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Press Room

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Fact Sheet: DHS and OPM Final Human Resource Regulations

The Department of Homeland Security (DHS) is establishing a new Human Resource Management System to ensure the Department can continue to attract, retain, and reward a workforce that is able to meet the critical mission entrusted to it by the American people. As outlined in the final regulations, issued jointly by the Secretary and the Director of the Office of Personnel Management (OPM), the system provides greater flexibility and accountability in the way employees are paid, developed, evaluated, afforded due process, and represented by labor organizations.

The Case for Change

The DHS mission demands unprecedented organizational agility to stay ahead of determined, dangerous, and sophisticated adversaries. The mission demands that employees and supervisors work together as never before. Achieving such unity requires an integrated HR system for the Department—a system that assures maximum flexibility and accountability. That system must value and reward high performance, teamwork, commitment to learning and excellence, and selfless service. It must also facilitate communication and collaboration at all levels of the Department. The Secretary and the Director are committed to ensuring that these goals are met. This was the fundamental challenge faced in designing this new system — to strike a balance between mission-essential flexibility and protection of core civil service principles.

The new Human Resource Management System, referred to as MAXHR, will help DHS meet its critical mission needs by:

- Reinforcing the commitment to employees and the pledge to preserve fundamental merit principles, to prevent prohibited personnel practices, and to honor and promote veterans' preference;
- Implementing a pay-for-performance program that will replace the General Schedule with market-based pay bands, in which employee pay progression is solely driven by performance and/or competency attainment—not longevity;
- Benchmarking positions in new DHS occupational clusters with other similar positions in the marketplace to establish minimum and maximum rates of pay for pay bands—ensuring DHS' ability to compete for top talent. Annual compensation surveys will be used to establish ranges of pay for covered DHS employees;
- Training DHS managers to set clear performance expectations and to link employee performance objectives to organizational goals;

- Expanding management rights that are non-negotiable to ensure DHS' ability to respond to operational needs;
- Preserving collective bargaining but reducing the number of situations in which bargaining is required; and
- Streamlining adverse actions and appeals processes for DHS employees, ensuring the Department's ability to effectively deal with performance and conduct issues, including standard notification and response periods, while retaining due process protections.

Key Elements of the Human Resource Management System

Classification

- Simplified system
- Occupational clusters based on similarity of work, qualifications, marketplace and competencies
- Pay bands based on level of work within each cluster
- Pay ranges set by occupational cluster, band

Compensation

- Performance replaces longevity as basis for individual pay increases
- Employees rated less than fully successful do not receive pay increases
- Pay ranges based on labor market (national and local), budget, etc.
- Compensation Committee (including union representatives) advises Secretary
- Additional detail provided for promotion, demotion, pay retention, etc.

Performance Management

- Individual expectations aligned with organizational goals
- Ratings will reflect meaningful distinctions in employee performance
- System results in improved organizational accountability
- Less emphasis on paper and more attention to manager-employee interaction
- Performance Improvement Periods no longer required

Labor Relations

- Non negotiable management rights expanded to assure ability to act
- Bargaining on procedures prohibited, but management required to confer
- Limited bargaining on the impact of a management action
- Expedited collective bargaining with impasse resolution
- Homeland Security Labor Relations Board (HSLRB) established to ensure mission focus, provide one-stop dispute resolution
- Judicial review provided

Adverse Actions

- Due process preserved
- Single process for performance and conduct
- Streamlined 15-day notice/10-day reply period
- Initial Service Periods (trial periods) of up to 2 years for designated positions
- Mandatory Removal Offenses (MRO) to be identified

Appeals

- Due process preserved
- Merit Systems Protection Board (MSPB) and arbitration retained
- Burden of proof changed to single "preponderance" standard

- MSPB procedures streamlined
- Mitigation permitted only when penalty is wholly without justification
- Mandatory Removal Panel established for MROs to ensure mission focus
- Judicial review provided

Important Facts

- Employees' pay and benefits will not be reduced as a result of transition to the new system.
- Commitment to DHS employees to preserve fundamental merit principles, to prevent prohibited personnel practices, and to promote veterans preference is unchanged.
- Employees may grieve performance ratings and appeal unacceptable ratings that result in adverse actions.
- Employees' right to organize and bargain collectively is retained.
- Process for continuing collaboration offers additional opportunities for employee representatives' involvement and participation.
- Definitions of what constitutes an adverse action are retained.
- No changes have been made to EEOC-related appeals.
- Ongoing program evaluation will guide continuous improvement efforts and measure results.

Who is Included in the Human Resource Management System?

The vast majority of DHS civilian employees (approximately 110,000) will be covered by most of the elements included in the Human Resource Management System. However, some employees in the Department will not be affected by these new regulations, or will only be covered by certain elements:

- Transportation Security Administration is not included in any elements of the System.
- Emergency Preparedness & Response Stafford Act Employees are not included in any elements of the System.
- Secret Service is excluded from labor relations, and the Uniformed Division is not included in pay and classification elements of the System.
- Inspector General employees are not included in any elements of the System.
- Wage Grade employees are not included in pay and classification in initial implementation.

In addition, the Senior Executives (SES) will be covered by a government-wide pay-for-performance system.

It is important to note that employees not included in the Human Resource Management System right now may be included at a future date.

