

CRS Report for Congress

DHS's Max-HR Personnel System: Regulations on Classification, Pay, and Performance Management Compared With Current Law, and Implementation Plans

Updated May 4, 2007

Barbara L. Schwemle
Analyst in American National Government
Government and Finance Division



Prepared for Members and
Committees of Congress

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Summary

The most recent legislative development on the implementation of a new personnel system at the Department of Homeland Security (DHS) is that H.R. 1684, DHS Authorization Act for FY2008, as ordered to be reported by the House Committee on Homeland Security on March 28, 2007, would repeal the authority for that system. The bill is expected to be considered by the House in early May 2007.

The DHS Secretary and the Director of the Office of Personnel Management were authorized to prescribe joint regulations for a new human resources management system for DHS employees with the enactment of P.L. 107-296, the Homeland Security Act of 2002. The final regulations for that system, called Max-HR, were published in the *Federal Register* on February 1, 2005. This report compares the final regulations with current law under Title 5 of the *United States Code* and relevant regulations under Title 5 of the *Code of Federal Regulations*. Specifically, Subparts A (General Provisions), B (Classification), C (Pay and Pay Administration), and D (Performance Management) of the final regulations are examined.

With regard to classification, pay, and performance management, the regulations prescribe the following. The classification system will organize the department's jobs into clusters by major occupational groups. Within each occupational cluster, open pay bands with no steps will be established. Each pay band typically will have four levels — entry/developmental, full performance, senior expert, and supervisory. Employees will progress through a pay band based on performance or enhanced skill level. The pay system will provide an annual pay adjustment, supplemented by a locality pay rate or a special pay rate in appropriate circumstances, to employees who meet or exceed performance expectations. In addition, employees in a Full Performance or higher pay band may receive a performance-based pay increase, based primarily on accomplishing work assignments and achieving results. Employees will not lose pay upon their transition to the pay system. The performance management system ties employee performance appraisal to the DHS mission and to specific performance standards based on job assignments. Quotas or forced distributions will not be imposed on the performance ratings. A Homeland Security Compensation Committee, chaired by the DHS Undersecretary for Management, will provide options and/or recommendations to the Secretary on various strategic compensation matters, including the annual adjustment of rate ranges and locality and special pay rate supplements for the department's employees. The committee will have 14 members, four of whom will represent labor organizations granted national consultation rights. The regulations provide broad policy parameters. DHS will issue implementing directives to provide the details of these policies. The directive on performance management was published on March 23, 2006. Directives on other aspects of the new system are in development. Max-HR is expected to be implemented in phases beginning in early 2007, with the first performance-based pay adjustments being granted in January 2008.

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DHS's Max-HR Personnel System: Regulations on Classification, Pay, and Performance Management Compared With Current Law, and Implementation Plans

Introduction

President George W. Bush signed the Homeland Security Act of 2002 on November 25, 2002, and it became P.L. 107-296. Title VIII, Subtitle E, Section 841 of the law amends Title 5 *United States Code* by adding a new Chapter 97 — Department of Homeland Security (DHS) to Part III, Subpart I. The new §9701(a) provides that, notwithstanding any other provision of Part III, 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 (HRM) system for some or all of the organizational units of the Department of Homeland Security. The law states specific requirements for the HRM system.¹

On February 20, 2004, DHS and OPM jointly published a proposed rule to implement a new HRM system for DHS in the *Federal Register*.² The final rule for that system, called Max-HR, was published in the *Federal Register* on February 1, 2005.³ The design process that culminated in the proposed rule for the new system was discussed in the rule's background section.⁴ Briefly, a design team, composed of DHS program managers, union and employee representatives, DHS and OPM human resource specialists, and private sector experts, conducted research and meetings in the field to compile options for the new system. A senior review committee, composed of DHS and OPM top management officials, major union leaders, and several experts from academia, developed the options for consideration by the DHS Secretary and the Director of OPM and their senior staff.

¹ See CRS Report RL31500, *Homeland Security: Human Resources Management*, by Barbara L. Schwemle.

² U.S. Department of Homeland Security and U.S. Office of Personnel Management, "Department of Homeland Security Human Resources Management System," *Federal Register*, vol. 69, no. 34, February 20, 2004, pp. 8029-8071.

³ U.S. Department of Homeland Security and U.S. Office of Personnel Management, "Department of Homeland Security Human Resources Management System," *Federal Register*, vol. 70, no. 20, February 1, 2005, pp. 5271-5347.

⁴ "Designing Options for a New HR System," in February 20, 2004, proposed rule, op. cit., pp. 8031-8035.

Broad policy parameters are provided in the final regulations. The details of these policies will be included in implementing directives to be issued by DHS. On March 23, 2006, the directive on performance management was published. Directives on other aspects of the new system are in development. The final regulations include the following information on classification, pay, and performance management.

- *Classification.* The department's jobs will be organized into clusters by major occupational groups. The current 15 grades and ten steps of the General Schedule pay system will be abolished and replaced, within each occupational cluster, by open pay bands without steps. There typically will be four levels — entry/developmental, full performance, senior expert, and supervisory — for each pay band. Salaries within the pay bands will be set based on mission requirements, labor market conditions, availability of funds, pay adjustments received by other federal employees, and any other relevant factors. Employees will progress through a pay band based on performance or enhanced skill level.
- *Pay Adjustments.* For each occupational cluster, there will be an annual pay adjustment, and locality pay rate and special pay rate supplements as appropriate, based on mission requirements, labor market conditions, availability of funds, pay adjustments received by other federal employees, and any other relevant factors. An employee must meet or exceed performance expectations to receive these pay adjustments. In addition, employees with a high level of performance that supports the accomplishment of the department's mission may receive a performance-based pay increase; higher increases would go to outstanding performers. The pay-outs for pay adjustments and awards will depend on DHS's funding. The formula that will be used to determine the size of performance-based pay adjustments has not yet been defined. Employees will not lose pay as they transition to the new system. The DHS Undersecretary for Management will chair a Homeland Security Compensation Committee which will provide options and/or recommendations to the Secretary on various strategic compensation matters, including the annual adjustment of rate ranges and locality and special pay rate supplements for the department's employees. Of the committee's 14 members, four will represent labor organizations granted national consultation rights.
- *Performance Management.* Appraisal of employee performance will be tied to the DHS mission and to specific performance standards based on job assignments. Generally, three or four rating levels will be established. The system will *not* have quotas or forced distributions of performance ratings. Managers and supervisors will be trained to appraise employee performance. The directive on performance management published on March 23, 2006, identifies these core competencies: (1) achieving results, (2) technical proficiency, (3) customer service (except for positions in the 1811

and 1896 series), (4) teamwork/cooperation, (5) communications, and (6) representing the agency. Managers and supervisors have additional core competencies on assigning, monitoring, and evaluating work, and leadership. The directive provides for four rating levels — “Achieved Excellence,” “Exceeded Expectations,” “Achieved Expectations,” and “Unacceptable.”⁵

The Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs, and the House Subcommittee on the Federal Workforce and Agency Organization of the Committee on Government Reform conducted hearings on the final regulations shortly after they were published. The testimony of Ronald James, then-Chief Human Capital Officer at DHS, and Ronald Sanders, then Associate Director for Strategic Human Resources Policy at OPM, and their written responses to questions for the hearing record provide additional information about the policies embodied in the final regulations. **Table 1** below presents the views of Mr. James and Mr. Sanders as stated for the February 10, 2005, Senate subcommittee hearing and the March 2, 2005, House subcommittee hearing on issues related to classification, pay, and performance management.

Table 1. Views of DHS and OPM Representatives on Selected Policies in the Final Regulations on Max-HR as Expressed at Senate and House Subcommittee Hearings

Issue	Views
<i>Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Committee on Homeland Security and Governmental Affairs Hearing</i>	
job classification	“DHS will establish definitions for a small number of broad pay bands (typically 4-5), within occupational clusters. Grading criteria will be developed for these broad pay bands that will specify the type and range of difficulty and responsibility, qualifications, competencies, or other characteristics of the work encompassed by the band ... allow[ing] us to describe a range of work ...” (James and Sanders, same written response)
performance evaluations	“OPM (or OPM and DHS) will treat performance evaluations for DHS employees under 5 U.S.C. chapter 97 as personnel actions for purposes of enforcing the ban against prohibited personnel practices under 5 U.S.C. §2302.” (Sanders, written response)

⁵ U.S. Department of Homeland Security, Management Directives System, *Performance Management*, MD Number 3181, March 23, 2006. Provided to CRS by electronic mail, by Human Resources staff at DHS, March 27, 2006.

Issue	Views
pass/fail system for rating performance	<p>“my personal professional judgment is ... that we do not want to use pass/fail anywhere beyond the entry level, the training level, and the school level.” (James, oral response)</p>
annual pay adjustments	<p>“DHS will have the following type of annual pay adjustment features: market-based pay which will be based on a market survey approach; Locality Rate Supplements which will be based on the cost of labor at different localities or geographic areas; and performance based pay increases which will be based on individual performance. The DHS compensation plan will also offer a special rate supplement which will provide a higher pay level for subcategories of employees within an occupational cluster if warranted by current or anticipated recruitment or retention needs.” (James, written response)</p>
locality pay	<p>“DHS will have greater flexibility in setting [locality rate supplements] based on labor market conditions and other factors DHS may provide for different locality rate supplement percentages for different occupational categories and different band levels.” (James, written response)</p>
Homeland Security Compensation Committee (HSCC)	<p>“The HSCC will be an advisory body to the Secretary for making annual recommendations regarding strategic pay decisions such as budget allocation for market and locality adjustments and aggregate review of performance ratings and performance payouts. The HSCC will also recommend process improvements or policy changes to improve program effectiveness. The Secretary or designee will make final decisions. We appreciate the suggestion to publish internally the overall results of performance management decisions and will consider doing so ...” (James, written response)</p>

Issue	Views
<p>performance appraisal of managers</p>	<p>“[E]ach manager’s goals will be based on his or her manager’s goals, thus creating a ‘line of sight’ cascade that starts with the Secretary and his direct reports and is repeated through the chain, creating subsets of goals that all point to the Department’s mission objectives. With this cascade comes responsibility and accountability for managers to not only set appropriate goals, but to actually nurture their employees to achieve success. Because employees’ goals will be tied directly to their manager’s goals, the manager’s success is tied to how well employees perform. And finally, managers will also be assessed on their management skills ... including their ability to justify and stand behind pay decisions. Employee climate surveys and use of 360 degree performance appraisal systems are being seriously considered ... to ensure that employees have a voice in providing feedback on how well their leaders are leading ...” (James, written response)</p>
<p><i>House Subcommittee on the Federal Workforce and Agency Organization of the Committee on Government Reform Hearing</i></p>	
<p>communication of core competencies</p>	<p>“We are not considering amending the regulations to provide that core competencies be communicated in writing. During the meet-and-confer process, the participating labor organizations agreed that performance expectations (including core competencies) need not be in writing performance expectations, including those that may affect an employee’s retention in the job, must be communicated to the employee prior to holding the employee accountable for them.” (James, written response)</p>
<p>performance management system</p>	<p>“We will emphasize a greater role for Departmental leaders in ensuring mission and individual goal alignment and holding individual employees accountable for results and ensuring that compensation decisions are driven by performance employees along with their supervisor will work together to align their individual goals with the larger goals of the Department. By setting specific milestones and creating a direct line of sight between individual jobs and mission-achievement there will be a clear picture of what is expected during the performance cycle.” (James, written response)</p>

Issue	Views
<p>mathematical formula for performance payouts</p>	<p>“There are four variables ... performance rating, pay pool and the dollars in the pay pool, and the ratings distribution ... let us focus on those people who ‘meet expectations,’ ‘exceed expectations,’ and who are ‘outstanding’ Each of those [performance] ratings has a point value. That point value is established at a higher headquarters through oversight of the Compensation Committee. The funding in that pay pool is also established at a higher headquarters with oversight from the Compensation Committee. You simply take the rating, multiply it times the point value, and divide the points into the dollars, and you get your share of the pool.... The regulations absolutely positively bar and prohibit forced distributions of ratings. You can’t bust the budget because the pool is finite. You simply divide the available dollars in the pool amongst the employees based on their rating. And the amount in the pool, the amount of the Department’s payroll that will go to performance pay is set by the Secretary on the advice and input of the Compensation Committee, four members of which are from the Department’s two major unions ... they will determine how much of the Department’s annual appropriations increase in payroll goes to performance, the national market adjustments and local market adjustments. Secretary reserves the right to make final decisions.... They will decide how that is divided up by location and occupation and how much goes into the performance pay pool....” and later, “There is enough in the performance pay pool to make sure that fully successful employees get shares that are worth something, those who exceed expectations get shares that are worth more, and those that are outstanding get even more.” (Sanders, oral responses)</p>
<p>an employee who receives an “unacceptable” performance rating</p>	<p>“If the employee is at the minimum level of pay, he or she is unacceptable and everybody else in the pay range goes up because they get across-the-board increases, the regulations require management to take action in 90 days Either the employee’s performance improves and they move back up into the range with everyone else, or the Department either demotes or removes the employee.” (Sanders, oral response)</p>

Issue	Views
employee understanding of the pay system	“will be measured through periodic employee attitude surveys Fair administration and meaningful performance adjustments will be gauged both by these surveys and by periodic quantitative analyses of pay adjustments data (ratings given by managers and amounts of increases throughout the department) ... as well as review of payout information by the DHS Compensation Committee.” (James, written response)
prohibition on forced distributions or quotas	“DHS will conduct ongoing evaluations DHS will deploy an automated performance management system ... will include a reporting feature that will provide the capability to produce standard reports that will identify trends and detect patterns in distribution that indicate forced distribution curves.” (James, written response)

Sources: U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Unlocking the Potential Within Homeland Security: The New Human Resources System*, hearing, 109th Cong., 1st sess., Feb. 10, 2005 (Washington: GPO, 2005), pp. 17, 313, 318, 320, 321, 326, and 327. U.S. Congress, House Committee on Government Reform, Subcommittee on the Federal Workforce and Agency Organization, *The Countdown to Completion: Implementing the New Department of Homeland Security Personnel System*, hearing, 109th Cong., 1st sess., Mar. 2, 2005 (Washington: GPO, 2005), pp. 102, 108, 109, 219, 220, 224, 225, and 227. The views expressed in the table are those of Ronald James, then-Chief Human Capital Officer at DHS, and Ronald Sanders, then-Associate Director for Strategic Human Resources Policy at OPM.

Implementation

According to a DHS and OPM Fact Sheet on the final regulations, the new HRM system will cover about 110,000 of the department’s 180,000 employees.⁶ Transportation Security Administration (TSA) employees, Inspector General employees, and employees appointed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act will not be covered by the system. The Secret Service is excluded from the labor-management relations provisions and its Uniformed Division employees are not covered by the classification and pay provisions. Blue-collar employees under the wage grade system are excluded from the classification and pay provisions during the initial implementation of the system. Members of the Senior Executive Service (SES) are covered by the government-wide pay-for-performance system.

