinion, or the making of any statement which publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election, corrects the record with respect to any false or misleading statement made by any person, or informs employees of the Government’s policy relating to labor-management relations and representation, shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (1) constitute an unfair labor practice under any provision of this chapter, or (2) constitute grounds for the setting aside of any election conducted under any provisions of 5 U.S.C. chapter 71.</p>	<p>5 C.F.R. § 9701.517(g) - Unfair Labor Practices (Personal Expressions)</p> <p>The expression of any personal view, argument, or opinion, or the making of any statement which publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election, corrects the record with respect to any false or misleading statement made by any person, or informs employees of the Government’s policy relating to labor-management relations and representation, <i>may</i> not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (1) constitute an unfair labor practice under any provision of this chapter, or (2) constitute grounds for the setting aside of any election conducted under any provisions of subpart E of part 9701 (emphasis added).</p>
<p>5 U.S.C. § 7117(a) - Duty to Bargain in Good Faith; Compelling Need; Duty to Consult</p> <p>The duty to bargain in good faith shall, to the extent not inconsistent with any federal law or any government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a government-wide rule or regulation, and only if the FLRA has determined that no compelling need exists for the rule or regulation.</p>	<p>5 C.F.R. § 9701.518(d)(1) - Duty to Bargain, Confer, and Consult</p> <p>Management may not bargain over any matters that are inconsistent with law or the regulations in subpart E of part 9701, government-wide rules and regulations, departmental implementing directives and other policies and regulations, or executive orders.</p>
<p>No similar provision.</p>	<p>5 C.F.R. § 9701.518(b) -Duty to Bargain, Confer, and Consult (Bargaining Over Initial and Successor Agreements)</p> <p>If bargaining over an initial collective bargaining agreement or any successor agreement is not completed within 90 days after such bargaining begins, the parties can mutually agree to continue bargaining or mutually agree to refer the matter to an independent mediator/arbitrator for resolution.</p>

Current Law	Final DHS Regulations
	<p>Alternatively, either party may refer the matter to the Board for resolution in accordance with procedures established by the Board, or may refer the matter to the FMCS for assistance at any time.</p>
<p>No similar provision.</p>	<p>5 C.F.R. § 9701.518(c) -Duty to Bargain, Confer, and Consult (Bargaining During the Term of an Existing Agreement)</p> <p>If the parties bargain during the term of an existing collective bargaining agreement over a proposed change that is otherwise negotiable, and no agreement is reached within 30 days after such bargaining begins, the parties may mutually agree to continue bargaining or mutually agree to refer the matter to an independent mediator/arbitrator for resolution. Alternatively, either party may refer the matter to the Board for resolution in accordance with procedures established by the Board, or may refer the matter to the FMCS for assistance at any time.</p>
<p>No similar provision</p>	<p>5 C.F.R. § 9701.518(d)(3), (d)(4) -Duty to Bargain, Confer, and Consult (Change in Conditions of Employment)</p> <p>Management has no obligation to bargain over a change to a condition of employment unless the change is otherwise negotiable pursuant to DHS regulations and is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees affected by the change.</p> <p>Management has no obligation to confer or consult unless a change is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees affected by the change.</p>

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7117(c)(1) -Duty to Bargain in Good Faith; Compelling Need; Duty to Consult (Negotiation Appeals)</p> <p>Except in cases involving compelling need, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the FLRA in accordance with the provisions of 5 U.S.C. § 7117(c).</p>	<p>5 C.F.R. § 9701.518(e) -Duty to Bargain, Confer, and Consult (Negotiation Appeals)</p> <p>If a management official involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Board in accordance with the Board’s procedures.</p>
<p>5 U.S.C. § 7119(a) - Negotiation Impasses</p> <p>The Federal Mediation and Conciliation Service (“FMCS”) shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The FMCS shall determine under what circumstances and in what manner it shall provide services and assistance.</p>	<p>5 C.F.R. § 9701.519(a) - Negotiation Impasses</p> <p>If the Department and exclusive representative are unable to reach an agreement under 5 C.F.R. §§ 9701.515 or 9701.518, either party may submit the disputed issues to the Board for resolution.</p>
<p>5 U.S.C. § 7119(b), (c)(5)(B) - Negotiation Impasses (Failure to Resolve Impasse)</p> <p>If voluntary arrangements, including the services of the FMCS or any other third-party mediation fail to resolve the negotiation impasse, either party may request the Federal Service Impasses Panel (“FSIP”) to consider the matter or the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the FSIP. If the parties do not arrive at a settlement after assistance by the FSIP, the FSIP may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71 to resolve the impasse.</p>	<p>5 C.F.R. § 9701.519(b) - Negotiation Impasses (Failure to Resolve Impasse)</p> <p>If the parties do not arrive at a settlement after assistance by the Board, the Board may take whatever action is necessary and not inconsistent with subpart E of part 9701 to resolve the impasse.</p>
<p>5 U.S.C. § 7121(a)(1) - Grievance Procedures (Procedures in Collective Bargaining Agreements)</p> <p>Except as provided in 5 U.S.C. § 7121(a)(2), any collective bargaining agreement shall provide procedures for the settlement of grievances, including</p>	<p>5 C.F.R. § 9701.521(a)(1) - Grievance Procedures (Procedures in Collective Bargaining Agreements)</p> <p>Except as provided in 5 C.F.R. § 9701.521(a)(2), any collective bargaining agreement must provide procedures for the settlement of grievances including</p>

