

**HEADQUARTERS UNITED STATES AIR FORCE
NSPS Federal Register Comments**

14 Mar 05

SECTION/PARA #	COMMENT	PROPOSED CHANGE	Rationale
Supplementary Information, Subpart C - Pay Administration, Promotion - page 7561	Currently states: "Promotion pay increases (from a lower band to a higher band in the same cluster or to a higher band in a different cluster)	Change to: "Promotion pay increases (from a lower band to a higher band in the same career group or different career group)	The term "cluster" is not used anywhere else in this Federal Register and is, therefore, confusing to readers. Recommend "career group" or "pay schedule" for consistency.
Supplementary Information, Subpart I - Labor-Management Relations, Determination of Appropriate Units for Labor Organization Representation - page 7570	Currently states: employees engaged in all types of personnel work are excluded from the unit, to include work of a clerical nature.	Expand the bargaining unit exclusion to include employees who provide personnel management advisory service in the organizational units. Do not limit the exclusion to those solely working in the personnel office.	Organizations have management and employee analysts providing detailed personnel advice and strategies in organizations outside of civilian personnel offices. These employees are involved in developing and coordinating the organizations personnel design as well as functioning as advisors to management on all types of personnel issues.
9901.103 Definitions, Performance	Currently states: Performance means . . . attitude	Change to: conduct or delete attitude altogether.	Attitude is not as easily defined or measured as is conduct.
9901.221(a) Class requirements	Currently states: DoD will develop a methodology . . . categories of jobs . . .	Change to: positions	Provides the proper antecedent for official position of record in 9901.222(a) and 9901.606(c). Alternatively, define position of record in 9901.103.
9901.222 (a) Reconsideration of classification decisions	Currently states: (i.e. pay system, career group, occupational series, pay schedule, or pay band)	Change to: (i.e. pay system, career group, occupational series, title , pay schedule, or pay band)	Titles will still be a part of the NSPS. This correction/addition reflects current classification appeal rights in the CFR.

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9901.333(b)	Currently states: "DoD may determine the effective date of newly set or adjusted local market supplements. Established supplements will be reviewed for possible adjustment at least annually... "	Change to: "DoD may determine the effective date of newly set or adjusted local market supplements. Established supplements will be reviewed for possible adjustment periodically... "	Term "periodically" allows more flexibility than requiring annual reviews in the CFR. Annual reviews may not yield significant changes in pay adjustments and imposes a workload on DoD that may not be an efficient use of resources.
9901.342(d) (3)	Currently states: DoD may provide for control points with a band.	The discussion of control points should be addressed in the Implementing Issuances and not in the Federal Register at all. If it is absolutely necessary to reference control points in the FR, recommend the reference be placed in a more general discussion of pay such as in 9901.200, Classification, or 9901.321 and be re-worded to "setting or increasing pay" vice just increasing pay.	Placement of the discussion of control points under Performance Payouts suggests that control points apply only to the performance management aspect of NSPS and not other aspects of NSPS such as appointments, in-service placement, and work force shaping. This leaves the impression that employees may be appointed or otherwise placed in a position above the control point that employees already working in the unit are subject. We question the fairness of this. Note: There is no reference to control points in the DHS FR.
9901.511(c)(3)	Currently states: "DoD will terminate or modify a specific authority to make appointments under paragraph (a) of this section..."	Change to: "DoD will terminate or modify a specific authority to make appointments under paragraph (c) of this section..."	Reference should be to termination of authority under "Severe shortage/critical need hiring authority."

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9901.515(a)(1)	Currently states: "Will accept applications for the vacant position from all sources;"	Change to: "Will accept applications for the vacant position from all U.S. citizens;"	Competitive examining does not include "sources." All U.S. citizens may apply. Using the term "sources" confuses the reader and implies we are referring to noncompetitive "sources."
Subpart F - Workforce Shaping	The current 5 CFR part 351 is referenced throughout this subpart; however, under proposed NSPS procedures, much of the current 5 CFR part 351 will not apply. Suggest language be changed to remove all specific references to 5 CFR part 351, except in 9901.601	Change 9901.601 to include: Applicable procedures in 5 CFR part 351 will apply, except when replaced by provisions of this subpart."	NSPS needs to redefine rules covering Transfers of Function to more appropriately match the flexibilities of the entire NSPS system.
9901.603/605(e)	No definition of "Reduction in Force"	Add Definition to read: an action resulting from the planned elimination, addition, or redistribution of functions, duties, or skills within or among organizational units, including realigning, reshaping, delayering, and similar organizational-based restructuring actions.	This subpart's title has been changed from "Reduction in Force" to "Workforce Shaping" but the term "reduction in force" is used throughout the proposed rules without a clear definition.