At the time that the final regulations were published in February 2005, a phased implementation of Max-HR according to the following timetable was envisioned:

⁶ U.S. Department of Homeland Security, *DHS and OPM Final Human Resource Regulations Fact Sheet*, January 26, 2005. (Available on the Internet at [http://www.dhs.gov], visited March 24, 2006.)

Time Period	Implementation Steps
Early in 2005	Communication outreach begins; Detailed design work, including collaboration with employee representatives; Meetings and focus groups held around the country.
Spring 2005	Training of managers and supervisors begins; The labor relations and adverse actions and appeals provisions become effective.
Summer 2005	Managers, supervisors, and employees receive performance management training.
Fall 2005	The performance management process begins.
Early 2006	DHS Headquarters, Information Analysis and Infrastructure Protection, Science and Technology, Emergency Preparedness and Response, and Federal Law Enforcement Training Center are converted to the new pay system. The first rate range adjustment and performance pay-out is scheduled for January 2007.
Early 2007	U.S. Secret Service and U.S. Coast Guard (USCG) are converted to the new pay system. The first rate range adjustment and performance pay-out is scheduled for January 2008. (The USCG performance pay-out is scheduled for Summer 2008.)
Early 2008	U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services are converted to the new pay system. The first rate range adjustment and performance pay-out is scheduled for January 2009.

This timetable has since been revised. In early September 2005, DHS announced in the department's newsletter that the employees who were initially scheduled to move into Max-HR in early 2006 would instead do so in early 2007, at the same time that the U.S. Secret Service and USCG employees are scheduled to join the new system. The first rate range adjustment and performance pay-out for these employees would be granted in January 2008. The remainder of the implementation schedule was expected to remain the same. Commenting on the revised schedule, Colleen M. Kelley, president of the National Treasury Employees Union, stated that "leaving the rest of the calendar on the back end unchanged" means that "DHS will be moving a larger number of employees into the pay system at the same time, losing the advantages of a phased approach." She called for "a delay of the entire rollout."⁷ The DHS Secretary is required by P.L. 109-295 to report to

⁷ Louis C. LaBrecque, "DHS to Delay Implementation of MaxHR Pay System; Labor Battle Continues," *Government Employee Relations Report*, vol. 43, September 13, 2005.

the House and Senate Committees on Appropriations in January 2007 on an updated plan for Max-HR (see the “Funding” section below.)

In his report to DHS employees on the agency’s results agenda, the Secretary of Homeland Security, Michael Chertoff, stated that training and communications will be ongoing as Max-HR becomes operational. During FY2006, among other initiatives, the effectiveness of the department’s training was to be evaluated, gaps in employee competencies were to be further defined and addressed, and opportunities for employees to develop their leadership capabilities were to be enhanced.⁸

On December 9, 2006, the Senate, by voice vote, confirmed Paul A. Schneider to be the new Undersecretary for Management at DHS. (The previous undersecretary, Janet Hale, who had been with DHS since its founding, left the department in late May 2006.) During the Senate Committee on Homeland Security and Governmental Affairs hearing on his confirmation, he reportedly assured Senator Susan Collins that DHS officials would create “an effective method of evaluating employees’ job performance and would work with unions on structuring the pay aspects as well as grievance procedures” of Max-HR.⁹

Funding.¹⁰ The President’s FY2007 budget requested an appropriation of \$71.449 million to fund Max-HR, \$41.749 million more than the amount provided in FY2006. The full time equivalent (FTE) employees attached to the account were 27, an increase of 15 FTEs over FY2006. Almost 94% of the requested money was for salaries and benefits (\$3.153 million) and advisory and assistance services (\$63.984 million). Accounting for the increased funding were (1) implementation costs of the new pay system for employees who were originally scheduled to be converted in FY2006 (\$15 million), (2) implementation and operational costs for a market- and performance-based compensation system in FY2007 (\$22 million), and (3) funding the Homeland Security Labor Relations Board (HSLRB) (\$4.749 million).¹¹ P.L. 109-295, the Department of Homeland Security Appropriations Act for FY2007, provides funding of \$25 million for Max-HR (some \$46.449 million below the President’s request).

⁸ U.S. Department of Homeland Security, *Securing the Success of DHS Results*, 2005, p. 14, available at [<http://www.dhs.gov>], visited March 24, 2006.

⁹ Stephen Barr, “Personnel Policy Challenges Await the New DHS Management Chief,” *The Washington Post*, December 14, 2006, p. D4.

¹⁰ For an analysis of the FY2007 appropriations for Max-HR, see the “Personnel Issues” section of CRS Report RL33428, *Homeland Security Department: FY2007 Appropriations*, coordinated by Jennifer E. Lake and Blas Nunez-Neto. For the FY2006 appropriations, see the “Personnel Issues” section of CRS Report RL32863, *Homeland Security Department: FY2006 Appropriations*, coordinated by Jennifer E. Lake and Blas Nunez-Neto.

¹¹ U.S. Department of Homeland Security, *FY2007 Congressional Justification, Departmental Management and Operations*, Under Secretary for Management, Office of Human Capital and Office of Human Capital — MaxHR, pp. USM-43 - USM-50.

FY2008 Budget and Personnel Issues

The Office of Human Capital (OHC) at DHS reports to the Under Secretary for Management, and its appropriation is included in that of the Under Secretary. The OHC appropriation has two parts. The first part, formerly labeled “HR Operations” and now labeled “OHC,” includes funding for the office which is responsible for the overall management and administration of human capital in DHS. As such, the office establishes policy and procedures and provides oversight, guidance, and leadership for the department’s human resources functions. The second part, formerly labeled “MaxHR” and now labeled “OHC — Operational Initiatives and HR Management System,” includes funding for the OHC organization, which “is responsible for creating, implementing, and operating DHS’ new human resources system, ensuring that organizational goals and individual work performance are linked, and that employees are compensated based on their contributions to agency performance.” The OHC organization also “is responsible for ensuring that DHS recruits, hires, trains, and retains the very best workforce, provides the highest quality leadership development, and creates a performance culture in the workforce to ensure DHS succeeds in its mission.”¹² **Table 2** below shows the funding and staff for the OHC from FY2005 through the budget request for FY2008.

Table 2. Office of Human Capital (OHC) Appropriations, FY2005-FY2008
(in millions)

Account	FY2005 Enacted	FY2006 Enacted	FY2007 Enacted	FY2008 Request	FY2008 Request Compared to FY2007 Enacted
“OHC” (formerly “HR Operations”)	\$7	\$9	\$9	\$10	\$1
“OHC — Operational Initiatives and HR Management System” (formerly “MaxHR”)	\$36	\$30	\$25*	\$15	-\$10
Total	\$43	\$39	\$34	\$25	-\$9
Staffing (full time equivalent, FTE, positions)	49	62 (12 for “MaxHR”)	53	60	7

Note: This amount does not reflect the transfer of \$5 million from “MaxHR” to the Transportation Security Administration as provided by Section 21101 of P.L. 110-5, the Revised Continuing Appropriations Resolution for FY2007, enacted on Feb. 15, 2007, (121 Stat. 8). The numbers in the table are rounded.

¹² *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management*, p. USM-2.

Sources: P.L. 108-334, Oct. 18, 2004, 118 Stat. 1298; P.L. 109-90, Oct. 18, 2005, 119 Stat. 2064; P.L. 109-295, Oct. 4, 2006, 120 Stat. 1355, at 1356, and *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital, and Office of Human Capital — Max-HR*, pp. USM-39 - USM-44.

As directed by the conference report¹³ accompanying P.L. 109-295, the Department of Homeland Security Appropriations Act for FY2007, the Under Secretary for Management submitted an expenditure plan for the DHS Human Resources Management System (HRMS) (formerly “MaxHR”) for FY2007 to the House and Senate Committees on Appropriations on February 1, 2007. The report’s cover letter states that in FY2007 the HRMS “will be broadened ... to encompass additional aspects of FY2007 Human Capital Operational Plan (HCOP), including an increased focus on employee recruiting and advanced homeland security related education.”¹⁴ Among other data, the report states that the contractor Northrop Grumman Information Technology (NGIT) received a contract worth almost \$3 million dollars to provide services through January 31, 2007, related to program management; pay, performance, and classification; and training, communications, and organizational change management at DHS. According to the report, NGIT is being awarded another contract, worth more than \$16 million, to provide services to the department through September 30, 2007, in the same areas identified above and labor relations.¹⁵

The transfer of the Office of Federal Law Enforcement Training Accreditation (FLETA) from the Federal Law Enforcement Training Center to the OHC accounts for the increase of \$1 million and seven full-time equivalent employees over the FY2007 appropriation for the “OHC” account. Almost 93% of the money requested for FY2008 under this account is for salaries and benefits (\$8 million) and advisory and assistance services (\$2 million) that includes services acquired by contract from non-federal sources.¹⁶ The appropriation will fund continued implementation of the Human Capital Operational Plan for FY2007 to FY2009, development of an employee talent bank for use throughout the department, creation of standards to assess and evaluate learning and development programs, and participation of all new DHS employees in a department-wide orientation program.¹⁷ Some 76% of the money requested for FY2008 under the “OHC — Operational Initiatives and HR Management System” account is for advisory and assistance services (\$11 million).

¹³ U.S. Congress, Conference Committees, 2006, *Making Appropriations for the Department of Homeland Security For the Fiscal Year Ending September 30, 2007, and For Other Purposes*, conference report to accompany H.R. 5441, 109th Cong., 2nd sess., H.Rept. 109-699 (Washington, DC: GPO, 2006), p. 119.

¹⁴ Letter to Representative David E. Price, Chairman, House Subcommittee on Homeland Security of the House Committee on Appropriations from Paul A. Schneider, Under Secretary for Management, U.S. Department of Homeland Security, February 1, 2007.

¹⁵ *Report to Congress, Spend Plan for MaxHR, Office of Human Capital, Department of Homeland Security, January 4, 2007*, p. 7. Accompanied the letter cited in footnote 5.

¹⁶ *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital*, pp. USM-39 - USM-41.

¹⁷ *FY2008 DHS Justifications, Under Secretary for Management, Strategic Context*, p. USM-3.

No funding is requested for salaries and benefits.¹⁸ The appropriation will fund continued training of the DHS workforce in pay for performance and a new pay system pilot project that will cover employees in the department who work in the intelligence area. The pilot will be implemented jointly with the Director of National Intelligence who is developing a pilot pay system for employees of the intelligence agencies. It also will fund investment in recruitment and retention programs along with learning and development initiatives to address gaps in skills and competencies, and deployment of career paths and rotations to facilitate the mobility of DHS employees through various leadership positions in the department.¹⁹

There are new incumbents for both the Under Secretary and Chief Human Capital Officer positions at DHS. Paul Schneider assumed the former position on February 1, 2007, and Marta Brito Perez the latter position on September 18, 2006. During his confirmation hearing on December 6, 2006, Mr. Schneider told the members of the Senate Committee on Homeland Security and Governmental Affairs that he would make sure that DHS officials create an effective method of evaluating employees' job performance.

In January 2007, the Culture Task Force of the Homeland Security Advisory Council issued a report to the DHS Secretary. Among its recommendations were that DHS staff be referred to as "employees" or "members" of DHS and not as "human capital," and that "members of the headquarters" be required to visit and listen "to employees and engage and support groups outside the headquarters" and respond within 30 days on actions taken to address their concerns.²⁰ The task force believes that "there can be no hierarchically imposed 'single culture' within the Department," but that "an overarching and blended culture can be developed that is based on threads of common values, goals, and focus of mission among DHS headquarters and its component organizations." With regard to developing and sustaining such a culture, the task force advised that "there are organizations in the Private Sector that will deploy and embed within DHS qualified, objective, emotionally and organizationally detached personnel to help develop the leadership's vision and strategic goals of creating a Homeland Security (rather than DHS) Mission Culture and then monitor, objectively test, and support progress in achieving, continually improving and sustaining an operationally focused, innovation and people rewarding

¹⁸ *FY2008 DHS Justifications, Departmental Management and Operations, Undersecretary for Management, Office of Human Capital — Max-HR*, pp. USM-42 - USM-44.

¹⁹ *FY2008 DHS Justifications, Under Secretary for Management, Strategic Context*, p. USM-4. On January 23, 2007, 27 employees in General Schedule grades 14 and 15 and representing various components of DHS began a year-long fellowship program designed to prepare them for future leadership positions in the department. The program is intended to establish a common culture at DHS and encourage cooperation among the different agencies that comprise the department.

²⁰ Homeland Security Advisory Council, *Report of the Culture Task Force*, January 2007, pp. 2-3. Section 871 of P.L. 107-296 (116 Stat. 2243) authorized the council which provides advice and recommendations to the DHS Secretary on homeland security matters. In June 2006, Secretary Chertoff directed the council to establish the task force "to provide observations and recommendations for achieving and maintaining an empowering, energetic, dedicated, mission-focused culture within the Department"

culture.”²¹ The task force recommended that such contract employees work under the direction of a senior (preferably career) DHS employee and with staff from the department’s component agencies.

Legislation Pending in the 110th Congress

Representative Bennie Thompson introduced H.R. 1684, the Department of Homeland Security Authorization Act for FY2008, on March 26, 2007. It was referred to the House Committee on Homeland Security where it was marked up and ordered to be reported, on a 26-0 vote, on March 28, 2007. During the markup, an amendment to repeal the authority for the new human resources management system at DHS that was offered by Representative Sheila Jackson-Lee was agreed to on a 17-13 vote. H.R. 1684 is expected to be considered by the House in early May 2007.

This report compares the final regulations for Subparts A (General Provisions), B (Classification), C (Pay and Pay Administration), and D (Performance Management) of the Department of Homeland Security’s HRM system with current law under Title 5 *United States Code* and relevant regulations under Title 5 *Code of Federal Regulations*. For an analysis of the regulations for Subpart E on Labor-Management Relations and the court case which resulted from those rules, see CRS Report RL32255, *Homeland Security: Final Regulations for the Department of Homeland Security Human Resources Management System (Subpart E) Compared With Current Law*, by Jon O. Shimabukuro; and CRS Report RL33052, *Homeland Security and Labor-Management Relations: NTEU v. Chertoff*, by Thomas J. Nicola and Jon O. Shimabukuro. P.L. 107-296, the Homeland Security Act of 2002, amended Title 5 provisions that are applicable to most federal employees, and it is these provisions (rather than those which have been provided in separate statutes to employees at the Internal Revenue Service, Federal Aviation Administration, Transportation Security Administration, Department of Defense, and the National Aeronautics and Space Administration) that are compared with the proposed DHS regulations.

²¹ *Ibid.*, pp. 5-6.

