

Subpart B – Classification

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General - The classification system described in Subpart B of this proposed regulation contains very few specific details about the career groups, pay schedules, pay bands, and other classification structures and rules that will apply to DoD employees under this regulation, if implemented. Much more detail is needed to allow for a meaningful and thorough review and discussion of this regulation, as required by law.

No changes should be made to the classification systems currently used by DoD agencies until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

A personnel system without fair and appropriate classification structures and rules will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

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Section 9901.222 Reconsideration of classification decisions

9901.222(b) states: “DoD will establish implementing issuances for reviewing requests for reconsideration.”

This process has not been defined, so there is no way to determine if it will be fair, effective and credible. This process should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

No changes should be made to the current reconsideration process used by DoD employees until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

A system without a fair and credible reconsideration procedure will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

Although the proposed regulation allows an employee to request reconsideration of the assignment of his or her position to an occupational series, career group, pay system, pay schedule or pay band, there is no independent review of this determination. The absence of an independent review and appeal procedure will undermine the credibility and accountability of these determinations. This section should be modified to allow employees to challenge classification determinations through the negotiated grievance procedure.

9901.222(e) states that reconsideration determinations made under this section will be based on criteria issued by DoD, unless DoD has adopted an applicable OPM classification standard. The use of criteria issued solely by DoD, in lieu of an OPM standard or criteria, will likely be considered unfair by employees. Only criteria and standards issued by OPM should be used in reconsideration determinations made by DoD under this section.

Subpart D - Performance Management

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Section 9901.403 Waivers

I oppose the waiver of 5 U.S.C. chapter 43 and 5 CFR part 430, which provide important criteria, standards and procedures governing the performance management system. No compelling need to eliminate these provisions has been presented, which protect employees from arbitrary and unfair treatment in the evaluation of their performance.

Relaxing the standards for management to conduct employee evaluations and set performance standards will not enhance national security. This will only lead to greater uncertainty about what is expected of employees, resulting in misunderstandings, disruptions, and inefficiencies in performance.

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Section 9901.405 Performance management system requirements

9901.405(a) states: "DoD will issue implementing issuances that establish a performance management system for DoD employees, subject to the requirements set forth in this subpart."

This system has not been defined, so there is no way to determine if it will be fair, effective and credible. This process should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

No changes should be made to the current performance management system used by DoD agencies until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

A system without a fair and credible performance management procedure will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

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Section 9901.406 Setting and communicating performance expectations

The proposed regulations are seriously flawed because they do not require management to provide performance expectations to employees in writing.

9901.406(b) should be modified by adding: "Performance expectations will be provided in writing and discussed with employees at the beginning of the rating period. When expectations are set or changed verbally by supervisors during the rating period, they will be confirmed in writing by management, and provided to employees in a timely manner."

9901.406(b) should be modified by adding: “Performance expectations must permit the accurate evaluation of job performance based on objective criteria.” This recommendation incorporates a current requirement for performance standards under 5 U.S.C. 4302(b)(1).

9901.406(c) should be modified by adding: “Supervisor and managers are always accountable for demonstrating professionalism and standards of appropriate conduct and behavior, such as civility and respect for others. Supervisors and managers must set the standard of behavior for employees to follow. Therefore, professionalism, civility, respect for others, and similar exemplary behavior will be an absolute requirement for management, and will directly impact their performance ratings and pay.”

This language is necessary to ensure that the language in 9901.406(b) specifying these conduct requirements for employees is clearly applied to supervisors and managers as well, recognizing the need for management to set the standard for conduct in the workplace.

9901.406(d) should be modified by adding: “Employees should seek clarification and/or additional information when they do not understand their performance expectations.” This change clarifies that the primary responsibility for clearly communicating performance expectations lies with supervisors.

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9901.406(e) should be modified to read as follows: “Supervisors must involve employees in the development of performance expectations, and fully consider input and feedback from employees regarding the appropriate performance expectations for each position. However, final decisions regarding performance expectations are within the discretion of the agency, subject to the requirement that performance expectations for employees in the same occupational series and pay band will be similar. Employees will not be held responsible for performance expectations until they have been clearly and expressly communicated. Supervisors must meet with employees at the beginning of the appraisal period, and frequently during the appraisal period, to discuss performance expectations and changes in priorities or expectations during the appraisal year.”

