

Comments Submitted 2005.03.14

The current National Security Personnel System (NSPS) is the Civil Service / General Schedule (CS / GS) that has evolved in response to the abuses of the Civil War era “Spoils” system (use of government jobs to reward political cronies) and the “Shoddy” materiel supplied to the Operating Forces by inept or corrupt acquisition officials. The idea was that a permanent competent staff holding relatively secure government jobs could avoid the past mistakes and abuses by acting impartially with concern only for the public interest. The CS / GS model worked exactly as intended through wars major, minor, hot and cold and it has evolved successfully to accommodate new technologies and theories of warfare.

The effectiveness of the CS / GS model has been questioned at regular intervals by folks who thought that the apparent successes of the “Private Sector” revealed lessons that ought to be carried over to the Defense Establishment and perhaps to the entire Federal Government. That the stakes in Defense are most grave and intolerant of miscalculation, or that there is no Quarterly Profit and Loss statement to measure intermediate results, has not inhibited the admirers of the private sector from drawing selective and ill-justified “lessons” and attempting to apply these to the “Re-Invention” of the Defense Personnel System. The transient gains of the Internet Bubble that have bedazzled the latest set of re-inventors have largely turned to vapor and the economic damage of information-enabled job deportation is draining our National Treasure just as the latest quest for short-term gains is threatening our long-term survival both Militarily and Economically.

To determine how much improvement the existing Personnel System needs and to measure how much the specific NSPS proposal presented here might produce tangible benefits that out-weigh the potential Unintended Consequences, one would expect to find quantitative Measures-of-Effectiveness (MoEs) presented as they have been over, say, the last decade, and how they are expected to result in a Net Improvement over the next decade. Although no such MoEs are offered in the justification of the peculiar NSPS offered here, the following are commonly recognized measures of “Personnel System” performance:

- **Retention:** portion of personnel available at the beginning of the “period” that are still on the job at the end; DoD’s current civilian retention is much higher than either the Military or the Private Sector – what are the specific numbers now and what improvement is expected? Or is the perception that Retention is too high and that more turn-over of experienced specialists would improve the Defense effort? Or that too many Civil Servants are remaining on the job long enough to recognize the goofy re-invention schemes as they are disinterred at regular intervals?

- **Recruiting:** number of qualified applicants for each vacancy; DoD now out-sources many menial or “Industrial Age” jobs and so should be most concerned about the more highly

trained “Knowledge Workers” suited to the key “Information Age” jobs of the 21st Century – how many folks with good academic records apply for each vacancy now? What improvement is expected?

- **“Shaping”**: number of employees willing / able to accept new challenges that are outside of their current area of expertise or the scope of their “Position Description”? What are current statistics? What improvements are possible within the current GS / CS system (Training, Developmental Assignments, Management Coaching,...); What other features would be added? What quantitative changes are expected that could not be achieved under the current system?

- **Responsiveness**: How long does it take to hire a new employee; to retrain or out-place a mis-matched or under-performing employee? How common are the extreme examples (a frequent complaint is that too many current employees are “above average”)? What specific features in the new system would address this factor? What impact is expected on the scale of the over-all Defense effort?

Detained proposals do not address any quantitative MoEs but they seem to be directed toward giving “Management” (SECDEF and the Supervisory Employees) more control over the rest of the DoD Employees:

- **Getting Rid of Current Employees**: While no current values or expected quantitative gains are presented, the vast bulk of the new features seem to be directed toward shortening the time and effort it would take to get rid of current employees, minimize the interference of employee representative (Unions) and other outside (non-DoD) reviewers even though the percent of problem employees that could not be dealt with under the current system is unknown (probably less than 1%?). The unintended consequences of a more adversarial interaction between the supervisory and non-supervisory employees are potentially more costly than the presence of a few under-productive folks but there is no estimate of the impact or net benefit.