Current Law	Final DHS Regulations
<p>questions of arbitrability. Except as provided in 5 U.S.C. § 7121(d), (e), and (g), the procedures shall be the exclusive administrative procedures for resolving grievances which fall within their coverage.</p> <p>5 U.S.C. § 7121(d): Prohibited personnel practices involving employment discrimination may be raised under a statutory procedure or the negotiated procedure, but not both.</p> <p>5 U.S.C. § 7121(e): Matters involving unacceptable performance, removals, suspensions, and reductions in grade and pay which fall within the coverage of the negotiated grievance procedure may be raised under the appellate procedures of 5 U.S.C. § 7701 or under the negotiated grievance procedures, but not both.</p> <p>5 U.S.C. § 7121(g): Other prohibited personnel practices may be appealed to the Merit Systems Protection Board (“MSPB”), raised under the negotiated grievance procedure, or addressed through procedures for seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12.</p>	<p>questions of arbitrability. Except as provided in 5 C.F.R. § 9701.521(d), (f), and (g), the procedures must be the exclusive administrative procedures for grievances which fall within its coverage.</p> <p>5 C.F.R. § 9701.521(d): To the extent not already excluded by existing collective bargaining agreements, the exclusions contained in 5 C.F.R. § 9701.521(c) apply upon the effective date of subpart E, as determined under 5 C.F.R. § 9701.102(b).</p> <p>5 C.F.R. § 9701.521(f)(1): Matters covered by subpart G may be raised under the appeals procedure of 5 C.F.R. § 9701.706 or under the negotiated grievance procedure, but not both.</p> <p>5 C.F.R. § 9701.521(g)(1): A performance rating of record that has not been appealed in connection with an action under subpart G may be grieved.</p>
<p>5 U.S.C. § 7121(b)(2)(A) - Grievance Procedures (Negotiated Grievance Procedures)</p> <p>The provisions of a negotiated grievance procedure providing for binding arbitration shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order (1) a stay of any personnel action in a manner similar to the manner described in 5 U.S.C. § 1221(c) with respect to the MSPB, and (2) the taking, by an agency, of any disciplinary action identified under section 5 U.S.C. § 1215(a)(3) that is otherwise within the authority of such agency to take.</p>	<p>5 C.F.R. § 9701.521(b)(2) - Grievance Procedures (Negotiated Grievance Procedures)</p> <p>Similar regulatory language.</p>