Table 3. Department of Homeland Security Human Resources Management System: Final Regulations Compared With Current Law/Selected Regulations

<p style="text-align: center;">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p style="text-align: center;">Final DHS Regulations</p>
<p>Subpart A — General Provisions</p>	
<p>5 U.S.C. §9701. Establishment of human resources management system. (a) Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, 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.</p>	<p>§9701.101. Purpose. To establish a system that is mission-centered, performance-focused, flexible, contemporary, and excellent; that generates respect and trust through employee involvement; that is based on the principles of merit and fairness embodied in the statutory merit system principles; and that complies with all other applicable laws.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.102. Eligibility and coverage. All DHS civilian employees are eligible for coverage under one or more subparts of 5 CFR Part 9701 except those covered by a provision of law outside the chapters of Title 5 <i>United States Code</i> identified in §9701.104 which can be waived. For example Transportation Security Administration (TSA) employees, employees appointed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Secret Service Uniformed Division members, Coast Guard Academy faculty members, and Coast Guard military members are not eligible for coverage under any classification or pay system established under Subpart B or C. Each subpart provides specific information regarding coverage.</p>

<p>Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p>Final DHS Regulations</p>
<p>5 U.S.C. Chapter 53, Subchapter VIII — Pay for the Senior Executive Service.</p>	<p>Subpart A becomes applicable to all eligible employees 30 days after the date of publication in the <i>Federal Register</i>. With respect to Subparts B, C, and D, the Secretary or designee may, at his or her sole and exclusive discretion and after coordination with OPM, apply one or more of these subparts to a specific category or categories of eligible civilian employees at any time. With respect to any given category of civilian employees, the Secretary or designee may apply some of these subparts, but not others, and such coverage determinations may be made effective on different dates (e.g., in order to phase in coverage under a new classification, pay, and performance management system). DHS will notify affected employees and labor organizations in advance of the application of one or more subparts to them. Until the Secretary or designee makes such a determination to apply the provisions of one or more subparts to a particular category or categories of eligible DHS employees, those employees will continue to be covered by the applicable federal laws and regulations that would apply to them in the absence of 5 CFR Part 9701. All personnel actions affecting DHS employees must be based on the federal laws and regulations applicable to them on the effective date of the action.</p> <p>Any new DHS classification, pay, or performance management system covering Senior Executive Service (SES) members must be consistent</p>

<p style="text-align: center;">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p style="text-align: center;">Final DHS Regulations</p>
	<p>with the policies and procedures established by the government-wide SES pay-for-performance system authorized by 5 U.S.C. Chapter 53, Subchapter VIII, and applicable implementing regulations issued by OPM. If the Secretary determines that SES members employed by DHS should be covered by classification, pay, or performance management provisions that differ substantially from the government-wide SES pay-for-performance system, the Secretary and the Director must issue joint regulations consistent with all of the requirements of 5 U.S.C. §9701.</p> <p>At his or her sole and exclusive discretion, the Secretary or designee may, after coordination with OPM, rescind the application of one or more subparts to a particular category of employees and prescribe implementing directives for converting that category of employees to coverage under applicable Title 5 provisions. DHS will notify affected employees and labor organizations in advance of such a decision.</p> <p>The Secretary or other authorized DHS official may exercise an independent legal authority to establish a parallel system that follows some or all of the requirements in 5 CFR Part 9701 for a category of employees who are not eligible for coverage under 5 U.S.C. §9701.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.103. Definitions. Various terms are defined, including: “Authorized agency official” means the Secretary or an official who is authorized to act for the Secretary in the matter concerned.</p>

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<p>5 U.S.C. §2105. Employee. (a) “Employee” means an officer and an individual who is appointed in the civil service by one of the following acting in an official capacity — the President; a Member or Members of Congress, or the Congress; a member of a uniformed service; an individual who is an employee under this section; the head of a government controlled corporation; or</p>	<p>“Coordination” means the process by which DHS, after appropriate staff-level consultation, officially provides OPM with notice of a proposed action and intended effective date. If OPM concurs, or does not respond to that notice within 30 calendar days, DHS may proceed with the proposed action. However, if OPM indicates the matter has government-wide implications or consequences, DHS will not proceed until the matter is resolved. The coordination process is intended to give due deference to the flexibilities afforded DHS by the Homeland Security Act and the regulations in 5 CFR Part 9701, without compromising OPM’s institutional responsibility to provide government-wide oversight in HRM programs and practices.</p> <p>“Implementing directives” means directives issued at the departmental level by the Secretary or designee to carry out any policy or procedure established in accordance with 5 CFR Part 9701. These directives may apply department-wide or to any part of the department as determined by the Secretary at his or her sole and exclusive discretion.</p> <p>“Employee” means an employee within the meaning of that term in 5 U.S.C. §2105. “Secretary” means the Secretary of Homeland Security or, as authorized, the Deputy Secretary of Homeland Security.</p> <p>“Secretary or designee” means the Secretary or a DHS official authorized to act for the Secretary in the matter concerned who serves as the Undersecretary for Management or as DHS’ Chief Human Capital</p>

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<p>an adjutant general designated by the Secretary concerned under 32 U.S.C. §709(c). It also means an officer and an individual engaged in the performance of a federal function under authority of law or an executive act; and subject to the supervision of an individual named above while engaged in the performance of the duties of the position.</p>	<p>Officer.</p>
<p>5 U.S.C. §9701. Establishment of human resources management system. (b)(c) The HRM system must be flexible and contemporary. It cannot waive, modify, or otherwise affect:</p> <ul style="list-style-type: none"> — the public employment principles of merit and fitness at 5 U.S.C. §2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing; — any provision of 5 U.S.C. §2302 relating to prohibited personnel practices; — any provision of law referred to in 5 U.S.C. §2302(b)(1)(8)(9); or any provision of law implementing any provision of law referred to in 5 U.S.C. §2302(b)(1)(8)(9) by providing for equal 	<p>§9701.104. Scope of authority. Subject to the requirements and limitations in 5 U.S.C. §9701, these Title 5 chapters and related regulations may be waived or modified: Chapter 43 (performance appraisal systems); Chapter 51 (General Schedule (GS) job classification); Chapter 53 (pay for GS employees, pay and job grading for Federal Wage System employees, and pay for certain other employees); Chapter 71 (labor relations); Chapter 75 (adverse actions and certain other actions); and Chapter 77 (appeal of adverse actions and certain other actions).</p>

<p align="center">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p align="center">Final DHS Regulations</p>
<p>employment opportunity through affirmative action; or providing any right or remedy available to any employee or applicant for employment in the civil service;</p> <p>— Subparts A (General Provisions), B (Employment and Retention), E (Attendance and Leave), G (Insurance and Annuities), and H (Access to Criminal History Record Information) of Part III of Title 5 <i>United States Code</i>; and Chapters 41 (Training), 45 (Incentive Awards), 47 (Personnel Research Programs and Demonstration Projects), 55 (Pay Administration), 57 (Travel, Transportation, and Subsistence), 59 (Allowances), 72 (Antidiscrimination, Right to Petition Congress), 73 (Suitability, Security, and Conduct), and 79 (Services to Employees) of Title 5; or</p> <p>— any rule or regulation prescribed under any provision of law referred to in any of the statements in bullets immediately above.</p>	
<p>5 U.S.C. §9701. Establishment of human resources management system. (h) Effective five years after the conclusion of the transition period defined under §1501 of P.L. 107-296, all authority to issue regulations under the section (including regulations which would modify,</p>	<p>§9701.105. Continuing collaboration. Relates to the participation of employee representatives in developing implementing directives.</p>

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<p>supersede, or terminate any regulations previously issued under the section) must cease to be available. The transition period is the 12-month period that began on the act’s effective date. The act’s effective date was 60 days after the act’s enactment date of November 25, 2002.</p>	
<p>Authority derives from 5 U.S.C. §9701(a)-(c).</p>	<p>§9701.106. Relationship to other provisions. Title 5, <i>United States Code</i>, is waived or modified to the extent authorized by 5 U.S.C. §9701 to conform to 5 CFR Part 9701. This part must be interpreted in a way that recognizes the critical mission of DHS. Each provision must be construed to promote the swift, flexible, effective day-to-day accomplishment of the mission, as defined by the DHS Secretary or designee. The interpretation of the regulations by DHS and OPM must be accorded great deference.</p>
<p>5 U.S.C. Chapter 43 (Performance Appraisal); Chapter 51 (Classification); Chapter 53 (Pay Rates and Systems); Chapter 71 (Labor-Management Relations); Chapter 75 (Adverse Actions); and Chapter 77 (Appeals).</p>	<p>For the purpose of applying other provisions of law or Government-wide regulations that reference provisions under 5 U.S.C. Chapters 43, 51, 53, 71, 75, and 77, the referenced provisions are not waived but are modified consistent with the corresponding regulations in 5 CFR Part 9701, except as otherwise provided in this part or in DHS implementing directives. Applications of this rule include, but are not limited to, the following: If another provision of law or Government-wide regulations requires coverage under one of the chapters modified or waived under 5 CFR</p>

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<p>5 U.S.C. §§4521-4523. Award to Law Enforcement Officers for Foreign Language Capabilities; 5 U.S.C. §5545b (Pay for firefighters); 5 U.S.C. §5545(d) (hardship or hazard pay differentials); 5 U.S.C. §§5753-5754 (Recruitment and relocation bonuses and Retention allowances); 5 U.S.C. §5948 (Physicians comparability allowances); P.L. 101-509, Sec. 407, 5 U.S.C. §5305 note (Relocation payments for law enforcement officers);</p> <p>5 CFR Part 300, Subpart F (Time-in-Grade Restrictions); 5 U.S.C. §5755 (Supervisory differentials); P.L. 101-509, Sec. 404 and 404, 5 U.S.C. 5303 note (Special rates and Special pay adjustments for law enforcement officers).</p> <p>42 U.S.C. §2000e (Equal Employment Opportunity); 29 U.S.C. §621 (Age discrimination in employment); 29 U.S.C. §791 (Employment of individuals with disabilities); 29 U.S.C. §206(d) (Prohibition of sex discrimination); 29 CFR Part 1614 — Federal Sector Equal</p>	<p>Part 9701 (i.e., 5 U.S.C. Chapters 43, 51, 53, 71, 75, and 77), DHS employees are deemed to be covered by the applicable chapter notwithstanding coverage under a system established under this part. Selected examples of provisions that continue to apply to any DHS employees (notwithstanding coverage under Subparts B through G) include, but are not limited to: foreign language awards for law enforcement officers; pay for firefighters; differentials for duty involving physical hardship or hazard; recruitment, relocation, and retention payments; physicians’ comparability allowances; and the higher cap on relocation bonuses for law enforcement officers. Application of the back pay law with regard to attorney fees and labor relations will be consistent with §9701.706(h) and §9701.517, respectively.</p> <p>When a specified category of employees is covered by a classification and pay system established under Subparts B and C, the following provisions do not apply: time-in-grade restrictions that apply to competitive service GS positions; supervisory differentials; and law enforcement officer special rates and geographic adjustments.</p> <p>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 <i>et seq.</i>, 29 U.S.C. §621 <i>et seq.</i>, 29 U.S.C. §791 <i>et seq.</i>, and 29 U.S.C.</p>

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<p>Employment Opportunity (Subparts A-F, including Agency Program to Promote Equal Employment Opportunity, Appeals and Civil Actions, Remedies and Enforcement).</p>	<p>§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.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.107. Program evaluation. DHS will establish procedures for evaluating the regulations and their implementation. Designated employee representatives will be provided with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations. Employee representatives will be involved with the identification of the scope, objectives, and methodology to be used in program evaluation and review of draft findings and recommendations. Involvement in the evaluation process does not waive the rights of any party under applicable law or regulations.</p>
<p align="center">Subpart B — Classification</p>	
<p align="center"><i>General</i></p>	
<p>DHS authority for Subpart B derives from 5 U.S.C. §9701(a)-(c).</p>	<p>§9701.201. Purpose. Subpart B contains regulations establishing a</p>

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<p>5 U.S.C. Chapter 51 — Classification 5 U.S.C. §5101. Purpose. To provide a plan for classification of positions whereby in determining the rate of basic pay which an employee will receive, the principle of equal pay for substantially equal work will be followed, and variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service. Individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, and the various classes will be so described in published standards, that the resulting position-classification system can be used in all phases of personnel administration.</p> <p>5 U.S.C. Chapter 53, Subchapter IV — Prevailing Rate Systems 5 U.S.C. §5341. Policy. It is the policy of Congress that rates of pay of prevailing rate employees be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and be based on principles that there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area; there will be relative differences in pay within</p>	<p>classification structure and rules for covered DHS employees and positions to replace the 5 U.S.C. Chapter 51 classification structure and rules and the 5 U.S.C. Chapter 53, Subchapter IV job grading system, in accordance with the merit principle of equal pay for work of equal value. Any classification system must be established in conjunction with the pay system described in Subpart C.</p>

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<p>a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions; the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area; and the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees.</p>	
<p>Authority derives from 5 U.S.C. §9701(a).</p> <p>5 U.S.C. Chapter 53, Subchapter III — General Schedule Pay Rates 5 U.S.C. Chapter 53, Subchapter IV — Prevailing Rate Systems 5 U.S.C. §5376. Pay for certain senior-level positions 5 U.S.C. Chapter 53, Subchapter VIII — Pay for the Senior Executive Service</p>	<p>§9701.202. Coverage. Subpart B applies to eligible DHS employees and positions listed below, subject to a determination by the Secretary or designee under §9701.102(b).</p> <p>Eligible for coverage are: employees and positions that would otherwise be covered by the GS classification system; employees and positions that would otherwise be covered by a prevailing rate system; employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. §5376; and SES members who would otherwise be covered by 5 U.S.C. Chapter 53, Subchapter VIII, subject to §9701.102(d).</p>
<p>5 U.S.C. Chapter 51 — Classification (includes classification and grading of positions) 5 U.S.C. §5346. Job grading system 5 U.S.C. §5108. Classification of positions above GS-15</p>	<p>§9701.203. Waivers. When a specified category of employees is covered by a classification system established under Subpart B, 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</p>

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	<p>immediately below, in §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). 5 U.S.C. §5108 is not waived.</p>
<p>5 U.S.C. §5102. Definitions; application (unless otherwise noted) “Grade” includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to level of difficulty and responsibility; and level of qualification requirements of the work; to warrant their inclusion within one range of rates of basic pay in the General Schedule.</p> <p>“Basic pay” means the total amount of pay received during any one calendar year at the rate fixed by law or administrative action for the position ... including night and environmental differentials for prevailing rate employees, but before any deductions and exclusive of additional pay of any other kind. [5 CFR §530.202]</p> <p>“Classification” means the analysis and identification of a position and placing it in a class under the position-classification plan established by OPM under 5 U.S.C. Chapter 51. [5 CFR §511.101(c)]</p>	<p>§9701.204. Definitions. “Band” means a work level or pay range within an occupational cluster.</p> <p>“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. It includes locality and special rate supplements for the specific purposes prescribed in §§9701.332(c) and 9701.333.</p> <p>“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.</p>