- **Using Pay to Modify Behavior**: The consistent income and relative job security that gave the Civil Service the freedom to act objectively on the behalf of the People and Long-Term Defense effort is directly attacked by explicit provisions to adjust employee’s pay in response to job market (details to be the subject of undisclosed future “issuances”) or/and failure to perform “in the manner prescribed” with the proper “attitude”. This treatment of current employees is apparently to be visible to the pool of potential recruits so that they will flock to the Department. Since the amounts of money expected to be available to influence the behavior of the entire DoD is so small that it embarrasses even the re-inventors, all monies allotted to Cost-of-Living adjustments, previously available promotions (within-grade “steps” and grade-to-grade) and pay-cuts for the under-performers are to be pooled to allow life-style altering increases for the few over-performers. It is not clear whether the over-performers are expected to increase their output enough to compensate for the further de-motivation of the under-performers or whether the under-performers are expected to really turn-to so that they can get a bigger bite of the apple the next time around. Since performance is expected to increase whether pay is increased or decreased, one concludes that all current employees are always working at minimum

productivity. Again this is supposed to attract a better class of Knowledge Worker than does the current system.

If there are other innovations to improve Retention, Recruiting and Responsiveness, they will be revealed after the proposed regulation is approved in Implementing Issuances which will (apparently) not be subject to an extended comment process.

The presentation in the Federal Register is not conducive to understanding the specific differences between the “old” and “new” system or the implied MoEs or the expected net benefit to the Defense Effort. The first part is self-congratulatory promotion of the proposed regulation and assertion of compliance with the Congressional Intent but the space would have been better spent if it accounted for each change with a straight-forward “before - after - expected benefit - MoE now - MoE then” analysis that would let the reviewer recognize the merit of the change based on what is proposed. While there is great potential for mischief in the yet-to-be-disclosed “issuances”, there are a number of revealing and concerning ideas to be found if one labors through the tedious and rather opaque process of comparing the current United States Code(USC), the proposed “Code” and enabling legislation. A few examples include:

- ***Behavior, Attitude and Manner of Performance*** become factors in a performance rating;
- ***Mandatory Removal Offense (MRO)*** is applied to anything the SECDEF finds offensive by any employee, not just actions by Law - Enforcement Officers that are damaging to National Security; and
- ***Sole and Un-Reviewable Discretion (SURD)*** of the SECDEF applies to any personnel matter, not just issues with an immediate impact on National Security.

The overall impression is one of a rather clumsy attempt to apply Industrial Age “Scientific Management” to Information Age “Knowledge Workers” that is not informed by more enlightened contemporaneous models based on communication, collaboration and consensus building or even by the “Military Model” as it exists in the same DoD. These themes are developed in the three attachments provide here:

- **The Military Model vs Pay for Performance:** Rigid grades and predictable “Seniority” - based pay increases produce admirable results for the Uniformed part of the DoD team, why not the Civilian side?
- **Explanatory Preface to the Proposed Rule:** The promotional front matter from the Federal Register notice with highlighting and footnotes to comment on the ill - informed concepts of Organizational Development Psychology and potential Un-Intended Consequences, and
- **The Proposed §9901 Verbiage:** The actual license the re - inventors are seeking to

practice their model of “Management” and “Supervision” with comments about what is to be changed and the potential impact. This comparison should have been offered in the introduction instead of the self-serving promotion and should still be done by a more competent, disinterested organization, perhaps the Congressional Research Service (CRS) or/and the Government Accountability Office (GAO).

Rather than the head-long rush to spread the implementation of the “new” Personnel System before the legislative authority expires, a first “spiral” (say the Air Force and the Defense Agencies) should be taken as a “Pilot Demonstration” that uses well calibrated MoEs to compare the results obtained by the rest of the DoD using the current CS / GS model as a “Control” in a more cautious experiment. Both the Pilot and the Control should be provided equal resources on a per capita basis and should receive the same degree of training and visibility to avoid a distorted result (Hawthorne Effect, etc.). Outcomes measured by MoEs and qualitative impressions from both Bosses and Workers should be assessed by the same disinterested observers (CRS / GAO ?).

The Civilian contribution to the Defense Effort is too important to allow the rather poorly informed NSPS Model to propagate across the entire Department without a better quantitative assessment of actual Costs and Benefits by folk who are more qualified and more objective than the NSPS promoters.

The Military Model vs Pay for Performance

2005.03.08a

Our Military Personnel are widely admired while our Civilian Personnel are not.