Key Boards/Committees Established by the Regulations

- **DHS Compensation Committee** — Comprised of 14 members, this body is responsible for making recommendations to the Secretary on the allocation of budget resources in the new compensation system. On an annual basis, the Committee will recommend market adjustments across occupational clusters, locality-based adjustments by occupation and location, and will review pay-for-performance payouts. The Committee provides oversight and transparency to the compensation process. Four seats are reserved for DHS labor organizations and OPM serves as an ex officio member. The DHS Under Secretary for Management serves as the chair.
- **Homeland Security Labor Relations Board (HSLRB)** — The HSLRB resolves issues between management and employee representatives, including the scope of bargaining, duty to bargain in good faith, negotiation impasses, and exceptions to arbitration awards involving exercise of management rights. Decisions of the HSLRB

are final and binding. The Board is a single entity for the resolution of these labor management disputes. The Board will be composed of at least three members, appointed by the Secretary. Members must be independent, distinguished citizens of the United States who are well known for their integrity, impartiality, and expertise in labor relations, law enforcement, or national/homeland security or other related security matters. DHS labor unions will be asked to provide nominees for the Secretary's consideration.

- **Mandatory Removal Panel (MRP)** — A standing panel of three members well known for their integrity, impartiality, and expertise in labor or employee relations, or law enforcement/homeland security matters. The MRP will review employee appeals of removal actions taken as a result of the MRO provisions. The Panel, dedicated to the Department of Homeland Security, will provide expeditious handling of these very critical issues. Employees may appeal MRP decisions to the MSPB. DHS labor unions will also be asked to provide nominees for the Secretary's consideration.

Additional Key Program Aspects

- **DHS Communications Efforts** — DHS employees will be well-informed of program changes and when system changes are anticipated. The comprehensive communications program will include global emails, satellite broadcasts, and considerable use of DHS Web pages. An internal DHS newsletter provides a weekly update to all employees. Additionally, DHS leaders will be provided toolkits and other aids to facilitate discussions and interactions between management and employees on program changes.
- **Training and Leadership Development** — All DHS employees, supervisors, and executives will receive training on the new program throughout its implementation. HR professionals will also receive training on the deployment effort and new job skills that will be required over time as program changes take effect.

What Has Not Been Decided?

DHS and OPM have intentionally patterned these regulations after the chapters in Title 5 they replace, providing broad policy parameters and leaving much of the detail to DHS implementing directives. Specific details of the Human Resource Management System that still need to be developed include:

- Identifying new occupational clusters and how DHS employees will be placed in these new job clusters;
- Establishing new pay ranges that will replace the current GS system;
- Establishing additional rules for performance management, pay administration and conversion of employees from the GS system;
- Identifying benchmark positions for which market surveys will be used to gauge DHS' competitiveness for purposes of establishing pay ranges;
- Drafting operating procedures for the Homeland Security Labor Relations Board; and
- Identifying Mandatory Removal Offenses.

These and other details will be addressed in DHS implementing directives. DHS employee representatives will have an opportunity to participate in this more detailed program design phase, as outlined under the "continuing collaboration" provisions of the regulations.

Implementation Highlights

Using the framework established in the regulations, the new policies and procedures for labor relations, adverse actions, and appeals, including the formation of the Homeland Security Labor Relations Board, will occur after 30 but no later than 180 days from the issuance of the regulations. The DHS Secretary will make separate decisions regarding the effective dates of

the rest of the regulations.

The new programs will be implemented in phases to allow ample time for training and program evaluation. In particular, the majority of employees will have more than one year under the new performance management system before their pay is affected by performance decisions.

Early in 2005

- Communication outreach begins
- Detailed design work including continuing collaboration with employee representatives
- Meetings and focus groups held around the country

Spring 2005

- Manager and supervisor training begins
- Labor relations, adverse actions and appeals portions of the program become effective for all covered employees

Summer 2005

- Performance management training for managers, supervisors and employees

Fall 2005

- New performance management process begins

Early 2006

- DHS Headquarters, Information Analysis and Infrastructure Protection (IAIP), Science & Technology (S&T), Emergency Preparedness and Response (EP&R), and Federal Law Enforcement Training Center (FLETC) — converted to new pay system; first rate range adjustment and performance pay-out scheduled for January 2007

Early 2007

- U.S. Secret Service (USSS) and U.S. Coast Guard (USCG) — converted to new pay system; first rate range adjustment and performance pay-out scheduled for January 2008 (note USCG performance pay-out in summer of 2008)

Early 2008

- U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (CIS) — converted to new pay system; first rate range adjustment and performance pay-out scheduled for January 2009

Program Background Information/Timeline

These final regulations represent a major milestone in an inclusive design process that was initiated over two years ago.

- Homeland Security Act, November 25, 2002
- DHS/OPM HR Design Team, April-September 2003
- Senior Review Committee, July and October 2003
- Proposed Regulations, February 2004

- Public Comment Period, February-March 2004
- Meet and Confer Process, May-August 2004
- Final Regulations, January 2005

Design Facts

- 80 DHS employees, supervisors, union representatives, and OPM representatives were members of the design team
- 64 nationwide focus groups and town hall meetings were conducted to gain input from employees in all major DHS components
- Over 65 public and private sector organizations and HR experts were contacted
- 52 options were created reflecting a range of alternatives, information, and ideas
- More than 3,800 public comments on the proposed regulations were received and analyzed by DHS and OPM staff before the regulations were finalized
- Over 30 days of “meet and confer” with employee representatives

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