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<p>“Class” or “class of positions” includes all positions which are sufficiently similar, as to kind or subject-matter of work; level of difficulty and responsibility; and the qualification requirements of the work; to warrant similar treatment in personnel and pay administration.</p> <p>“Position” means the work, consisting of the duties and responsibilities, assigned by competent authority for performance by an employee. [5 CFR §511.101(e)]</p>	<p>“Competencies” means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position.</p> <p>“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.</p> <p>“Occupational series” means the number OPM or DHS assigns to a group or family of similar positions for identification purposes.</p> <p>“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).</p>
<p>Classification of positions is not subject to collective bargaining.</p>	<p>§9701.205. Bar on collective bargaining. As provided in the definition of “conditions of employment” in §9701.504, any classification system established under Subpart B 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.</p>

Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations	Final DHS Regulations
<i>Classification Structure</i>	
<p>5 U.S.C. §5106. Basis for classifying positions Each position is placed in its appropriate class on the basis of the duties and responsibilities of the position and the qualifications required by those duties and responsibilities. Each class is placed in its appropriate grade on the basis of the level of difficulty, responsibility, and qualification requirements of the work of the class.</p>	<p>§9701.211. Occupational clusters. For purposes 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 progression 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.</p>
<p>5 U.S.C. §5104. Basis for grading positions Provides for 15 General Schedule pay grades. The statute defines each of the pay grades in terms of their difficulty and responsibility.</p>	<p>§9701.212. Bands. 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. Each occupational cluster may include, but is not limited to, the following bands: 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. 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. Senior Expert — work that involves an extraordinary level of</p>

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<p>5 U.S.C. §5106. Basis for classifying positions Each position is placed in its appropriate class on the basis of the duties and responsibilities of the position and the qualifications required by those duties and responsibilities. Each class is placed in its appropriate grade on the basis of the level of difficulty, responsibility, and qualification requirements of the work of the class.</p> <p>5 U.S.C. §5105. Standards for classification of positions OPM , after consulting the agencies, prepares standards for placing positions in their proper classes and grades. OPM may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. In the standards, OPM defines the various classes of positions in terms of duties, responsibilities, and qualification requirements; establishes the official class titles; and sets forth the grades in which the classes have been placed by OPM. OPM must revise, supplement, or</p>	<p>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. Supervisory — work that may involve hiring or selecting employees, assigning work, managing performance, recognizing and rewarding employees, and other associated duties.</p> <p>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.</p> <p>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. Any DHS authority to establish qualification standards or requirements under 5 U.S.C. Chapters 31 and 33 and OPM implementing regulations is not waived or modified.</p>

<p align="center">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p align="center">Final DHS Regulations</p>
<p>abolish existing standards, or prepare new standards so that positions will be covered by current published standards. The official class titles are used for personnel, budget, and fiscal purposes.</p> <p>5 U.S.C. §5107. Classification of positions Except as otherwise provided in Chapter 51, each agency places each position under its jurisdiction in its appropriate class and grade in conformance with OPM standards. When facts warrant, an agency may change a position from one class or grade to another.</p>	
<p align="center"><i>Classification Process</i></p>	
<p>5 U.S.C. §5104. Basis for grading positions Provides for 15 General Schedule pay grades. The statute defines each of the pay grades in terms of their difficulty and responsibility.</p> <p>5 U.S.C. §5108. Classification of positions above GS-15 Authorizes OPM to establish, and from time to time revise, the maximum number of positions classified at any one time above GS-15, and establish standards and procedures for classifying positions above GS-15 for any executive agency.</p> <p>5 U.S.C. 5113. Classification records OPM may prescribe the form in which each agency must record the duties and responsibilities of positions and the places where these records must be maintained; examine these or other pertinent records of the agency; and interview agency employees who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.</p>	<p>§9701.221. Classification requirements. DHS must develop a methodology for describing and documenting the duties, qualifications, and other requirements of categories of jobs, and DHS must make such descriptions and documentation available to affected employees.</p>

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<p>5 U.S.C. §5106. Basis for classifying positions Each position is placed in its appropriate class on the basis of the duties and responsibilities of the position and the qualifications required by those duties and responsibilities. Each class is placed in its appropriate grade on the basis of the level of difficulty, responsibility, and qualification requirements of the work of the class.</p>	<p>An authorized agency official must assign occupational series to jobs consistent with definitions established by OPM or by DHS, after coordination with OPM; and apply the criteria and definitions required by §9701.211 and §9701.212 to assign jobs to an appropriate occupational cluster and band.</p>
<p>5 U.S.C. §5105. Standards for classification of positions OPM , after consulting the agencies, prepares standards for placing positions in their proper classes and grades. OPM may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. In the standards, OPM defines the various classes of positions in terms of duties, responsibilities, and qualification requirements; establishes the official class titles; and sets forth the grades in which the classes have been placed by OPM. OPM must revise, supplement, or abolish existing standards, or prepare new standards so that positions will be covered by current published standards. The official class titles are used for personnel, budget, and fiscal purposes.</p> <p>5 U.S.C. §5111. Revocation and restoration of authority to classify positions When OPM finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency under 5 U.S.C. §5107 and require that prior OPM approval be secured before an action placing a position in a class and grade become effective. Agency authority may be restored upon corrective action.</p>	<p>DHS must establish procedures for classifying jobs and may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of jobs as it considers necessary for the purposes of this section. Classification decisions become effective on the date designated by the authorized agency official who makes the decision.</p> <p>DHS must establish a plan to periodically review the accuracy of classification decisions.</p>

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<p>5 U.S.C. §5110. Review of classification of positions OPM, from time to time, reviews such number of positions in each agency as will enable it to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards. OPM takes corrective action when it finds that a position is not placed in its proper class and grade in conformance with published standards.</p> <p>5 U.S.C. §5112. General authority of OPM OPM may place a position in the appropriate class and grade, determine whether a position is in the appropriate class and grade, and change a position from one class and grade to another when the facts as to the duties, responsibilities, and qualification requirements of a position warrant. An employee may request that OPM exercise its authority in this regard.</p>	<p>§9701.222. Reconsideration of classification decisions. An individual employee may request that DHS or OPM reconsider the pay system, occupational cluster, occupational series, or band assigned to his or her current official position of record at any time. DHS will, after coordination with OPM, establish implementing directives for reviewing requests for reconsideration, including nonreviewable issues, rights of representation, and the effective date of any corrective actions. OPM will, after consulting with DHS, establish separate policies and procedures for reviewing reconsideration requests. An employee may request that OPM review a DHS determination. If an employee does not request an OPM reconsideration decision, DHS’s classification determination is final and not subject to further review or appeal. OPM’s final determination on a request is not subject to further review or appeal.</p>
<p align="center"><i>Transitional Provisions</i></p>	
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.231. Conversion of positions and employees to the DHS classification system. Affected positions and employees may convert from the GS system, a prevailing rate system, the SL/ST system, or the SES system, as provided in §9701.202. The terms “convert,” “converted,” “converting,” and “conversion” refer to positions and employees that become covered by the classification system as a result of a coverage determination made under §9701.102(b) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the DHS system. DHS will issue implementing directives prescribing policies and</p>

<p>Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p>Final DHS Regulations</p>
	<p>procedures for converting the GS or prevailing rate grade of a position to a band and for converting SL/ST and SES positions to a band upon initial implementation of the DHS classification system. Such procedures must include provisions for converting an employee who is retaining a grade under 5 U.S.C. Chapter 53, Subchapter VI, immediately prior to conversion. As provided in §9701.373, DHS must convert employees without a reduction in their rate of pay (including basic pay and any applicable locality payment, special rate, or other similar supplemental pay).</p>
<p>Authority derives from 5 U.S.C. §9701(a). P.L. 107-71 (115 Stat. 597) established the Transportation Security Administration.</p>	<p>§9701.232. Special transition rules for Federal Air Marshal Service. Notwithstanding any other provision in Subpart B, if DHS transfers Federal Air Marshal Service (FAMS) positions from the TSA to another organization within DHS, DHS may cover those positions under a classification system that is parallel to the classification system that was applicable to the FAMS within TSA. DHS may, after coordination with OPM, modify that system. DHS will issue implementing directives on converting FAMS employees to any new classification system that may subsequently be established under Subpart B, consistent with the conversion rules in §9701.231.</p>
<p>Subpart C — Pay and Pay Administration</p>	
<p><i>General</i></p>	
<p>DHS Authority for Subpart C derives from 5 U.S.C. §9701(a)-(c). 5 U.S.C. Chapter 53 — Pay Rates and Systems 5 U.S.C. §5301. Policy It is the policy of Congress that federal pay fixing for employees under</p>	<p>§9701.301. Purpose. Subpart C contains regulations establishing pay structures and pay administration rules for covered DHS employees to replace the pay structures and pay administration rules established under 5 U.S.C. Chapter 53, as authorized by 5 U.S.C. §9701. These</p>

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<p>the General Schedule be based on the principles that there be equal pay for substantially equal work within each local pay area; within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions; federal pay rates be comparable with non-federal pay rates for the same levels of work within the same local pay area; and any existing pay disparities between federal and non-federal employees should be completely eliminated.</p>	<p>regulations are designed to provide DHS with the flexibility to allocate available funds strategically in support of DHS mission priorities and objectives. Various features that link pay to employees’ performance ratings are designed to promote a high-performance culture within DHS. Any pay system prescribed under Subpart C must be established in conjunction with the classification system described in Subpart B. The pay system established under Subpart C, working in conjunction with the performance management system established under Subpart D, is designed to incorporate these features: adherence to merit principles set forth in 5 U.S.C. §2301; a fair, credible, and transparent employee performance appraisal system; a link between elements of the pay system established in Subpart C, the employee performance appraisal system, and the department’s strategic plan; employee involvement in the design and implementation of the system (as specified in §9701.105); adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay system; periodic performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period, and setting timetables for review; effective safeguards so that the management of the system is fair and equitable and based on employee performance; and a means for ensuring that adequate resources are allocated for the design, implementation, and administration of the performance management system that supports the pay system.</p>
<p>Authority derives from 5 U.S.C. §9701(a)-(c).</p>	<p>§9701.302. Coverage. Subpart C applies to eligible DHS employees in the categories listed below, subject to a determination by the Secretary or designee under §9701.102(b).</p>

<p align="center">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p align="center">Final DHS Regulations</p>
<p>5 U.S.C. Chapter 53, Subchapter III — General Schedule Pay Rates 5 U.S.C. Chapter 53, Subchapter IV — Prevailing Rate Systems 5 U.S.C. §5376. Pay for certain senior-level positions 5 U.S.C. Chapter 53, Subchapter VIII — Pay for the Senior Executive Service</p>	<p>Eligible for coverage are: employees who would otherwise be covered by the GS pay system; employees who would otherwise be covered by a prevailing rate system; employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. §5376; and SES members who would otherwise be covered by 5 U.S.C. Chapter 53, Subchapter VIII, subject to §9701.102(d).</p>
<p>Authority derives from 5 U.S.C. §9701 (a)-(c).</p> <p>5 U.S.C. §5307. Limitation on certain payments 5 U.S.C. §§5311-5318. Executive Schedule Pay Rates 5 U.S.C. §5377. Pay authority for critical positions</p> <p>5 U.S.C. §5371. Health care positions</p> <p>5 U.S.C. §5373. Limitation on pay fixed by administrative action Generally, the limitation is Executive Schedule level IV.</p>	<p>§9701.303. Waivers. When a specified category of employees is covered by the pay system established under Subpart C, the provisions of 5 U.S.C. Chapter 53, and related regulations, are waived with respect to that category of employees, except as provided in §9701.106, and below.</p> <p>Provisions of 5 U.S.C. Chapter 53 that are not waived are: Sections 5307; 5311 through 5318; and 5377.</p> <p>The following provisions of 5 U.S.C. Chapter 53 also are not waived: Section 5371, insofar as it authorizes OPM to apply the provisions of 38 U.S.C. Chapter 74 to DHS employees in health care positions covered by section 5371 in lieu of any DHS pay system established under Subpart C or Title 5 Chapters 51, 53, and 61, and Subchapter V of Chapter 55. The reference to “chapter 51” in section 5371 is deemed to include a classification system established under Subpart B.</p> <p>Section 5373 is modified to raise the limit on rates of basic pay, including any applicable locality payment or supplement, for DHS employees who are not covered by Subpart C and whose pay is set by</p>

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<p>5 U.S.C. §5379. Student loan repayments</p> <p>5 U.S.C. Chapter 53, Subchapter IV — Prevailing Rate Systems 5 U.S.C. §5343. Prevailing rate determinations; wage schedules; night differentials (c)(4) environmental or other differentials for blue-collar workers (f) night shift differentials for blue-collar workers</p> <p>5 U.S.C. §5376. Pay for certain senior-level positions 5 U.S.C. §5382. Establishment and adjustment of rates of pay for the Senior Executive Service 5 U.S.C. §5307. Limitation on certain payments (d) For an employee who is paid under 5 U.S.C. 5376 or 5383 (setting</p>	<p>administrative action (e.g., Coast Guard Academy faculty) to the rate for level III of the Executive Schedule.</p> <p>Section 5379 is modified to allow DHS, after coordination with OPM, to establish and administer a student loan repayment program for DHS employees, except that DHS may not make loan payments for any noncareer appointees to the SES or for any employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character. Notwithstanding §9701.302(a), any DHS employee otherwise covered by section 5379 is eligible for coverage under the provisions established under this paragraph, subject to a determination by the Secretary or designee under §9701.102(b).</p> <p>In approving the coverage of employees who would otherwise be covered by a prevailing rate system, DHS may limit the waiver so that affected employees remain entitled to environmental or other differentials established under 5 U.S.C. §5343(c)(4) and night shift differentials established under 5 U.S.C. §5343(f) if such employees are grouped in separate occupational clusters (established under Subpart B) that are limited to employees who would otherwise be covered by a prevailing rate system.</p> <p>Employees in SL/ST positions and SES members who are covered by a basic pay system established under Subpart C are considered to be paid under 5 U.S.C. §§5376 and 5382, respectively, for the purpose of applying 5 U.S.C. §5307(d).</p>

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<p>individual senior executive pay) or 28 U.S.C. 332(f) (judicial circuit executives), 603 or 604 (Administrative Office of U.S. Courts) and who holds a position in or under an agency which, for purposes of the calendar year involved, has been certified as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance, the limitation would be the Vice President’s annual salary.</p>	
<p>5 U.S.C. §5102. Definitions; application (unless otherwise noted)</p> <p>“Grade” includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to level of difficulty and responsibility; and level of qualification requirements of the work to warrant their inclusion within one range of rates of basic pay in the General Schedule.</p> <p>“Basic pay” means the total amount of pay received during any one calendar year at the rate fixed by law or administrative action for the position held by an employee, including night and environmental differentials for prevailing rate employees, but before any deductions and exclusive of additional pay of any other kind. [5 CFR §530.202]</p> <p>“Demotion” means a change of an employee, while continuously employed, from one General Schedule (GS) grade to a lower GS grade,</p>	<p>§9701.304. Definitions. “48 contiguous States” means the States of the United States, excluding Alaska and Hawaii, but including the District of Columbia.</p> <p>“Band” means a work level or pay range within an occupational cluster. “Band rate range” means the range of rates of basic pay (excluding any locality or special rate supplements) applicable to employees in a particular band, as described in §9701.321. Each band rate range is defined by a minimum and maximum rate.</p> <p>“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.</p> <p>“Competencies” means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position.</p> <p>“Demotion” means a reduction to a lower band within the same occupational cluster or a reduction to a lower band in a different</p>