The Military folks are brought into the service with no “Military” training or experience and are provided with the opportunity to enter well defined “Career Paths” with a Rigid Grade Structure (E-1 through O-10) and fixed Rates of Pay based their Grade and Years of Service. Premium Pay is provided only for well defined, usually Hazardous, “Duty” (Combat, Flight,..). The Measures of Effectiveness (MoEs) of this system, under the All-Volunteer Service are **Retention** (the percentage of folks that stay for a full career or, at least “Re-Up” for the next “Tour”) and **Recruitment** (the Number and “Quality” of Candidates that come forward for each open position). The Cumulative Training and Experience of the Military are considered to be Investments on the behalf of the Taxpayers and the premature departure of more senior personnel is considered to be an Asset Lost and a Failure of “Management”.

The Administration regularly proposes annual across-the-board percentage increases in Military pay that are at or above the Economic “Cost of Living” Increase (Inflation) while proposing less for the Civilians. They never suggest that Individual Service People should paid more than their comrades of the same Grade and Seniority because that would be destructive to “Unit Cohesion” and “Team Work”. The Military Bosses (Commissioned and Non-Commissioned Officers) have absolute authority to give “Lawful” Orders but are expected to exhibit “Leadership” qualities which earn them the Loyalty and Respect of their subordinates by their Example, Demonstrated Commitment to the Mission and concern for the Welfare of the Personnel under their care.

Civilians are viewed as a Commodity that can be purchased on the Open Market at the Prevailing Rate (Time and Locale), whose In-House Experience and On-the-Job Relationship Development is of minimal value to the Mission. They are expected to respond to the Single Stimulus of “Pay” with no Loyalty to their Organization or Colleagues, Respect for their Bosses or Commitment to the Government Service. If the Government (Administration, Congress, current Bosses,...) builds a system of rewards that is tailored to this class of employee, that is what the Government will attract and retain – only as long as “Government” service is the Employee’s only (or most lucrative) option.

Pay-for-Performance (PfP) is based on a Mental Model that says that the Value provided by an Employee to the Government Mission is a “Function” (in the Mathematical sense) of their “Pay” and that the “Government” – rather, the other Employees who encumber “Management” or “Supervisory” Positions – knows this Function and can manipulate the distribution of a “Fixed” (Cost-Neutral) amount of Pay amongst their Employees in order to Maximize the Total Value to the Mission. This Model descends from early 20th Century “Scientific Management” or “Taylorism” (After F. W. Taylor, its most notorious expositor (ca. 1910)) and is built on the Obsolete “Industrial Age” assumption that only the Bosses knew how a “Job” should be done – in its explicit step-by-step “Manner of Performance” – and that the “Worker” was only expected complete as many repetitions as physically possible per unit time or/and to be paid only for each countable repetition (“Piece Work”). This model would never be considered for our Esteemed

Military and it has long since been overtaken by more “Enlightened” models in the Private Sector by students of W. E. Deming, the “Japanese” Model (Continuous Improvement, Worker / Management Collaboration, Elimination of Individual “Ratings”, “Kaizen”,...) etc. but, it seems to be the only Idea available to the folks intent on Re-Inventing the DoD “Personnel System”.

The PfP “Mental Model” is not only Obsolete, Simplistic and Counter-Productive to the Maintenance of a Mutually Supportive Team of 21th Century “Knowledge Workers”, it is unable to produce the purported benefit even if the Workers actually behaved with its idealized simplicity:

If Workers “A” and “B” produce the same number of Value Units per Unit of Pay, then **any** Distribution of the Total Pay between A and B will produce the same Total Value. {Linear Model, Identical Workers}.

If Worker A produces more Value Units per Unit of Pay than Worker B, then giving **all** to the Total Pay to A would Maximize the Total Value (and we could get rid of the Boss since there would only be one Worker) {Linear Model, Unequal Workers}.

If Worker A and Worker B produce Unequal Value Units per Unit Pay but the Value to the Mission depends on the Product of their Individual Contributions (or anything other than the Sum of their Isolated Contributions), then Maximum Mission Value occurs when the Total Pay is shared **equally** between A and B {Non-Linear Model, Unequal Individual Workers}.