Current Law	Final DHS Regulations
<p>5 U.S.C. § 7121(d) - Grievance Procedures (Prohibited Personnel Practices Involving Employment Discrimination)</p> <p>Selection of the negotiated procedure by an aggrieved employee affected by a prohibited personnel practice involving employment discrimination in no manner prejudices the right of the employee to request the MSPB to review the final decision in the case of any action that could have been appealed to the MSPB, or, where applicable, to request the Equal Employment Opportunity Commission (“EEOC”) to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the EEOC.</p>	<p>5 C.F.R. § 9701.521(e)(1) - Grievance Procedures (Prohibited Personnel Practices Involving Employment Discrimination)</p> <p>An aggrieved employee affected by a prohibited personnel practice under 5 U.S.C. § 2302(b)(1) which also falls under the coverage of the negotiated grievance procedure may raise the matter under the applicable statutory procedures, or the negotiated procedure, but not both.</p>
<p>5 U.S.C. § 7121(h) - Grievance Procedures (Limits on Settlements and Awards)</p> <p>Settlements and awards under 5 U.S.C. chapter 71 shall be subject to the limitations in 5 U.S.C. § 5596(b)(4).</p>	<p>No similar provision.</p>
<p>5 U.S.C. § 7122 - Exceptions to Arbitration Awards</p> <p>Either party to arbitration under 5 U.S.C. chapter 71 may file with the FLRA an exception to any arbitrator’s award. If upon review, the FLRA finds that the award is deficient because it is contrary to any law, rule, or regulation, or on the grounds similar to those applied by federal courts in private sector labor-management relations, it may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations. If no exception to an arbitrator’s award is filed during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding.</p>	<p>5 C.F.R. § 9701.522 - Exceptions to Arbitration Awards</p> <p>For awards involving the exercise of management rights or the duty to bargain under 5 C.F.R. §§ 9701.511 and 9701.518, either party to the arbitration may file an exception to any arbitrator’s award with the Board. The Board may take such action and make such recommendations concerning the award as is consistent with subpart E. If no exception to an arbitrator’s award is filed during the 30-day period beginning on the date of such award, the award is final and binding.</p> <p>For other awards, either party may file an exception with the FLRA pursuant to 5 U.S.C. § 7122 and the FLRA’s regulations.</p>
<p>5 U.S.C. § 7131 - Official Time</p> <p>Any employee representing an exclusive representative in the negotiation of a</p>	<p>5 C.F.R. § 9701.523 - Official Time</p> <p>Any employee representing an exclusive representative in the negotiation of a</p>

Current Law	Final DHS Regulations
<p>collective bargaining agreement under 5 U.S.C. chapter 71 shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. Except as provided in 5 U.S.C. § 7131(a), the FLRA shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the FLRA shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.</p>	<p>collective bargaining agreement under subpart E must be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. Except as provided in 5 C.F.R. § 9701.523(a), the FLRA or the Board will determine whether an employee participating for, or on behalf of, a labor organization in any phase of proceedings before the FLRA or the Board will be authorized official time for such purpose during the time the employee would otherwise be in a duty status.</p>
<p>5 U.S.C. § 7133 - Compilation and Publication of Data</p> <p>The FLRA shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the FSIP under 5 U.S.C. § 7119. All files shall be open to inspection and reproduction in accordance with the provisions of 5 U.S.C. §§ 552 and 552a.</p>	<p>5 C.F.R. § 9701.524 - Compilation and Publication of Data</p> <p>The Board must maintain a file of its proceedings and copies of all available agreements and arbitration decisions and publish the texts of its impasse resolution decisions and the actions taken under 5 C.F.R. § 9701.919. All files must be open to inspection and reproduction in accordance with 5 U.S.C. §§ 552 and 552a. The Board will establish rules in consultation with the Department for maintaining and making available for inspection sensitive information.</p>
<p>5 U.S.C. § 7135(a)(2) - Continuation of Existing Laws, Recognitions, Agreements, and Procedures (Units of Management Officials or Supervisors)</p> <p>Nothing contained in 5 U.S.C. chapter 71 shall preclude the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of 5 U.S.C. chapter 71.</p>	<p>No similar provision.</p>

Current Law	Final DHS Regulations
No similar provision.	<p>5 C.F.R. § 9701.527 - Savings Provision</p> <p>Subpart E of part 9701 does not apply to grievances or other administrative proceedings already pending on the effective date of the subpart, as determined under 5 C.F.R. § 9701.102(b). Any remedy that applies after the date of coverage under any provision of subpart E and that is in conflict with applicable provisions of subpart E is not enforceable.</p>

EveryCRSReport.com

The Congressional Research Service (CRS) is a federal legislative branch agency, housed inside the Library of Congress, charged with providing the United States Congress non-partisan advice on issues that may come before Congress.

EveryCRSReport.com republishes CRS reports that are available to all Congressional staff. The reports are not classified, and Members of Congress routinely make individual reports available to the public.

Prior to our republication, we redacted names, phone numbers and email addresses of analysts who produced the reports. We also added this page to the report. We have not intentionally made any other changes to any report published on EveryCRSReport.com.

CRS reports, as a work of the United States government, are not subject to copyright protection in the United States. Any CRS report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS report may include copyrighted images or material from a third party, you may need to obtain permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

Information in a CRS report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to members of Congress in connection with CRS' institutional role.

EveryCRSReport.com is not a government website and is not affiliated with CRS. We do not claim copyright on any CRS report we have republished.