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<p>with or without reduction in pay; or a higher rate paid under authority other than 5 U.S.C. Chapter 53, Subchapter III, to a lower rate within a GS grade. [5 CFR §531.202]</p> <p>“Comparability payment” means a payment payable under 5 U.S.C. §5304 (locality-based comparability payments).</p> <p>“Promotion” means a change of an employee, while continuously employed, from one General Schedule (GS) grade to a higher GS grade; or a lower rate paid under authority other than 5 U.S.C. Chapter 53, Subchapter III, to a higher rate within a GS grade. [5 CFR §531.202]</p> <p>“Rating of record” means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern. [5 CFR §430.203]</p>	<p>occupational cluster under implementing directives issued by DHS pursuant to §9701.355.</p> <p>“Locality rate supplement” means a geographic-based addition to basic pay, as described in §9701.332.</p> <p>“Modal rating” means the rating of record that occurs most frequently in a particular pay pool.</p> <p>“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.</p> <p>“Promotion” means an increase to a higher band within the same occupational cluster or an increase to a higher band in a different occupational cluster under implementing directives issued by DHS pursuant to §9701.355.</p> <p>“Rating of record” means a performance appraisal prepared at the end of an appraisal period covering an employee’ performance of assigned duties against performance expectations (as defined in §9701.404) over the applicable period; or to support a pay determination, including one granted in accordance with Subpart C, a within-grade increase granted under 5 CFR §531.404, or a pay determination granted under other applicable rules.</p>
<p>Senior-level positions are positions that are classified above GS-15 pursuant to 5 U.S.C. §5108; and scientific or professional positions</p>	<p>“SL/ST” refers to an employee serving in a senior-level position paid under 5 U.S.C. §5376. The term “SL” identifies a senior-level</p>

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<p>established under 5 U.S.C. §3104. [5 U.S.C. §5376]</p> <p>“Senior Executive Service position” means any position in an agency that is classified above GS-15 pursuant to 5 U.S.C. §5108 or in level IV or V of the Executive Schedule, or an equivalent position, that is not required to be filled by an appointment by the President by and with the advice and consent of the Senate. Duties and responsibilities of employees in such positions are listed. [5 U.S.C. §3132(a)(2)]</p> <p>Special pay authority — higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof. Locality-based comparability payments shall be available to employees receiving special rates to such extent as the President (or designated agency) considers appropriate subject to pay limitations. [5 U.S.C. §5305(a)(g)]</p> <p>“Unacceptable performance” means performance of an employee that fails to meet established performance standards in one or more critical elements of the employee’s position. [5 U.S.C. §4301(3)]</p> <p>Pay cannot be collectively bargained under Title 5</p>	<p>employee covered by 5 U.S.C. §§3324 and 5108. The term “ST” identifies an employee who is appointed under the special authority in 5 U.S.C. §3325 to a scientific or professional position under 5 U.S.C. §3104.</p> <p>“SES” means the Senior Executive Service established under 5 U.S.C. Chapter 31, Subchapter II.</p> <p>“Special rate supplement” means an addition to basic pay for a particular category of employees to address staffing problems, as described in §9701.333. A special rate supplement is paid in place of any lesser locality rate supplement that would otherwise apply.</p> <p>“Unacceptable performance” means the failure to meet one or more performance expectations, as described in §9701.406.</p> <p>§9701.305. Bar on collective bargaining. As provided in the definition of “conditions of employment” in §9701.504, any pay program established under authority of Subpart C is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the pay program, including but not limited to coverage decisions, the design of pay structures, the setting and adjustment of pay</p>

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	<p>levels, pay administration rules and policies, and administrative procedures and arrangements.</p>
<p align="center"><i>Overview of Pay System</i></p>	
<p>5 U.S.C. Chapter 53, Subchapter I — Pay Comparability System 5 U.S.C. §5303. Annual adjustments to pay schedules 5 U.S.C. §5304. Locality-based comparability payments 5 U.S.C. §5305. Special pay authority</p> <p>5 U.S.C. Chapter 53, Subchapter II. Executive Schedule Pay Rates 5 U.S.C. Chapter 53, Subchapter IV. Prevailing Rate Systems (pay setting for blue-collar workers) 5 U.S.C. Chapter 53, Subchapter VIII. Pay for the Senior Executive Service</p>	<p>§9701.311. Major features. Through the issuance of implementing directives, DHS will establish a pay system that governs the setting and adjusting of covered employees’ rates of pay. The system will include a structure of rate ranges linked to various bands for each occupational cluster, in alignment with the classification structure described in Subpart B; policies regarding the setting and adjusting of basic pay rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§9701.321 through 9701.322; policies regarding the setting and adjusting of supplements to basic pay based on local labor market conditions and other factors, as described in §§9701.331 through 9701.334; policies regarding employees’ eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§9701.323 through §9701.325 and 9701.335 through §9701.337; policies regarding performance-based pay adjustments, as described in §§9701.341 through 9701.346; policies on basic pay administration, including movement between occupational clusters, as described in §§9701.351 through 9701.356; policies regarding special payments that are not basic pay, as described in §§9701.361 through 9701.363; and linkages to employees’ performance ratings of records, as described in Subpart D.</p>
<p>5 U.S.C. §5307. Limitation on certain payments No allowance, differential, bonus, award, or other similar cash payment</p>	<p>§9701.312. Maximum rates. DHS may not pay any employee an annual rate of basic pay in excess of the rate for level III of the</p>

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<p>may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee would cause the total to exceed the annual rate of basic pay for Executive Schedule level I.</p> <p>For an employee who is paid under 5 U.S.C. 5376 or 5383 or 28 U.S.C. 332(f) (judicial circuit executives), 603 or 604 (Administrative Offices of U.S. Courts) and who holds a position in or under an agency which, for purposes of the calendar year involved, has been certified as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance, the limitation would be the Vice President’s annual salary.</p>	<p>Executive Schedule, except that DHS may establish the maximum annual rate of basic pay for members of the SES at the rate for level II of the Executive Schedule if DHS obtains the certification specified in 5 U.S.C. §5307(d).</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.313. Homeland Security Compensation Committee (HSCC). DHS will establish a HSCC to provide options and/or recommendations for consideration by the Secretary or designee on strategic compensation matters such as departmental compensation policies and principles, the annual allocation of funds between market and performance pay adjustments, and the annual adjustment of rate ranges and locality and special rate supplements. The committee will consider factors such as turnover, recruitment, and local labor market conditions in providing options and recommendations for consideration by the Secretary. The Secretary’s or designee’s determination with regard to these options and/or recommendations is final and not subject to further review.</p> <p>The DHS Undersecretary for Management will chair the committee. The committee has 14 members, including 4 officials of labor organizations granted national consultation rights (NCR). An OPM official will serve as an <i>ex officio</i> member of the committee. DHS will</p>

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	<p>provide technical staff to support the committee. DHS will establish procedures governing the committee’s membership and operation.</p> <p>An individual will be selected by the Chair to facilitate committee meetings. The facilitator will be selected from a list of nominees developed jointly by representatives of the department and NCR labor organizations, the latter acting as a single party, according to procedures and time limits established by implementing directives. Nominees must be known for their integrity, impartiality, and expertise in facilitation and compensation. If the department and the labor organizations are unable to reach agreement on a joint list of nominees, they will enlist the assistance of the Federal Mediation and Conciliation Service (FMCS). If the parties are still unable to reach agreement, each party will prepare a list of up to three nominees and provide those separate lists to FMCS who may add up to three additional nominees. From that combined list of nominees, the department and the labor organizations, the latter acting as a single party, will alternately strike names from the list until five names remain, and those five nominees will be submitted to the Chair for consideration. The Chair may request that the parties develop an additional list of nominees. If the NCR labor organizations representatives, acting as a single party, do not participate in developing the list of nominees in accordance with this section, the Chair will select the facilitator.</p> <p>After considering the views of all committee members, the Chair prepares and provides options and/or recommendations to the Secretary or designee. Members may present their views on the final recommendations in writing as part of the final recommendation package. The Secretary or designee will make the final decision and</p>

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	<p>notify the committee. This process is not subject to the requirements established by §§9701.512, 9701.517(a)(5), 9701.518, or 9701.519. The Secretary retains the right to make determinations regarding the annual allocation of funds between market and performance pay adjustments, the annual adjustment of rate ranges and locality and special rate supplements, or any other matter recommended by the committee, and to make such determinations effective at any time.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.314. DHS responsibilities. DHS responsibilities in implementing Subpart C include providing OPM with information regarding the implementation of the program authorized under Subpart C at OPM’s request; 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 fulfilling all other responsibilities prescribed in Subpart C.</p>
<p align="center"><i>Setting and Adjusting Rate Ranges</i></p>	
<p>5 U.S.C. §5104. Basis for grading positions Provides for 15 General Schedule pay grades. The statute defines each of the pay grades in terms of their difficulty and responsibility.</p>	<p>§9701.321. Structure of bands. After coordination with OPM, DHS may 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. For each band within an occupational cluster, DHS will establish a common rate range that applies in all locations.</p>
<p>5 U.S.C. §5106. Basis for classifying positions Each position is placed in its appropriate class on the basis of the duties and responsibilities of the position and the qualifications required by</p>	<p>§9701.322. Setting and adjusting rate ranges. 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.</p>

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<p>those duties and responsibilities. Each class is placed in its appropriate grade on the basis of the level of difficulty, responsibility, and qualification requirements of the work of the class.</p> <p>5 U.S.C. §5105. Standards for classification of positions OPM, after consulting the agencies, prepares standards for placing positions in their proper classes and grades. OPM may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. In the standards, OPM defines the various classes of positions in terms of duties, responsibilities, and qualification requirements; establishes the official class titles; and sets forth the grades in which the classes have been placed by OPM. OPM must revise, supplement, or abolish existing standards, or prepare new standards so that positions will be covered by current published standards. The official class titles are used for personnel, budget, and fiscal purposes.</p> <p>5 U.S.C. §5107. Classification of positions Except as otherwise provided in Chapter 51, each agency places each position under its jurisdiction in its appropriate class and grade in conformance with OPM standards. When facts warrant, an agency may change a position from one class or grade to another.</p>	<p>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.</p> <p>After coordination with OPM, DHS may 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 GS pay adjustment.</p> <p>DHS may establish different rate ranges and provide different rate range adjustments for different bands.</p> <p>DHS may adjust the minimum and maximum rates of a band by different percentages.</p>
<p>5 U.S.C. §5335. Periodic step-increases 5 U.S.C. §5336. Additional step-increases Authorizes within-grade pay adjustments for work at an acceptable level of competence (§5335) or for high quality performance above that ordinarily found in the position (§5336).</p>	<p>§9701.323. Eligibility for pay increase associated with a rate range adjustment. 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</p>

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<p>5 U.S.C. §5303. Annual adjustments to pay schedules Authorizes annual pay adjustments. Effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year, the rates of basic pay for each statutory pay system are increased by the percentage equal to the Employment Cost Index for wages and salaries, private industry workers, minus 0.5%, i.e., the September 2003 ECI is used for the January 2005 pay adjustment.</p>	<p>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 is determined under §9701.356.</p> <p>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. An employee who has an unacceptable rating of record may not receive 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.</p>
<p>5 CFR §430.208 Rating performance. (i) A rating or record may be changed within 60 days of issuance based upon an informal request by the employee; as a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a <i>bona fide</i> settlement of a formal proceeding; or where the agency determines that a rating of record was incorrectly recorded or calculated.</p> <p>5 CFR §531.409 Acceptable level of competence determinations (the section generally and specifically:) (c)(2)(i) When the determination of an acceptable level of competence</p>	<p>§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 first day of the first pay period beginning on or after the date the new rating of record is issued.</p>

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<p>has been delayed for reasons including an employee’s unacceptable performance, if, following the delay, the employee’s performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.</p>	
<p>See 5 CFR §430.208 and 5 CFR §531.409 above.</p>	<p>§9701.325. Treatment of employees whose rate of basic pay falls below the minimum rate of their band. For 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 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 if the employee demonstrates performance that meets or exceeds performance expectations within 90 days after the date of the rate range adjustment; or initiate action within 90 days after the date of the rate range adjustment to demote or remove the employee in accordance with the adverse actions procedures established in Subpart F. If DHS fails to initiate a removal or demotion action within 90 days after the date of the 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.</p>
<p align="center"><i>Locality and Special Rate Supplements</i></p>	

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<p>5 U.S.C. §5304. Locality-based comparability payments 5 U.S.C. §5305. Special pay authority</p>	<p>§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.</p>
<p>5 U.S.C. §5304. Locality-based comparability payments Comparability payments are payable within each locality determined to have a pay disparity greater than 5%.</p>	<p>§9701.332. Locality rate supplements. 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.</p>
<p>Locality pay areas are listed at 5 CFR §531.603.</p> <p>5 U.S.C. §553. Rule making</p>	<p>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 in the <i>Federal Register</i> 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</p>

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<p>Locality payments are part of basic pay for purposes of retirement, life insurance, premium pay, and for such other purposes as may be expressly provided for by law or as OPM regulations may prescribe.</p>	<p>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.</p> <p>Locality rate supplements are considered basic pay for retirement; life insurance; premium pay; severance pay; application of the maximum rate limitation set forth in §9701.312; determining the rate of basic pay upon conversion to the DHS pay system established under Subpart C, consistent with §9701.373(b); other payments and adjustments authorized under Subpart C as specified by DHS implementing directives; other payments and adjustments under other statutory or regulatory authority that are basic pay for the purpose of locality-based comparability payments; and any provisions for which DHS locality rate supplements must be treated as basic pay by law.</p>
<p>5 U.S.C. §5305. Special pay authority Whenever the President finds that the government’s recruitment or retention efforts with respect to one or more occupations in one or more areas or locations are, or are likely to become significantly handicapped due to specific circumstances, he may establish for the areas or locations involved higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. Circumstances justifying special rates are rates of pay offered by non-federal employees being significantly higher than those payable by the government within the area, location, occupational group, or classes of positions under the pay system involved; the remoteness of the area or location; the undesirability of</p>	<p>§9701.333. Special rate supplements. DHS will, after coordination with OPM, establish special rate supplements that provide higher pay levels for subcategories of employees within an occupational cluster if DHS determines that such supplements are warranted by current or anticipated recruitment and/or retention needs. DHS will issue necessary implementing directives. Any special rate supplement must be treated as basic pay for the same purposes as locality rate supplements, as described in §9701.332(c), and for the purpose of computing cost-of-living allowances and post differentials in nonforeign areas under 5 U.S.C. §5941.</p>