Of course, no Real Person behaves according to any Mathematical Model, let alone a “Linear” model, especially the Highly Trained, Experienced “Knowledge Workers” that the Government should be most concerned about Recruiting, Retaining and Integrating into a Mutually Supporting Team (just as in the Military Model). These Real People respond Non-Linearly and contribute to Total Mission Value in Non-Linear manner that is beyond the ability of any Boss (especially one whose insight and leadership skills are stuck in the last century – or the previous one) to understand, much less to reduce to a Mathematical Function that could be brought to a Global Maximum by manipulating the distribution of the Total Pay amongst the Workers.

The Real Knowledge Worker will produce some Minimum Value no matter how Low the Pay because he/she is Interested in the Challenge or Believes in the Mission; they will reach some Maximum Productivity regardless of how High the Pay because there are too few hours in a day or because they have reached the Limits of their Knowledge, Skills and Abilities. These folk rarely obsess over their Pay as long as they feel that they are given fair Pay for the Value they contribute, and that their Pay keeps pace with Inflation and advances as they gain Knowledge and Experience with the passage of time – just as in the Military Model. Once Real Knowledge Workers are paid fairly, they become more concerned with their “Psychic Income” – Contribution to the Mission, their Work Environment, the Recognition of and Participation with their Peers, and their (hopefully) Nurturing Supervisor-Collaborators. Once their attention is redirected to their Pay by a missed Cost-of-Living Increase or/and they are taught to see their Peers as competitors for a Slice of a Fixed or Shrinking Pie or to see their Bosses as Critical would-be Task-Masters, then the Government’s benefit of the Psychic Income vanishes, the

Non-Linear Product goes to zero and the Workers take their services to the Highest Bidder – unless the Government is the Best they can do Pay-wise – and then the Real Knowledge Worker turns his/her Creative Urges to Destructive Competition, Subtle Resistance to the Boss's objectives and Mute Insolence – just as they would in a Military Unit that has lost its Cohesion.

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[Federal Register: February 14, 2005 (Volume 70, Number 29)¹]
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Part II

Department of Defense

Office of Personnel Management

5 CFR Chapter XCIX and Part 9901

National Security Personnel System; Proposed Rule

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DEPARTMENT OF DEFENSE

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Chapter XCIX and Part 9901

RIN 3206-AK76/0790-AH82

National Security Personnel System

AGENCY: Department of Defense; Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) and the Office of Personnel Management (OPM) are issuing proposed regulations to establish the National Security Personnel System (NSPS), a human resources management system for the DoD, as authorized by the National Defense Authorization Act (Pub. L. 108-136, November 24, 2003). NSPS governs basic pay, staffing, classification, performance management, labor relations, adverse actions, and employee appeals. NSPS aligns DoD's human resources management system with the Department's critical

¹Comments added 2005.02.15 - 2005.03.14 {FR14fe05-30XX.wpd}

mission requirements² and protects the civil service rights of its employees.

DATES: Comments must be received on or before March 16, 2005.

ADDRESSES: You may submit comments, identified by docket number NSPS- 2005-001 and/or Regulatory Information Number (RIN) 3206-AK76 or 0790- AH82. Please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. There are multiple methods for submitting comments. Please submit only one set of comments via one of the methods described. Preferred Method for Comments: The preferred method for submitting comments is through the NSPS Web site at: <http://www.cpms.osd.mil/nsps>.

Alternative Methods: If you are unable to submit comments via the NSPS Web site, you may submit comments in one of the following ways. Federal Rulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments. Mail to: Program Executive Office, National Security Personnel System, Attn: Bradley B. Bunn, 1400 Key Boulevard, Suite B- 200, Arlington, VA 22209-5144. E-mail to: nspscomments@cpms.osd.mil. Please put the following in the subject line: ``Comments on Proposed NSPS Regulations--RIN 3206-AK76/0790-AH82." Hand delivery/courier to: Program Executive Office, National Security Personnel System, Attn: Bradley B. Bunn, 1400 Key Boulevard, Suite B-200, Arlington, VA 22209-5144. Delivery must be made between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. Mailed or hand-delivered comments must be in paper form. No mailed or hand-delivered comments in electronic form (CDs, floppy disk, or other media) will be accepted.

