

**Department of the Navy
Comments on Proposed NSPS Regulations
RIN 3206-AK76/0790-AH82**

11 March 2005

Section Number	Comments
9901.103	“Performance” definition – Substitute “professional conduct that impacts performance and contribution” in place of “employee’s behavior/professional demeanor”
9901.103	Add definition of Federal Wage System
9901.104	Concern about impact of Fair Labor Standards Act determination
9901.202(b)	Should include section 1113 employees and experts
9901.212(d)	Change 514 ref to 513
9901.302	Should include section 1113 employees and experts
9901.303 (c)	DON proposes that the exception to confidential (i.e. attorney) positions be eliminated.
9901.312	Need definition of aggregate pay
9901.313 (c)	Move to definitions
9901.334	Verbiage should be added to consider the situation if local market supplement goes down
9901.342 (a)	Amend the last sentence as follows: The performance payout is a function of the amount of money in the performance pay pool, current compensation, and the number of shares assigned to individual employees.
9901.351	Need definition for “newly appointed” or “reappointed”
9901.356(e)	DoD may set pay at or above the employee’s basic rate of pay prior to the temporary action

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9901.373	Employee feedback shows considerable concern over this issue. Why not be more explicit on the Within Grade Increase buyout?
Subpart D – Performance Management	This subpart should more overtly embed the concept of contribution.
9901.409(b)	Modify to state that the appraisal period must be a minimum of 90 days.
9901.513	This section should be modified to include a statement that establishment of qualification standards is subject to 9901.105(c)(2).
9901.515(a)(3)	We recommend deleting the phrase, “. . as specified in the vacancy announcement, . . “
9901.604(c)(1)	Recommend term employees be excluded from coverage.
9901.611	Suggest that this section be modified to state that RIF appeals to MSPB be covered under the newly defined appeals process described under subpart H.
9901.704(b)(9)(ii)	Recommend termination of term employees be excluded from coverage.
9901.712(b)	Delete the requirement for the Sec Def review and approval
9901.714(a)	Amend the last sentence as follows: However if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, the Dept will provide at least 7 days advance written notice
9901.715(c)	Provision should include a reasonable amount of duty time for the employee to prepare and present response.
9901.715(e and f)	Reasonable amount of duty time should be provided to employee’s representative if he or she is a DoD employee.

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9901.807	Recommend this section expressly identify the NSLRB as the Department's agent for RFR petitions. This is to ensure that the NSLRB will be appropriately chartered in this particular section of the law.
9901.807(k)(5)	Recommend inserting the word "material" in this section, as follows: If the Admin Law Judge (AJ) determines.... that some or all material facts are not in dispute...
9901.807(k)(7)	This section requires that the AJ make an initial decision 90 day after the appeal is filed. This 90-day time limit is not realistic. Sufficient time is needed to accommodate the ADR process. Additionally, the Discovery process is generally time consuming. AJs typically allow themselves a minimum of 30 days after the hearing to prepare their decision. Consequently there is concern that this 90-day time limit will be to management's detriment by not allowing sufficient time for case preparation. Suggest that this section be modified to require that AJs issue decisions within 30 or 45 days of last day of hearing or within last written response to summary judgment motion. If this section of the Federal Register is not changed, then the implementing guidance should clarify to what extent the 90-day timeframe for rendering a decision is extended to accommodate use of ADR/settlement discussion and discovery.
9901.807k(8)(i)	Amend as follows: The initial decision will become the Department's final decision.
9901.807(k)(8)(ii) and (iii)	DON recommends deleting all of 9901.807k(8)(ii) and deleting all of 9901.807k(8)(iii). DON believes that the request of review (RFR) process is unwarranted and detracts from the goals of streamlining the appeals process and preserving due process protections.
9901.807(l)	Recommend deleting this requirement as it is unnecessary and pulls the MSPB away from more important tasks, particularly in the initial phase of NSPS
9901.809(b)	Section is confusing and not needed, recommend eliminating
9901.903	Definitions – Collective bargaining – Amend as follows: Collective bargaining means... a written document incorporating any collective bargaining agreement reached (term or mid-term), but the obligation...