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<p>the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or any other circumstances which the President (or an agency) considers appropriate.</p>	
<p>5 U.S.C. §5304. Locality-based comparability payments Authorizes the President to direct the Pay Agent to prepare a report comparing General Schedule pay rates with non-federal pay rates, as determined by surveys conducted by the Bureau of Labor Statistics. Based on the data from the surveys, the Pay Agent identifies each locality in which a pay disparity exists, specifies the size of the pay disparity, and makes recommendations to the President for appropriate comparability payments. Comparability payments are paid in the same manner and at the same time as basic pay is payable.</p> <p>5 U.S.C. §5304a. Authority to fix an alternative level of comparability payments Authorizes the President to fix an alternative level of locality-based comparability payments if, because of national emergency or serious economic conditions affecting the general welfare, he considers the level that would otherwise be payable to be inappropriate. At least one month before those comparability payments would be payable he must prepare and transmit to Congress a report describing the alternative level of payments he intends to provide, including the reasons why that alternative level is necessary.</p> <p>5 U.S.C. §5305. Special pay authority A minimum rate may not exceed the maximum pay rate prescribed by statute for the grade or level by more than 30% and no rate may be established in excess of basic pay for Executive Schedule level V.</p>	<p>§9701.334. Setting and adjusting locality and special rate supplements. Within its sole and exclusive discretion, DHS may, after coordination with OPM, set and adjust locality and special rate supplements. In determining the amounts of the supplements, 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.</p> <p>DHS may, after coordination with OPM, determine the effective date of newly set or adjusted locality and special rate supplements. Established supplements will be reviewed for possible adjustment on an annual basis in conjunction with rate range adjustments under §9701.322.</p>

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<p>Generally, Title 5 rewards high performing employees through awards.</p> <p>5 U.S.C. §4505a. Performance-based cash awards An employee whose most recent performance rating was fully successful or higher may be paid a cash award equal to an amount determined appropriate by the agency head, but not more than 10% of the employee’s annual pay rate (not more than 20% for exceptional performance).</p> <p>5 U.S.C. §4503. Agency awards Authorizes an agency head to pay a cash award to an employee who contributes to the efficiency, economy, or other improvement of government operations or achieves a significant reduction in paperwork; or performs a special act or service in the public interest in connection with or related to official employment.</p> <p>5 U.S.C. §4504. Presidential awards Authorizes the President to pay a cash award to an employee who contributes to the efficiency, economy, or other improvement of government operations or achieves a significant reduction in paperwork; or performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.</p>	<p>§9701.335. Eligibility for pay increase associated with a supplement adjustment. When a locality or special rate supplement is adjusted under §9701.334, an employee to whom the supplement applies is entitled to the pay increase resulting from that adjustment if he or she meets or exceeds performance expectations (i.e., has a rating of record above the unacceptable performance level for the most recently completed appraisal period). This includes an increase resulting from the initial establishment and setting of a special rate supplement. The pay increase takes effect at the same time as the applicable supplement is set or adjusted, except as provided in §§9701.336 and 9701.337. 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 any pay increase associated with a supplement adjustment.</p> <p>An employee who has an unacceptable rating of record may not receive a pay increase as a result of an increase in an applicable locality or special rate supplement, except as provided by §§9701.336 and 9701.337. Because the employee’s pay remains unchanged, failure to receive a pay increase is not considered an adverse action under Subpart F.</p>
<p>5 CFR §430.208 Rating performance. (i) A rating or record may be changed within 60 days of issuance based upon an informal request by the employee; as a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a <i>bona fide</i> settlement of a formal proceeding; or</p>	<p>§9701.336. Treatment of employees whose pay does not fall below the minimum adjusted rate of their band. An employee who does not receive a pay increase under §9701.335 because of an unacceptable rating of record and whose rate of basic pay (including a locality or special rate supplement) does not fall below the minimum adjusted rate of his or her band as a result of that rating will receive such an increase</p>

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<p>where the agency determines that a rating of record was incorrectly recorded or calculated. 5 CFR §531.409 Acceptable level of competence determinations (the section generally and specifically:) (c)(2)(i) When the determination of an acceptable level of competence has been delayed for reasons including an employee’s unacceptable performance, if, following the delay, the employee’s performance is determined to be at an acceptable level of competence, the within-grade increase will be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.</p>	<p>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 first day of the first pay period beginning on or after the date the new rating of record is issued.</p>
<p>See 5 CFR §430.208 and 5 CFR §531.409 (c) above.</p>	<p>§9701.337. Treatment of employees whose rate of pay falls below the minimum adjusted rate of their band. For an employee who does not receive a pay increase under §9701.335 because of an unacceptable rating of record and whose rate of basic pay (including a locality or special rate supplement) falls below the minimum adjusted rate of his or her band as a result of that rating, DHS must 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 if the employee demonstrates performance that meets or exceeds performance expectations within 90 days after the date of the locality or special rate supplement adjustment; or initiate action within 90 days after the date of the locality or special rate supplement adjustment to demote or remove the employee in accordance with the adverse action procedures established in Subpart F. If DHS fails to initiate a removal or demotion action within 90 days after the date of a locality or special rate supplement adjustment, the</p>

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	<p>employee becomes entitled to the minimum adjusted 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 locality or special rate supplement adjustment.</p>
<p><i>Performance-Based Pay</i></p>	
<p>5 U.S.C. §5335. Periodic step-increases 5 U.S.C. §5336. Additional step-increases</p> <p>5 U.S.C. §4505a. Performance-based cash awards 5 U.S.C. §4503. Agency awards 5 U.S.C. §4504. Presidential awards</p>	<p>§9701.341. General. Sections 9701.342 through 9701.346 describe various types of performance-based pay adjustments that are part of the pay system established under Subpart C. Generally, these within-band pay increases are directly linked to an employee’s rating of record (as assigned under the performance management system described in Subpart D). These provisions are designed to provide DHS with the flexibility to allocate available funds based on performance as a means of fostering a high-performance culture that supports mission accomplishment. While performance measures primarily focus on an employee’s contributions (as an individual or as part of a team) in accomplishing work assignments and achieving mission results, performance also may be reflected in the acquisition and demonstration of required competencies.</p>
<p>5 U.S.C. §4505a. Performance-based cash awards An employee whose most recent performance rating was “fully successful” or higher may be paid a cash award.</p> <p>5 U.S.C. §5335. Periodic step-increases 5 U.S.C. §5336. Additional step-increases Authorizes within-grade pay adjustments for work at an acceptable level</p>	<p>§9701.342. Performance pay increases. Overview. The DHS pay system provides employees in a Full Performance or higher band with increases in basic pay based on individual performance ratings of record as assigned under a performance management system established under Subpart D. The DHS pay system uses pay pool controls to allocate pay increases based on performance points that are directly linked to the employee’s rating of record, as described in this section. Performance</p>

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<p>of competence (§5335) or for high quality performance above that ordinarily found in the position (§5336).</p>	<p>pay increases are a function of the amount of money in the performance pay pool, the relative point value placed on ratings, and the distribution of ratings within that performance pay pool.</p> <p>The rating of record used as the basis for a performance pay increase is the one assigned for the most recently completed appraisal period (subject to the requirements of Subpart D), except that if the supervisor or other rating official determines that an employee’s current performance is inconsistent with that rating, the supervisor or other rating official may prepare a more current rating of record, consistent with §9701.409(b). If an employee does not have a rating of record, DHS will use the modal rating received by other employees covered by the same pay pool during the most recent rating cycle to determine the employee’s performance pay increase.</p> <p><i>Performance pay pools.</i> DHS will establish pay pools for performance pay increases. Each pay pool covers a defined group of DHS employees, as determined by the agency. An authorized agency official(s) may determine the distribution of funds among pay pools and may adjust those amounts based on overall levels of organizational performance or contribution to DHS’ mission. In allocating the monies to be budgeted for performance pay increases, the Secretary or designee must take into account the average value of within-grade and quality step increases under the General Schedule, as well as amounts that otherwise would have been spent on promotions among positions placed in the same band.</p> <p><i>Performance point values.</i> DHS will establish point values that correspond to the performance rating levels established under Subpart D, so that a point value is attached to each rating level. For example, in a four-level rating program, the point value pattern could be 4-2-1-0,</p>

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	<p>where 4 points are assigned to the highest (outstanding) rating and 0 points to an unacceptable rating. Performance point values will determine performance pay increases. DHS will establish a point value pattern for each pay pool. Different pay pools may have different point value patterns. DHS must assign zero performance points to an unacceptable rating of record.</p> <p><i>Performance payout.</i> DHS will determine the value of a performance point, expressed as a percentage of an employee’s rate of basic pay (exclusive of locality or special rate supplements under §§9701.332 and 9701.333) or as a fixed dollar amount. To determine an individual employee’s performance payout, DHS will multiply the point value determined above by the number of performance points assigned to the rating. To the extent that the adjustment does not cause the employee’s rate of basic pay to exceed the maximum rate of the employee’s band rate range, DHS will pay the performance payout as an adjustment in the employee’s annual rate of basic pay. Any excess amount may be granted as a lump-sum payment, which may not be considered basic pay for any purpose. DHS may, after coordination with OPM, determine the effective date of adjustments in basic pay.</p> <p>For an employee receiving a retained rate under §9701.356, DHS will issue implementing directives to provide for granting a lump-sum performance payout that may not exceed the amount that may be received by an employee in the same pay pool with the same rating of record whose rate of pay is at the maximum rate of the same band.</p> <p><i>Proration of performance payouts.</i> DHS will issue implementing directives regarding the proration of performance payouts for employees who, during the period between performance pay adjustments, are hired or promoted; in a leave-without-pay status; or in other circumstances</p>

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	<p>where proration is considered appropriate.</p> <p><i>Adjustments for employees returning after performing honorable service in the uniformed services.</i> DHS will issue implementing directives regarding how it sets the rate of basic pay prospectively for an employee who leaves a DHS position to perform service in the uniformed services (as defined in 38 U.S.C. §4303 and 5 CFR §353.102) and returns through the exercise of a reemployment right provided by law, Executive order, or regulation under which accrual of service for seniority-related benefits is protected (e.g., 38 U.S.C. §4316). DHS will credit the employee with intervening rate range adjustments under §9701.323(a), as well as developmental pay adjustments under §9701.345 (determined by DHS in accordance with its implementing directives), and performance pay adjustments based on the employee’s last DHS rating of record. For employees who have no such rating of record, DHS will use the modal rating received by other employees covered by the same pay pool during the most recent rating cycle. An employee returning from qualifying service in the uniformed services will receive the full amount of the performance pay increase associated with his or her rating of record.</p> <p><i>Adjustments for employees returning to duty after being in workers’ compensation status.</i> DHS will issue implementing directives regarding how it sets the rate of basic pay prospectively for an employee who returns to duty after a period of receiving injury compensation under 5 U.S.C. Chapter 81, Subchapter I (in a leave-without-pay status or as a separated employee). DHS will credit the employee with intervening rate range adjustments under §9701.323(a), as well as developmental pay adjustments under §9701.345 (as determined by DHS in accordance with its implementing directives), and performance pay adjustments</p>

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	<p>based on the employee’s last DHS rating of record. For employees who have no such rating of record, DHS will use the modal rating received by other employees covered by the same pay pool during the most recent rating cycle. An employee returning to duty after receiving injury compensation will receive the full amount of the performance pay increase associated with his or her rating of record.</p>
<p>5 U.S.C. §4303. Actions based on unacceptable performance Authorizes an agency to reduce in grade or remove an employee for unacceptable performance.</p>	<p>§9701.343. Within-band reductions. Subject to the adverse action procedures set forth in Subpart F, DHS may reduce an employee’s rate of basic pay within a band for unacceptable performance or conduct. A reduction under this section may not be more than 10% or cause an employee’s rate of basic pay to fall below the minimum rate of the employee’s band rate range. Such a reduction may be made effective at any time.</p>
<p>5 U.S.C. §5377. Pay authority for critical positions Authorizes OMB, in consultation with OPM, to, upon the request of an agency head, grant authority to fix the basic pay rate for one or more positions in the agency in accordance with critical pay. OMB may not authorize the exercise of critical pay authority for more than 800 positions at any time, of which not more than 30 may at any time be positions which would otherwise be paid on the Executive Schedule.</p>	<p>§9701.344. Special within-band increases. DHS may issue implementing directives regarding special within-band basic pay increases for employees within a Full Performance or higher band established under §9701.212 who possess exceptional skills in critical areas or who make exceptional contributions to mission accomplishment or in other circumstances determined by DHS. Increases under this section are in addition to any performance pay increases made under §9701.342 and may be made effective at any time. Special within-band increases may not be based on length of service.</p>
<p>5 U.S.C. §5335. Periodic step-increases 5 U.S.C. §5336. Additional step-increases</p>	<p>§9701.345. Developmental pay adjustments. DHS will issue implementing directives regarding pay adjustments within the</p>

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<p>Authorizes within-grade pay adjustments for work at an acceptable level of competence (§5335) or for high quality performance above that ordinarily found in the position (§5336).</p>	<p>Entry/Developmental band. These directives may require employees to meet certain standardized assessment or certification points as part of a formal training/developmental program. In administering Entry/Developmental band pay progression plans, DHS may link pay progression to the demonstration of required knowledge, skills, and abilities (KSAs)/competencies. DHS may set standard timeframes for progression through an Entry/Developmental band while allowing an employee to progress at a slower or faster rate based on his or her performance, demonstration of required competencies, and/or other factors.</p>
<p>5 U.S.C. §3393. Career appointments (SES) OPM administers the Federal Candidate Development Program to train career employees for SES positions. Upon certification by a performance review board that an employee has met the five executive core qualifications for the SES, he or she may be selected for an SES position throughout the government.</p>	<p>§9701.346. Pay progression for new supervisors. DHS will issue implementing directives requiring an employee newly appointed to or selected for a supervisory position to meet certain assessment or certification points as part of a formal training/developmental program. In administering performance pay increases for these employees under §9701.342, DHS may take into account the employee's success in completing a formal training/developmental program, as well as his or her performance.</p>
<p align="center"><i>Pay Administration</i></p>	
<p>5 U.S.C. §5333. Minimum rate for new appointments New appointments are made at the minimum rate of the appropriate grade. Appointments at above the minimum rate may be made for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the government for the individual's services.</p>	<p>§9701.351. Setting an employee's starting pay. DHS will, after coordination with OPM, issue implementing directives regarding the starting rate of pay for an employee, including an individual who is newly appointed or reappointed to the federal service; an employee transferring to DHS from another Federal agency; and a DHS employee who moves from a noncovered position to a position already covered by</p>