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9901.604(b)(2)	Currently states: Transfer of Function - The Department will apply 5 CFR part 351, subpart C, when a function transfers from one competitive area to a different competitive area, except as otherwise provided in this subpart.	Change to: "The Department will issue implementing issuances which describe the procedures for Transfer of Function under this subpart."	NSPS needs to redefine rules covering Transfers of Function to more appropriately match the flexibilities of the entire NSPS system. Under NSPS, current rules for Transfer of Function under 5 CFR part 351 will not be appropriate and will unnecessarily tie management's hands when defining competitive areas.
9901.605(e)	Currently states: "The Department will establish a competitive area only on the basis of legitimate organizational reasons, and competitive areas will not be used for the purpose of for targeting individual employees for reduction in forces ... "	Change to: "The Department will establish a competitive area only on the basis of legitimate organizational reasons, and competitive areas will not be used for the purpose of targeting employees for reduction in force... "	Correct typographical errors.
9901.704(b)(2)	Currently states: "A reduction in pay or pay band of a supervisor or manager who has not completed a supervisory probationary period, if the supervisory or manager is returned to..."	Change to: "A reduction in pay or pay band of a supervisor or manager who has not completed a supervisory probationary period, if the supervisor or manager is returned to..."	Correct typographical error.
9901.714(a)	Currently states: The proposal indicates a 15-day advance notification of intent to take adverse action and a 10-suspense once the action is taken for employee rebuttal.	Change to: The Department will provide at least 15 calendar days advance. . . Will provide at least 5 calendar days advance written notice.	Adding "calendar" provides clarity.

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9901.904(b) Employees excluded.	Currently: No exclusion described. Employees assigned to military technician positions should be excluded from the bargaining unit.	Add: (6) Employees assigned to military technician positions.	With the definition of supervisor extended to those employee who exercise "supervisory authority over military members of the armed services, such as directing or assigning work or evaluating or recommending evaluations", there arises the potential for confusion as to the status of military technicians. Their jobs inherently involve the management and training of the traditional reserve military members. Rather than try and make a position-by-position determination as to how much any individual directs, assigns work or evaluates a military member, we should exclude all military technicians from labor relations coverage. In addition, the dual-status employment requirement of the military technicians argues for exclusion. One purpose of establishing the military technician program is to have a flexible, agile work force that can move easily between civilian and military status as necessary. Coverage by the labor relations portion of the regulations hinders that flexibility.

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9901.905 (a) Impact on existing agreements	Currently states: Any provision of a collective bargaining agreement "inconsistent" with this part and/or DoD implementing issuances is unenforceable on the effective date of this subpart or such issuance.	Define the term "inconsistent"	A definition may assist the field in appropriately applying the term in reviewing their collective bargaining agreements.
9901.910 Management Rights	Currently provides: that appropriate arrangements can be negotiated with respect to the management rights outlined in this section. However, procedures are off limits for bargaining with respect to (a) (1) and (a) (2) management rights. The terms have often been mentioned together in the past. Providing definitions for what a procedure and appropriate arrangement is may assist the field in bargaining appropriately over management right issues.	Define the terms procedures and appropriate arrangements.	Definitions may be in order for these terms to distinguish the concepts and reduce possible conflict as to whether a proposal represent a "procedure" or "appropriate arrangement."

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9901.912(b)(7) Determination of appropriate units for labor organization representation	Currently states: Any employee engaged in intelligence, counterintelligence, investigative or security work which directly affects national security.	Change: Exclude from appropriate units employees engaged in intelligence, counterintelligence, investigative or security work which directly affects national security. It is in the best interest of mission accomplishment and national security to exclude sensitive positions (those requiring security clearances) from the bargaining unit. These cites need to be clarified or amended to identify such exclusions specifically, 5 CFR 732.102(a) defines the term "national security position" as the position "that requires regular use of, or access to, classified information."	There remains a question regarding the applicability of this provision to DoD positions requiring security clearances. 5 CFR 732.102 (a) defines the term "national security position" as one that requires regular use of, or access to, classified information. Depending on how the term "national security position" is applied could affect the makeup of many DoD bargaining units - that is, those units having bargaining unit employees required to have security clearances. The Department may wish to consider whether it wishes to address this issue contemporaneous with the introduction of the NSPS labor system. Applicable prior FLRA case decisions include 4 FLRA No. 85, 52 FLRA No. 111 and 59 FLRA No. 26.