Section Number	Comments
9901.903	Collective bargaining agreement – Amend as follows: Collective bargaining agreement (either term or mid-term) means...
9901.903	Conditions of employment – General Comment: If conditions of employment exclude pay matters (e.g. overtime, premium pay, night differential, Environmental Differential Pay (EDP) and the definition of grievance only pertains to conditions of employment, then grievances over pay matters would not be permitted. Is this your intent? If so, in what forum would pay matters be addressed? This issue needs to be considered in conjunction with the definition of a Grievance and the procedures outlined in 9901.922.
9901.903	Confidential employee – amend as follows: Confidential employee means an employee who acts in a confidential capacity with respect to a management official who formulates, influences or effectuates management policies
9901.903	Add new definition for Mid term agreement – Mid-term agreement means an agreement reached during the term of a collective bargaining agreement, or absent a collective bargaining agreement, an agreement concerning a specific issue or issues.
9901.903	Add new definition for Term Agreement – a collective bargaining agreement entered into for a specific time period, typically one to three years.
9901.905(a)	Amend as follows: Any provision of a collective bargaining agreement that is inconsistent with this part and/or DoD issuances implementing this subpart is unenforceable... The exclusive representative may challenge the Department's... and time limits pursuant to 9901.908, and 9901.916. Delete the last sentence beginning with However, the Secretary... are not precedential.

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9901.905(b)	DON recommends eliminating this cumbersome provision. It is unrealistic to believe the board could resolve disputes of this nature that could involve as many as 1500 bargaining units. Certainly, it would task to exhaustion the Board's resources to handle such a caseload that would result at the very onset of the new NSPS labor relations system. Declaring provisions unenforceable as a need to do so arises would permit the Board, under its plenary jurisdiction, to resolve both the negotiability aspects of the issue, and the unfair labor practice aspects of the issue, in one comprehensive decision. Using this process should result in staggering over a much longer period of time the need to address issues of compliance of provisions of collective bargaining agreements with the NSPS and its implementing regulations.
9901.907(f)(1)	Replace the word, "issuance" with "service"
9901.908	The DON recommends that another section (perhaps inserted into subsection (a)(7)) be added to specify the remedial powers of the Board. With the exception of prohibiting status quo ante awards, set forth in subsection (a)(8), the duties of the board to award Back Pay, issue cease and desist orders, issue bargaining orders, etc., is not specified, and it should be. With the exception of the elimination of status quo ante orders, such a section could mirror the remedial powers of the FLRA.
9901.914(d)(4)	Amend last sentence as follows: Bargaining will be at the level of recognition except where delegated, or bargaining conducted under subsections 9901.918 or 9901.919.
9901.917(a)	Amend as follows: The Department or appropriate... for the purpose of arriving at a collective bargaining agreement (term or mid-term). In addition, the Department...
9901.918(a)	Insert following sentence at beginning - Management may require simultaneous negotiations with all bargaining units affected by proposed changes in working conditions. Such negotiations . . .

Section Number	Comments
9901.918(d)	Amend as follows: Labor organizations may request multi-unit bargaining, as appropriate. Management has sole and exclusive authority to grant or deny the labor organizations' request.
9901.919(a)	Amend as follows: The Department may require negotiations at the DoD or Component level. . .
9901.923(b)	Amend as follows: In addition to the bases contained... NSPS regulations and DoD issuances if such failure to consider or comply is relevant and material to the case at hand and further provided that the matter was raised before the arbitrator during the hearing. The Board...
9901.923(c)	Amend as follows: If no exception... the award is final and binding unless inconsistent with law
9901.924(a)	After the words collective bargaining agreement, insert (term and mid-term)