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	<p>Subpart C.</p>
<p>5 CFR §531.203 General provisions. Discusses use of the highest previous rate, especially at (c)-(e). “Highest previous rate” means the highest actual rate of basic pay previously received by an individual while employed in a position in a branch of the federal government (executive, legislative, or judicial); a government corporation; the United States Postal Service or the Postal Rate Commission; or the government of the District of Columbia; without regard to whether the position was subject to the General Schedule (GS); or the actual rate of basic pay for the highest grade and step previously held by an individual while employed in a position subject to the GS. [5 CFR 531.202]</p>	<p>§9701.352. Use of highest previous rate. DHS will issue implementing directives regarding the discretionary use of an individual’s highest previous rate of basic pay received as a federal employee or as an employee of a Coast Guard nonappropriated fund instrumentality (NAFI) in setting pay upon reemployment, transfer, reassignment, promotion, demotion, placement in a different occupational cluster, or change in type of appointment. For this purpose, basic pay may include a locality-based payment or supplement under circumstances approved by DHS. If an employee in a Coast Guard NAFI position is converted to an appropriated fund position under the pay system established under Subpart C, DHS must use the existing NAFI rate to set pay upon conversion.</p>
<p>5 U.S.C. §5334. Rate on change of position or type of appointment; regulations (b) Generally, an employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. Regulations are at 5 CFR §531.203 and 5 CFR §531.204.</p>	<p>§9701.353. Setting pay upon promotion. Except as otherwise provided in this section, upon an employee’s promotion, DHS must provide an increase in the employee’s rate of basic pay equal to at least 8%. The rate of basic pay after promotion may not be less than the minimum rate of the higher band. DHS will issue implementing directives providing for an increase other than the amount specified above in the case of an employee promoted from an Entry/Developmental band to a Full Performance band (consistent with the pay progression plan established for the Entry/Developmental band); an employee who was demoted and is then repromoted back to the higher band; or employees in other circumstances specified by DHS implementing directives. An employee receiving a retained rate (i.e., a rate above the maximum</p>

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	<p>of the band) before promotion is entitled to a rate of basic pay after promotion that is at least 8% higher than the maximum rate of the employee’s current band (except in circumstances specified by DHS implementing directives). The rate of basic pay after promotion may not be less than the minimum rate of the employee’s new band rate range or the employee’s existing retained rate of basic pay. If the maximum rate of the employee’s new band rate range is less than the employee’s existing rate of basic pay, the employee will continue to be entitled to the existing rate as a retained rate.</p> <p>DHS may determine the circumstances under which and the extent to which any locality or special rate supplements are treated as basic pay in applying the promotion increase rules in this section.</p>
<p>5 U.S.C. §5334. Rate on change of position or type of appointment; regulations (a) The rate of basic pay to which an employee is entitled is governed by OPM regulations in conformity with Subchapter III of Chapter 53 and Chapter 51 when he is ... demoted to a position in a lower grade The regulations are at [5 CFR §531.203(c)(d)].</p>	<p>§9701.354. Setting pay upon demotion. DHS will issue implementing directives regarding how to set an employee’s pay when he or she is demoted. The directives must distinguish between demotions under adverse action procedures (as defined in Subpart F) and other demotions (e.g., due to expiration of a temporary promotion or canceling of a promotion during a new supervisor’s probationary period). A reduction in basic pay upon demotion under adverse action procedures may not exceed 10% unless a larger reduction is needed to place the employee at the maximum rate of the lower band.</p>
<p>See 5 U.S.C. §5334(a)(b) above.</p>	<p>§9701.355. Setting pay upon movement to a different occupational cluster. DHS will issue implementing directives regarding how to set an employee’s pay when he or she moves voluntarily or involuntarily to a position in a different occupational cluster, including rules for determining whether such a movement is to a higher or lower band for</p>

<p align="center">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p align="center">Final DHS Regulations</p>
	<p>the purpose of setting pay upon promotion or demotion under §§9701.353 and 9701.354, respectively.</p>
<p>5 U.S.C. Chapter 53, Subchapter VI — Grade and Pay Retention 5 U.S.C. §5362. Grade retention following a change of positions or reclassification Generally, an employee whose position changes to one in a lower grade is entitled to retain the higher grade for two years. Certain requirements stated in the law must be met for grade retention to occur. 5 U.S.C. §5363. Pay retention Generally, entitles an employee to basic pay at a rate equal to the employee’s allowable former rate of basic pay, plus 50% of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee’s position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for the grade. Certain requirements for pay retention are stated in the law.</p>	<p>§9701.356. Pay retention. Subject to the requirements of this section, DHS will, after coordination with OPM, issue implementing directives regarding the application of pay retention. Pay retention prevents a reduction in basic pay that would otherwise occur by preserving the former rate of basic pay within the employee’s new band or by establishing a retained rate that exceeds the maximum rate of the new band. Pay retention must be based on the employee’s rate of basic pay in effect immediately before the action that would otherwise reduce the employee’s rate. A retained rate must be compared to the range of rates of basic pay applicable to the employee’s position. In applying §9701.323 (regarding pay increases provided at the time of a rate range adjustment under §9701.322), any increase in the rate of basic pay for an employee receiving a retained rate is equal to one-half of the percentage value of any increase in the minimum rate of the employee’s band.</p>
<p>5 U.S.C. §5333. Minimum rate for new appointments New appointments are made at the minimum rate of the appropriate grade. Appointments at above the minimum rate may be made for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the government for the individual’s services.</p>	<p>§9701.357. Miscellaneous. Except in the case of an employee who does not receive a pay increase under §§9701.323 or 9701.335 because of an unacceptable rating of record, an employee’s rate of basic pay may not be less than the minimum rate of the employee’s band (or the adjusted minimum rate of that band). Except as provided in §9701.356, an employee’s rate of basic pay may not exceed the maximum rate of the employees’ band rate range.</p>

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<p>5 U.S.C. §5504. Biweekly pay periods; computation of pay 5 U.S.C. §5505. Monthly pay periods; computation of pay</p> <p>5 CFR Part 351 — Reduction In Force</p>	<p>DHS must follow the rules for establishing pay periods and computing rates of pay in 5 U.S.C. §§5504 and 5505, as applicable. For employees covered by 5 U.S.C. §5504, annual rates of pay must be converted to hourly rates of pay in computing payments received by covered employees.</p> <p>DHS will issue implementing directives regarding the movement of employees to or from a band with a rate range that is increased by a special rate supplement.</p> <p>For the purpose of applying the reduction-in-force provisions of 5 CFR Part 351, DHS must establish representative rates for all band rate ranges.</p> <p>If a DHS employee moves from the pay system established under Subpart C to a GS position within DHS having a higher level of duties and responsibilities, DHS may issue implementing directives that provide for a special increase prior to the employee’s movement in recognition that the employee will not be eligible for a promotion increase under the GS system.</p>
<p align="center"><i>Special Payments</i></p>	
<p>5 U.S.C. Chapter 45, Subchapter III — Award to Law Enforcement Officers for Foreign Language Capabilities Authorizes cash awards of up to 5% of basic pay to eligible law enforcement officers who possess and make substantial use of one or more foreign languages in the performance of official duties. An award is in addition to basic pay.</p> <p>5 U.S.C. Chapter 53, Subchapter IX — Special Occupational Pay</p>	<p>§9701.361. Special skills payments. DHS will issue implementing directives regarding additional payments for specializations for which the incumbent is trained and ready to perform at all times. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special skills payments are not basic pay for any</p>

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<p>Systems 5 U.S.C. §5392. Establishment of special occupational pay systems Authorizes the President’s pay agent to establish one or more special occupational pay systems for any positions within occupations or groups of occupations that the pay agent, determines for reasons of good administration should not be classified under 5 U.S.C. Chapter 51 or be subject to Chapter 53, Subchapter III. Certain requirements for establishing special occupational pay systems are stated in the law.</p>	<p>purpose and may be terminated or reduced at any time without triggering pay retention or adverse action procedures.</p>
<p>5 U.S.C. §5545. Night, standby, irregular, and hazardous duty differential (d) Authorizes a differential for duty involving unusual physical hardship or hazard. 5 U.S.C. Chapter 59, Subchapter III — Overseas Differentials and Allowances and Subchapter IV — Miscellaneous Allowances Authorizes a danger pay allowance and an allowance based on duty at remote worksites.</p>	<p>§9701.362. Special assignment payments. DHS will issue implementing directives regarding additional payments for employees serving on special assignments in positions placing significantly greater demands on the employee than other assignments within the employee’s band. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special assignment payments are not basic pay for any purpose and may be terminated or reduced at any time without triggering pay retention provisions or adverse action procedures.</p>
<p>5 U.S.C. §5753. Recruitment and relocation bonuses 5 U.S.C. §5754. Retention bonuses Authorize recruitment, relocation, and retention bonuses to eligible employees in positions likely to be difficult to fill or likely that essential employees would leave in the absence of such bonuses. An employee receiving a bonus must enter into a service agreement with the agency. Bonuses generally cannot exceed 25% of annual basic pay, but for a</p>	<p>§9701.363. Special staffing payments. DHS will issue implementing directives regarding additional payments for employees serving in positions for which DHS is experiencing or anticipates significant recruitment and/or retention problems. DHS may determine the amount of the payments and the conditions for eligibility, including any performance or service agreement requirements. Payments may be made at the same time as basic pay or in periodic lump-sum payments.</p>

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<p>critical agency need, may be up to 50% of annual basic pay. A bonus may be paid as a lump sum and is not part of basic pay. Additionally, retention bonuses of up to 10% of annual basic pay may be paid to a group of employees if there is a high risk that a significant portion of the group would likely leave in the absence of such bonuses. For a critical agency need, such bonuses may be up to 50% of annual basic pay. [P.L. 108-411, Oct. 30, 2004, 118 Stat. 2305-2309]</p>	<p>Special staffing payments are not basic pay for any purpose and may be terminated or reduced at any time without triggering pay retention or adverse action procedures.</p>
<p align="center"><i>Transitional Provisions</i></p>	
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.371. General. An affected employee may convert from the GS system, a prevailing rate system, the SL/ST system, or the SES system, as provided in §9701.302. For the purpose of this section and §§9701.372 through 9701.374, the terms “convert,” “converted,” “converting,” and “conversion” refer to employees who become covered by the pay system without a change in position (as a result of a coverage determination made under §9701.102(b) and exclude employees who are reassigned or transferred from a noncovered position to a position already covered by the DHS system. DHS will issue implementing directives prescribing the policies and procedures necessary to implement these transitional provisions.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.372. Creating initial pay ranges. DHS must, after coordination with OPM, set the initial band rate ranges for the DHS pay system established under Subpart C. The initial ranges will link to the ranges that apply to converted employees in their previously applicable pay system (taking into account any applicable special rates and locality payments or supplements).</p>

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<p>5 U.S.C. §5541(3) defines “law enforcement officer” (LEO) as an employee who is an LEO within the meaning of 5 U.S.C. §§8331(20) or 8401(17), which define the term for purposes of federal retirement. The law states other positions which meet the definition.</p>	<p>For employees who are law enforcement officers as defined in 5 U.S.C. §5541(3) and who were covered by the GS system immediately before conversion, the initial ranges must provide rates of basic pay that equal or exceed the rates of basic pay these officers received under the GS system (taking into account any applicable special rates and locality payments or supplements).</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.373. Conversion of employees to the DHS pay system. When a pay system is established under Subpart C and applied to a category of employees, DHS must convert employees to the system without a reduction in their rate of pay (including basic pay and any applicable locality payment, special rate, locality rate supplement under §9701.332, or special rate supplement under §9701.333). When an employee receiving a special rate under 5 U.S.C. §5305 before conversion is converted to an equal rate of pay under the DHS pay system that consists of a basic rate and a locality or special rate supplement, the conversion will not be considered as resulting in a reduction in basic pay for the purpose of an adverse action under Subpart F. If another personnel action (e.g., promotion, geographic movement) takes effect on the same day as the effective date of an employee’s conversion to the new pay system, DHS must process the other action under the rules pertaining to the employee’s former system before processing the conversion action. An employee on a temporary promotion at the time of conversion must be returned to his or her official position of record prior to processing the conversion. If the employee is temporarily promoted immediately after the conversion, pay must be set under the rules for promotion</p>

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	<p>increases under the DHS system.</p> <p>The Secretary has discretion to make one-time pay adjustments for GS and prevailing rate employees when they are converted to the DHS pay system. DHS will issue implementing directives governing any such pay adjustment, including rules governing employee eligibility, pay computations, and the timing of any such pay adjustment.</p> <p>The Secretary has discretion to convert entry/developmental employees in noncompetitive career ladder paths to the pay progression plan established for the Entry/Developmental band to which the employee is assigned under the DHS pay system. DHS will issue implementing directives governing any such conversion, including rules governing employee eligibility, pay computations, and the timing of any such conversion. DHS must convert employees without a reduction in their rate of pay.</p>
<p>Authority derives from 5 U.S.C. §9701(a). P.L. 107-71 (115 Stat. 597) established the Transportation Security Administration.</p>	<p>§9701.374. Special transition rules for Federal Air Marshal Service. Notwithstanding any other provision in Subpart C, if DHS transfers Federal Air Marshal Service (FAMS) positions from TSA to another organization within DHS, DHS may cover those positions under a pay system that is parallel to the pay system that was applicable to the FAMS within TSA. DHS may, after coordination with OPM, modify that system. DHS will issue implementing directives on converting FAMS employees to any new pay system that may subsequently be established under Subpart C, consistent with the conversion rules in §9701.373.</p>
<p>Subpart D — Performance Management</p>	

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<p>DHS Authority for Subpart D derives from 5 U.S.C. §9701 (a)-(c). 5 U.S.C. §4302. Establishment of performance appraisal systems Each agency must develop one or more performance appraisal systems which provide for periodic appraisals of job performance, encourage employee participation in establishing performance standards, and use the results of performance appraisals to train, reward, reassign, promote, reduce in grade, retain, and remove employees. Under OPM regulations, each system must establish performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include courtesy demonstrated to the public) related to the job in question for each employee or position; communicate those standards and critical elements to employees at the beginning of each appraisal period; evaluate each employee during the appraisal period on the standards; recognize and reward employees whose performance warrants such; assist employees in improving unacceptable performance; and reassign, reduce in grade, or remove employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance. The agency head may administer and maintain a performance appraisal system electronically. 5 U.S.C. Chapter 43, Subchapter II covers Performance Appraisal in the Senior Executive Service</p>	<p>§9701.401. Purpose. Provides for the establishment in DHS of at least one performance management system. The performance management system(s), working in conjunction with the pay system established under Subpart C, is designed to promote and sustain a high-performance culture by: adhering to merit principles; having a fair, credible, and transparent employee performance appraisal system; linking the pay and performance appraisal systems with the DHS strategic plan; involving employees in the design and implementation of the system; providing adequate training and retraining for supervisors, managers, and employees in implementing and operating the system; providing for periodic performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period, with specific timetables for review; having effective safeguards so that the management of the system is fair and equitable and based on employee performance; and providing a means for ensuring that adequate resources are allocated for the design, implementation, and administration of the system.</p>
<p>Authority derives from 5 U.S.C. §9701(a).</p>	<p>§9701.402. Coverage. Subpart D applies to eligible DHS employees in the categories listed below, subject to a determination by the Secretary or designee under §9701.102(b). Those eligible for coverage include employees who would otherwise be covered by 5 U.S.C. Chapter 43, and employees who were excluded from Chapter 43 by</p>