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9901.913(b)(1)(i)	Currently states: Any labor organization having national consultation rights in connection with any Department or Component under subsection (a) of this section will--(i) Be informed of any substantive change in conditions of employment proposed by the Department or component;. . .	Change to: Recommend changing "substantive change" to " reserved change " in conditions of employment. Define it as where the union does not have the right to bargain over the content or substance of the issue. Be informed of reserved changes in conditions of employment proposed by the Department or Component. Reserved change is defined where management does not have a bargaining obligation over the substance or content of the issuance (e.g. management rights, Department and component issuances).	National consultation in current Chapter 71 environment provides little value for the effort. However, it is essential in the proposed NSPS regulation because the union may not be able to bargain over the content of Department and Component issuances. Management would only be required to accomplish national consultation in these situations. This would ensure that the consulting process have purpose and adds value to the bargaining process.
9901.913(c)	Currently states: Section 9901.913(b) does not apply where the proposed change is bargained at the national level or where continuing collaboration procedures under section 9901.106 apply.	Clarify that: national consultation is not required if the union is entitled to bargain at the installation level over the substance of the proposed change in conditions of employment. National consultation may be accomplished but is not required if the union is entitled to bargain over the substance of the proposed change in conditions of employment	Would save the parties time and resources in only accomplishing national consultation where it adds value to the process.

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9901.914(a)(2)(i), and Supplementary information pg 7571, 11, Representation Rights and Duties	Currently explains representation rights or the lack thereof for different types of discussions about “personnel policies, practices, or working conditions.” However, in 9901.903, the definition of Conditions of employment is “personnel policies, practices and matters affecting working conditions.”	Change to: 9901.914 (a)(2)(i) references should be changed to simply “conditions of employment”, OR consistently precede “working conditions” with the words “matters affecting.”	Change provides for consistency and clarity of meaning.
9901.914(b) and 9901.917(a) & (d)(1-3)	Both paragraphs attempt to define the duty to negotiate in good faith. One section (9901.914) primarily deals with the on-going labor relationship while the other (9901.917) primarily deals with term and midterm bargaining. However, there are elements of both sections mixed into the other section.	These Sections should be more clearly compartmentalized and a single articulated duty to bargain in good faith could be written for both.	It would be easier for the field to find and understand their obligation to bargain in good faith.
9901.914(b)(1)	Currently states: The duty of the Department or appropriate Component(s) of the Department and an exclusive representative to negotiate in good faith under paragraph (a) of this section includes the obligation--.	Change to: Add (6) under section 9901.914 (b). It should read: (6) There is no duty to bargain the content of the Departmental implementing issuances and other Department or Component policies, regulations or similar issuances, or executive orders and they are implemented and effective upon receipt.	This ensures clear understanding of bargaining duty.

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9901.916 (f)	Currently states: ULP issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except, where an employee has an option of using the NGP or an appeals procedure.....the aggrieved party, be raised under the grievance procedure or as an unfair labor practice. . . , but not under both procedures.	Recommend any issue that is appealable be raised under the appeals procedures . Also, recommend language to prevent the union and the employee from filing on the same issue.	This change will be in tune with comments in Section 9901.922.
9901.922(c)(5)	Currently states: 9901.717 .	Change to: 9901.712	Wrong cite for mandatory removal.
9901.922(f)	Currently states: 9901.717 .	Change to: 9901.712	Wrong cite for mandatory removal.
9901.927	Clarify that existing DoD issuances (DoD and Component) will not make conflicting contract provisions unenforceable upon implementation of NSPS labor relations.	Need to delete the last sentence on page 7571, paragraph 12. Unfair Labor Practices which states this includes Department issuances in existence prior to the effective date of these regulations."	There is a clear conflict in this section and different parts of the proposed regulations that need to be corrected before final publication. The only time DoD can preclude agreements entered into by the Department and the exclusive representatives in regard to law, or DoD or component issuances is in 9901.905 and 9901.915 other than these two sections all such agreements will continue.