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Section 9901.407 Monitoring performance and providing feedback

The “periodic feedback” proposed in the regulation allows large gaps of time between periodic updates. Regular, ongoing and timely feedback on performance is the only fair, credible and effective way to properly manage employee performance.

9901.407(b) should be modified to read as follows: “Provide regular, ongoing, and timely feedback to employees on their actual performance with respect to their performance expectations, including one or more formal interim performance reviews during each appraisal period.”

Section 9901.408 Developing performance and addressing poor performance

9901.408(a) states: "DoD implementing issuances will prescribe procedures that supervisors will use to develop employee performance and to address poor performance."

These procedures have not been defined, so there is no way to determine if they will be fair, effective and credible for employees. This process should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

No changes should be made to the performance management procedures currently used by DoD agencies until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

A system without a fair and credible performance management process will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

9901.408(b) states: "If during the appraisal period a supervisor determines that an employee's performance is unacceptable, the supervisor will-

(1) Consider the range of options available to address the performance deficiency, which include, but are not limited to, remedial training, an improvement period, a reassignment, an oral warning, a written reprimand, or adverse action defined in subpart G of this part, including a reduction in rate of basic pay or pay band; and

(2) Take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences."

Giving supervisors the authority to take actions ranging from remedial training, to such drastic measures as adverse actions and demotions, without providing specific criteria to make such decisions, is unfair to employees and supervisors. Only fair and effective rules that prescribe appropriate actions to be taken by management to address poor performance will be accepted by employees. Otherwise, the resulting distrust of management and decreased morale and productivity will harm national security.

No changes should be made to the current performance management procedures used by DoD agencies until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

9901.408(b)(1) should be modified by adding: "Employees will be provided a reasonable opportunity to improve performance before an adverse action is proposed or taken, except in the most extreme cases of unacceptable performance which seriously and immediately endanger national security and/or the safety of personnel."

Section 9901.409 Rating and rewarding performance

9901.409(a) states: “The NSPS performance management system will establish a multi-level rating system as described in the DoD implementing issuances.”

This multi-level rating system has not been defined, so there is no way to determine if it will be an effective and appropriate process to rate employees. This rating system should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

No changes should be made to the rating systems currently used by DoD agencies until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees.

A process without a fair and credible rating system will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

9901.409(b) states: “A rating of record will be used as a basis for – (3) Such other action that DoD considers appropriate, as specified in DoD implementing issuances.”

These “other actions” have not been defined, so there is no way to determine if they will be appropriate, fair or credible to employees. All proposed uses of ratings of record should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

No additional uses for ratings of record should be implemented by DoD until a full comment and review period is completed, followed by a full collective bargaining process with the unions representing DoD employees. Otherwise, the rating system will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

9901.409(g) states: “A rating of record may be challenged by an employee only through a reconsideration procedure as provided in DoD implementing regulations. This procedure will be the sole and exclusive method for all employees to challenge a rating of record.”

This reconsideration process has not been defined, so there is no way to determine if it will be a fair and credible process. This process should have been defined in these regulations to allow for a meaningful review and comment period, as required by law.

Unless there is an independent third party available to impartially review and make reconsideration decisions, no such process will be considered fair or credible by employees. Therefore, the negotiated grievance and arbitration procedures currently available to employees under 5 USC Chapter 7121 should be used to challenge ratings of record.

A system without a fair and credible reconsideration process will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

9901.409(g) states: “A payout determination will not be subject to reconsideration procedures.”

A payout process without a fair and credible reconsideration procedure will be rejected by employees, and will result in distrust of management, decreased morale, and lower productivity, ultimately harming national security.

Therefore, the negotiated grievance and arbitration procedures set forth in 5 USC Chapter 7121 should be available to employees to challenge payout determinations.