The **official Web site (<http://www.cpms.osd.mil/nsps>) will contain any public comments received,**

²Requirements for unquestioning obedience, prompt compliance & willingness to accept physical risks that are encountered in "live fire" military operations are seldom or never encountered in day-to-day civilian operations of the Department of Defense (DoD). Civilians support the "Organize, Train & Equip" functions of the DoD, through the constituent "Services" by performing both traditional "Industrial Age" tasks at depots & bases and modern "Knowledge Work" in Research & Development, Acquisition Management, Intelligence collection & evaluation & "Policy" development &c. More & more of the "Industrial Age" tasks have been "Contracted - Out" to private sector businesses with the appropriate work forces & management methods. The remaining "Knowledge Work" includes critical tasks that require independent creative thinking abilities & technical expertise by the civilian employees that are not always held by the other civilian (or military) employees who happen to have supervisory duties. The first requirement for any effective "Personnel System" is that it does not stifle the creative process or inhibit the free exchange of ideas that is essential to Connect the Intelligence Dots, develop effective Materiel Acquisition strategies &c by clumsy attempts to manage by edict or to enforce uniform behavior. *First do no harm.*

without change, as DoD and OPM receive them, unless the comment contains security-sensitive material, confidential business information, or other information whose public disclosure is restricted by statute. If such material is received, we will provide a reference to that material in the version of the comment that is placed in the docket³. The system is an "anonymous access" system, which means that DoD and OPM will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. Unless a comment is submitted anonymously, the names of all commenters will be public information. Please ensure your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked "late," and DoD and OPM are not required to consider them in formulating a final decision.

Before acting on this proposal, DoD and OPM will consider all comments we receive on or before the closing date for comments. Comments filed late will be considered only if it is possible to do so without incurring expense or delay. Changes to this proposal may be made in light of the comments we receive.

FOR FURTHER INFORMATION CONTACT: For DoD, Bradley B. Bunn, (703) 696-4664; for OPM, Ronald P. Sanders, (202) 606-6500.

SUPPLEMENTARY INFORMATION: The Department of Defense (DoD or "the Department") and the Office of Personnel Management (OPM) are proposing to establish the National Security Personnel System (NSPS), a human resources (HR) management system for DoD under 5 U.S.C. 9902, as enacted by section 1101 of the National Defense Authorization Act (Pub. L. 108-136, November 24, 2003). The following information is intended to provide interested parties with relevant background material about (1) the establishment of the National Security Personnel System, (2) the process used to design the NSPS, (3) a description of the proposed NSPS regulations, and (4) an analysis of the costs and benefits of those proposed regulations.

The Case for Action

"* * * a future force that is defined less by size and more by mobility and swiftness, one that is easier to deploy and sustain, one that relies more heavily on stealth, precision weaponry, and

³The Department of Homeland Security (DHS) Human Resources Management System (DHS HRMS) development process was given blow - by - blow visibility through a "Docket" (DHS-2004-0001) available on an Environmental Protection Agency (EPA) Web Site <http://docket.epa.gov/edkpub/index.jsp>. Although the "Docket" is now closed, an "Archival" copy of this "Public Record" is to be found, <http://docket.epa.gov/edkpub/do/EDKStaffCollectionDetailView?objectId=0b0007d480222312>. Unfortunately, no similar "Docket" been found to document the formulation of the DoD "NSPS" as it evolved as opposed to the "Post Facto" comments to be received here.

information technologies⁴."

With that statement on May 25, 2001, President Bush set a new direction for defense strategy and defense management--one toward transformation.⁵ On January 31, 2002, Secretary of Defense Donald Rumsfeld echoed the sentiments expressed by President Bush, stating that ``All the high-tech weapons in the world will not transform the U.S. armed forces unless we also transform the way we think, the way we train, the way we exercise, and the way we fight⁶."

