

AFGE LOCAL #2302 COMMENTS

SUBPART A: GENERAL PROVISIONS, 9901.101 – 9901.108

Section 9901.104 attempts to mislead the public and DOD employees by stating only specific chapters of Title 5 of the U.S. code may be waived by NSPS. But, according to NSPS law, 5 USC 9902(b)(5) NSPS shall not be limited by any specific law or authority under Title 5, or any rule or regulation prescribed under this title. DOD employees are therefore concerned about further action by DOD to adversely impact retirement, health insurance, life insurance, workers compensation, annual leave and sick leave.

SUBPART B: CLASSIFICATION, 9901.201 – 9901.231

DOD employees and the public are denied a fair and reasonable opportunity to comment on DOD's expanded authority to evaluate and classify jobs because Subpart B relies on "implementing issuances" and does not provide information on what policies and procedures will be used by DOD. DOD must clarify the mechanics of their system and not hide their true intent behind vague language and policies and procedures that have not yet been held to the light of public scrutiny.

SUBPART C: PAY AND PAY ADMINISTRATION, 9901.301 – 9901.373

Successful pay-for-performance systems already in DOD are joint efforts between labor and management. DOD has designed a system that will not achieve the goals of a pay-for-performance system and will not enhance national security. Excellent employees that are in a pay pool with less money allocated by the pay pool manager will get lower raises than average employees in a pay pool with more money. Furthermore, the supervisor has almost total authority over their employees' pay and will make decisions based on favoritism and not on performance as the system intends. There are not adequate checks and balances in the system to stop bad supervisors from unfairly punishing good performers. That alone is bad enough, but managers above the supervisor may also make decisions that will unfairly cost top performers money with very little or no first-hand knowledge of the performance of the employee.

DOD's authority to establish limitations on maximum pay in pay bands will cause well-qualified people to leave DOD for better paying positions with no caps on salary. In the future DOD could eliminate or reduce payroll increases. The funding available for payroll increases may not be fairly distributed across DOD. Expenses in a specific locality are the same for all employees but under NSPS all employees in a specific location will not benefit equally from locality pay. DOD's broad latitude in setting the ranges of basic pay for the pay bands sets up a system in which the funds will be distributed solely at the discretion of DOD and may be subject to misuse and re-appropriation and not used to reward employees' performance. There is no guarantee of an annual increase. If the local market conditions do not warrant an increase at the minimum rate of the band, the entire band will not be increased even though an increase may be warranted at the upper end of the band. This creates a situation where higher

level employees will leave their jobs for better paying jobs in the local area. Also, the local market DOD selects may not be representative of the local area.

SUBPART D: PERFORMANCE MANAGEMENT, 9901.401 – 9901.409

As in Subpart B, DOD employees and the public are denied a fair and reasonable opportunity to comment on DOD's expanded authority to devise a performance management system because Subpart D also relies on "implementing issuances" and does not provide information on what policies and procedures will be used by DOD.

Employees with unacceptable ratings will not get increases to the pay band even though they will also be denied local market supplements and performance-based increases, therefore being punished three times under this new system and with no fair appeal process to rely on. Reductions in employees pay up to ten percent will be based solely on the supervisor's discretion, creating a system that invites favoritism and adversely affects employee morale. NSPS will pit worker against worker and destroy teamwork. Employees will legitimately fear speaking out about valid concerns from safety, discrimination, harassment, or legal violations.

SUBPART E: STAFFING AND EMPLOYMENT, 9901.501 – 9901.516

Once again, DOD employees and the public are denied a fair look at the system DOD intends to implement by stating a range of options they "may" employ and the now familiar "implementing issuances". Apparently DOD's strategy is to let employees know the bad news drop-by-drop in an attempt to avoid a flood of opposition.

SUBPART F: WORKPLACE SHAPING, 9901.601 – 9901.611

Since the NSPS performance system is fundamentally unfair, Subpart F compounds the problem by giving performance appraisals more weight than seniority in the event of a RIF. If an employee is being treated unfairly by a supervisor with little chance of a successful appeal, it could cost the employee their job.

SUBPART G: ADVERSE ACTIONS, 9901.701 – 9901.721

Once again, "implementing issuances" are used to avoid public scrutiny. Mandatory removal offenses are not identified and are left to the discretion of the Secretary and "the discretion of the Department to remove employees for offenses other than those identified by the Secretary". No reduction in penalty will be allowed and employees are not even afforded the prior 30 days advance notice of adverse actions but only 15 days notice with 10 days to submit a reply.

SUBPART H: APPEALS, 9901.801 – 9901.810

This subpart sacrifices due process for employees because they are given insufficient time to prepare to appeal an adverse action, and MSPB judges can issue "summary judgements" which means no hearing - a violation of the Constitution of the United

States. This portion of NSPS also will deny the few employees who will win their appeal recovery of their attorney's fees.

SUBPART I: LABOR MANAGEMENT RELATIONS, 9901.901 – 9901.928

Subpart I ignores the intent of Congress and is a transparent attempt to abolish collective bargaining for DOD employees. DOD has granted itself the right to decide what will be covered by collective bargaining and may impose decisions with no advance notice to the union and with no negotiations of any sort.