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<p>5 CFR §430.202 Coverage. (d) Agency requests for exclusions of positions in the excepted service.</p>	<p>OPM under 5 CFR §430.202(d) prior to the date of coverage under Subpart D, as determined under §9701.102(b). Employees who are not expected to be employed longer than a minimum period (as defined in §9701.404) during a single 12-month period are excluded from coverage under Subpart D.</p>
<p>Authority derives from 5 U.S.C. §9701(a)-(c). 5 U.S.C. Chapter 43 — Performance Appraisal 5 CFR Part 430 — Performance Management</p>	<p>§9701.403. Waivers. When a specified category of employees is covered by the performance management system(s) established under Subpart D, 5 U.S.C. Chapter 43 is waived with respect to that category of employees.</p>
<p>5 CFR §430.203. Definitions. (unless otherwise noted) “Appraisal” means the process under which performance is reviewed and evaluated. “Appraisal period” means the established period of time for which performance will be reviewed and a rating of record will be prepared. “Critical element,” “Non-critical element,” and “Additional performance element” express the objectives, goals, program plans, work plans, and the like that express performance expectations. Minimum period. An appraisal program shall establish a minimum period of performance that must be completed before a performance</p>	<p>§9701.404. Definitions. “Appraisal” means the review and evaluation of an employee’s performance. “Appraisal period” means the period of time established under a performance management system for reviewing employee performance. “Competencies” means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics required by a position. “Contribution” means a work product, service, output, or result provided or produced by an employee that supports the departmental or organizational mission, goals, or objectives. “Minimum period” means the period of time established by DHS during which an employee must perform before receiving a rating of record.</p>

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<p>rating may be prepared. [5 CFR§430.207(a)]</p> <p>“Performance” means accomplishment of work assignments or responsibilities.</p> <p>“Performance standard” means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.</p> <p>“Appraisal” means the process under which performance is reviewed and evaluated.</p>	<p>“Performance” means accomplishment of work assignments or responsibilities.</p> <p>“Performance expectations” means that which an employee is required to do, as described in §9701.406, and may include observable or verifiable descriptions of quality, quantity, timeliness, and cost effectiveness.</p> <p>“Performance management” means applying the integrated processes of setting and communicating performance expectations, monitoring performance and providing feedback, developing performance and addressing poor performance, and rating and rewarding performance in support of the organization’s goals and objectives.</p>
<p>“Performance appraisal system” means a framework of policies and parameters established by an agency for the administration of performance appraisal programs under 5 U.S.C. Chapter 43, Subchapter I and 5 CFR Part 430, Subpart B.</p> <p>“Rating of record” means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern.</p>	<p>“Performance management system” means the policies and requirements established under Subpart D, as supplemented by DHS implementing directives, for setting and communicating employee performance expectations, monitoring performance and providing feedback, developing performance and addressing poor performance, and rating and rewarding performance.</p> <p>“Rating of record” means a performance appraisal prepared at the end of an appraisal period covering an employee’s performance of assigned duties over the applicable period; or to support a pay determination, including one granted in accordance with Subpart C of this part, a within-grade increase granted under 5 CFR §531.404, or a pay</p>

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<p>“Unacceptable performance” means performance by an employee which fails to meet established performance standards in one or more critical elements of the employee’s position. [5 U.S.C. §4301(3)]</p>	<p>determination granted under other applicable rules.</p> <p>“Unacceptable performance” means the failure to meet one or more performance expectations.</p>
<p>5 CFR Part 430 — Performance Management contains the regulations to implement 5 U.S.C. Chapter 43 — Performance Appraisal, including regulations on agency performance appraisal systems and programs, and planning, monitoring, and rating performance.</p> <p>5 U.S.C. Chapter 23 — Merit System Principles Covers Merit system principles and Prohibited personnel practices.</p>	<p>§9701.405. Performance management system requirements. DHS will issue implementing directives that establish one or more performance management systems for DHS employees, subject to the requirements set forth in Subpart D.</p> <p>Each DHS performance management system must: specify the employees covered; provide for the periodic appraisal of the performance of each employee, generally once a year, based on performance expectations; specify the minimum period during which an employee must perform before receiving a rating of record; hold supervisors and managers accountable for effectively managing employee performance; include procedures for setting and communicating performance expectations, monitoring performance and providing feedback, and developing, rating, and rewarding performance; and specify the criteria and procedures to address the performance of employees who are detailed or transferred and for employees in other special circumstances.</p> <p>Supervisors and managers are responsible for: clearly communicating performance expectations and holding employees responsible for accomplishing them; making meaningful distinctions among employees based on performance; fostering and rewarding excellent performance;</p>

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	<p>and addressing poor performance.</p>
<p>5 U.S.C. §4302. Establishment of performance appraisal systems (a) Each agency must develop one or more performance appraisal systems which (a)(2) encourage employee participation in establishing performance standards. (b) Each performance appraisal system must provide for (1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include courtesy demonstrated to the public) related to the job in question for each employee or position; (2) communicating the performance standards and the critical elements of the employee’s position to the employee at the beginning of each appraisal period.</p> <p>5 CFR §430.102 Performance management. (a) Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals. (b) Performance management integrates the processes an agency uses to (1) Communicate and clarify organizational goals to employees; (2) Identify individual and, where applicable, team accountability for accomplishing organizational goals.</p> <p>5 CFR §430.206 Planning Performance. (b) Performance plan. (1) Agencies shall encourage employee participation in establishing performance plans. (2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days). (3) An appraisal program shall require that</p>	<p>§9701.406. Setting and communicating performance expectations. Performance expectations must align with and support the DHS mission and its strategic goals, organizational program and policy objectives, annual performance plans, and other measures of performance. Such expectations include those general performance expectations that apply to all employees, such as standard operating procedures, handbooks, or other operating instructions and requirements associated with the employee’s job, unit, or function. Supervisors and managers must communicate performance expectations, including those that may affect an employee’s retention in the job. Performance expectations need not be in writing, but must be communicated to the employee prior to holding the employee accountable for them. Employees are always accountable for demonstrating appropriate standards of conduct, behavior, and professionalism, such as civility and respect for others. Performance expectations may take the form of — goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level; organizational, occupational, or other work requirements, such as standard operating procedures, operating instructions, administrative manuals, internal rules and directives, and/or other instructions that are generally applicable and available to the employee; a particular work assignment, including expectations regarding the quality, quantity, accuracy, timeliness, and/or other expected characteristics of the completed assignment; competencies an employee is expected to demonstrate on the job, and/or the contributions an employee is expected to make; or any other means, as</p>

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<p>each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities. (4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s) (8) Elements and standards shall be established as follows — For a critical element — At least two levels for appraisal shall be used with one level being “Fully Successful” or its equivalent and another level being “Unacceptable;” and a performance standard shall be established at the “Fully Successful” level and may be established at other levels. For non-critical elements, when established — At least two levels for appraisal shall be used, and a performance standard(s) shall be established at whatever level(s) is appropriate. Additional requirements are listed in the regulations.</p>	<p>long as it is reasonable to assume that the employee will understand the performance that is expected. Supervisors must involve employees, insofar as practicable, in the development of their performance expectations. However, final decisions regarding performance expectations are within the sole and exclusive discretion of management.</p>
<p>5 CFR §430.207 Monitoring Performance. (a) An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared. (b) An appraisal program shall include methods for appraising each critical and non-critical element during the appraisal period Ongoing appraisal methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period. (c) Appraisal programs should provide assistance whenever performance is determined to be below “Fully Successful” or equivalent but above “Unacceptable.” (d) An appraisal program shall provide for assisting employees in improving unacceptable performance at any time during the appraisal</p>	<p>§9701.407. Monitoring performance and providing feedback. In applying the requirements of the performance management system and its implementing directives and policies, supervisors must monitor the performance of their employees and the organization; and provide timely periodic feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period.</p>

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<p>period that performance is determined to be unacceptable in one or more critical elements; and taking action based on unacceptable performance.</p>	
<p>5 CFR §430.102 Performance management. (b) Performance management integrates the process an agency uses to (3) Identify and address developmental needs for individuals and where applicable teams.</p> <p>5 U.S.C. §4302. Establishment of performance appraisal systems (b) Each performance appraisal system must provide for (5) assisting employees in improving unacceptable performance; and (6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.</p> <p>5 U.S.C. §4303. Actions based on unacceptable performance Authorizes an agency to reduce in grade or remove an employee for unacceptable performance.</p>	<p>§9701.408. Developing performance and addressing poor performance. Subject to budgetary and other organizational constraints, a supervisor must provide employees with the proper tools and technology to do their job and develop employees to enhance their ability to perform.</p> <p>During the appraisal period, if a supervisor determines that an employee’s performance is unacceptable, the supervisor must consider the range of options available to address the performance deficiency, such as remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, and/or an adverse action; and take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences.</p> <p>As specified in Subpart G, employees may appeal adverse actions based on unacceptable performance.</p>
<p>5 CFR §430.206 Planning Performance. (b) Performance plan. (8) Elements and standards shall be established as follows — For a critical element — At least two levels for appraisal shall be used with one level being “Fully Successful” or its equivalent and another level being “Unacceptable;” and a performance standard shall be established at the “Fully Successful” level and may be established at other levels. For non-critical elements, when established — At least two levels for appraisal shall be used, and a performance</p>	<p>§9701.409. Rating performance. Except as provided below, each DHS performance management system must establish a single summary rating level of unacceptable performance, a summary rating level of fully successful performance (or equivalent), and at least one summary rating level above fully successful performance. For employees in an Entry/Developmental band, the DHS performance management system(s) may establish two summary rating levels, i.e., an unacceptable rating level and a rating level of fully successful (or</p>

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<p>standard(s) shall be established at whatever level(s) is appropriate.</p> <p>5 CFR §430.208. Rating performance.</p> <p>(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.</p> <p>(b) (1) A level 1 summary (“Unacceptable”) shall be assigned if and only if performance on one or more critical elements is appraised as “Unacceptable.”</p> <p>(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not limited to, award determinations and promotion decisions.</p> <p>(d) An appraisal program may use one of eight patterns of summary rating levels. Level 1 is “Unacceptable,” Level 3 is “Fully Successful,” and Level 5 is “Outstanding.” Additional requirements are listed in the regulations.</p> <p>5 U.S.C. §4302. Establishment of performance appraisal systems</p> <p>(a) Each agency must develop one or more performance appraisal systems which (3) use the results of performance appraisals to ... reward ... employees.</p> <p>(b) Each performance appraisal system must provide for (4) recognizing and rewarding employees whose performance warrants such.</p> <p>5 U.S.C. Chapter 45 — Incentive Awards</p> <p>5 U.S.C. §4505a. Performance-based cash awards</p> <p>An employee whose most recent performance rating was “fully</p>	<p>equivalent).</p> <p>At his or her sole and exclusive discretion, the Secretary, or designee may under extraordinary circumstances establish a performance management system with two summary rating levels, i.e., an unacceptable level and a higher rating level, for employees not in an Entry/Developmental band.</p> <p>A supervisor or other rating official must prepare and issue a rating of record after the completion of the appraisal period. An additional rating of record may be issued to reflect a substantial change in the employee’s performance when appropriate. A rating of record will be used as a basis for determining an increase in basic pay under §9701.342; a locality or special rate supplement increase under §9701.336; a performance pay increase determination under §9701.342(a); a within-grade increase determination under 5 CFR §531.404, prior to conversion to the pay system established under Subpart C; a pay determination under any other applicable pay rules; awards under any legal authority; including 5 U.S.C. Chapter 45, 5 CFR Part 451, and a departmental or organizational awards program; eligibility for promotion; or such other action that DHS considers appropriate, as specified in the implementing directives.</p> <p>A rating of record must assess an employee’s performance with respect to his or her performance expectations and/or relative contributions and is considered final when issued to the employee with all appropriate reviews and signatures.</p> <p>DHS may not impose a forced distribution or quota on any rating level(s).</p> <p>A rating of record issued under Subpart D is an official rating of record for the purpose of any provision of Title 5 CFR, for which an official</p>

Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations	Final DHS Regulations
<p>successful” or higher may be paid a cash award.</p> <p>5 U.S.C. Chapter 35 — Retention Preference, Restoration, and Reemployment 5 CFR §351.504 Credit for performance.</p>	<p>rating of record is required.</p> <p>DHS may not lower the rating of record of an employee on an approved absence from work, including the absence of a disabled veteran to seek medical treatment, as provided in Executive Order 5396.</p> <p>A rating of record may be grieved by a non-bargaining unit employee (or a bargaining unit employee when no negotiated procedure exists) through an administrative grievance procedure established by DHS. A bargaining unit employee may grieve a rating of record through a negotiated grievance procedure, as provided in Subpart E. An arbitrator hearing a grievance is subject to the standards of review set forth in §9701.521(g)(2). Except as otherwise provided by law, an arbitrator may not conduct an independent evaluation of the employee’s performance or otherwise substitute his or her judgment for that of the supervisor.</p> <p>A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (e.g., transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.</p> <p>DHS implementing directives will establish policies and procedures for crediting performance in a reduction in force, including policies for assigning additional retention credit based on performance. Such policies must comply with 5 U.S.C. Chapter 35 and 5 CFR §351.504.</p>

<p align="center">Current Law/Selected Regulations Title 5 United States Code and Title 5 Code of Federal Regulations</p>	<p align="center">Final DHS Regulations</p>
<p>5 U.S.C. §4304. Responsibilities of the Office of Personnel Management OPM must review each performance appraisal system developed by any agency and determine whether the performance appraisal systems meets the requirements of 5 U.S.C. Chapter 43, Subchapter I. OPM may direct that corrective action be taken if an agency performance system does not meet the requirements of Subchapter I. The Comptroller General from time to time must review on a selected basis performance appraisal systems to determine the extent to which any such system meets the requirements of Subchapter I and must periodically report its findings to OPM and the Congress.</p>	<p>§9701.410. DHS responsibilities. In carrying out its performance management system(s), DHS must transfer ratings between subordinate organizations and to other federal departments or agencies; evaluate its performance management system(s) for effectiveness and compliance with Subpart D, DHS implementing directives and policies, and the provisions of 5 U.S.C. Chapter 23 that set forth the merit system principles and prohibited personnel practices; provide OPM with a copy of the implementing directives, policies, and procedures that implement Subpart D; and comply with 29 CFR §1614.102(a)(5), which requires agencies to review, evaluate, and control managerial and supervisory performance to ensure enforcement of the policy of equal opportunity.</p>

Source: U.S. Department of Homeland Security and U.S. Office of Personnel Management, “Department of Homeland Security Human Resources Management System,” *Federal Register*, vol. 70, no. 20, February 1, 2005, pp. 5271-5347.