Transformation is more than acquiring new equipment and embracing new technology--it is the process of working and managing creatively to achieve real results⁷. To transform the way DoD achieves its mission, it must transform the way it leads and manages the people⁸ who develop,

⁴This is gospel of "Network-Centric Warfare" (NCW) that was promoted to replace "Force Structure" with "Knowledge" & that appeared to work beyond our expectations in the Preliminary Phase of the current Iraq War but is less able to cope with the "Invertebrate War" of the present phase that requires more "Boots on the Ground", Language / Cultural Knowledge & Armor Plate & less "Precision Target Set Processing" than the NCW visionaries ever imagined. The same thinking that lead us to the Magic Bullet theory of Warfare has now produced a "One Solution to all Problems" approach to Personnel" matters that seems to be primarily intended to stifle debate about alternative strategies & priorities.

⁵This sloganeering does not contribute to a better understanding of how the DoD workforce with its evolving mix of Industrial Age & Knowledge Work needs is made more effective by discarding the proven "Civil Service /General Service" (CS/GS) model in favor of one that smacks of unenlightened Industrial Age "Taylorism". A simple accounting of the documented current shortcomings (e.g. low starting salaries for specialities that may be in high demand in the commercial market) are overcome by the proposed "System" without creating more onerous problems elsewhere (reduced retention / self-esteem amongst specialists in areas with little commercial demand)...

⁶The quote omits "Equip", "Anticipate the Future",... areas that we could have done better in over the past decade & areas that are most heavily dependent on the *continuity & creative* thinking of the Civilian Workforce.

⁷The DoD Civilian Workforce has been contributing to "Real Results" for more than half a century (1947 - 2005), usually with greater efficiency & panache than many of the "Private Sector" models (ENRON, Domestic (Civil) Shipbuilding, Boston's "Big Dig"...) that seem to be envied by our would-be Transformers. Trim back the hype & provide an "Audit Trail" from quantifiable "problem" to actionable solution with minimal risk of Unintended Consequences – Please.

⁸The "DoD" does not have a disembodied existence outside of its "People" (from the SECDEF on down); the "Leadership" & "Management" (only "Management is provided with a legal definition (an Employee with management functions) – a definition of "Leadership"

acquire, and maintain our Nation's defense capability. Those responsible for defense transformation--including DoD civilian employees--must **anticipate the future and wherever possible help create it**⁹. The Department must seek to develop new capabilities to meet tomorrow's threats as well as those of today. NSPS is a key pillar in the Department of Defense's transformation--**a new way to manage its civilian workforce**¹⁰. NSPS is essential to the Department's efforts to **create an environment in which the total force, uniformed personnel and civilians, thinks and operates as one cohesive unit**¹¹. DoD civilians are unique in government:

should be provided, especially if distinct / separable functions are imaged) – can only be provided by those same “People”, some by their thoughts & example, some by the exercise of the Duties contained in their “Position”. A side discussion is needed regarding how these arguments apply to the Military folk in the DoD who have occasion to oversee (Manage, Lead,... ?) some of the civilians but whose performance is widely admired despite their personnel management system that has rigid pay grades & specialty specifications, awards annual pay increases based on longevity and provides premium pay only for hazardous duty. {7103(a)(10), title 5, United States Code: “**Supervisor**” means an individual **employed** by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising such authority;... (11) “**Management Official**”. A. . . an individual **employed** by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency. }

⁹The future will come despite our best efforts to thwart it; Civilians (especially) must help anticipate surprise (Technological & Operational) while the Military folk are saluting their bosses and following their orders. The “Knowledge Work” that is necessary to maintain an openness to extreme possibilities must not be inhibited by confining task-by-task performance accounting or by fears that divergent thinking might be received as a negative “Attitude”.

¹⁰Different from the existing “Civil Service / General Schedule (CS / GS)” system perhaps, but familiar to students of such past fads as Taylor’s “Scientific Management” (ca 1910), “Management by Objectives” (ca 1980) ,...if not “Kaizen” (Japanese -style communication, cooperation & continuous improvement) or Deming’s somewhat more current & enlightened models. Again it is the Civilians (and occasional Military) people that will be doing the “Managing” (or Leading), just as they do (or don’t) under the current system.

¹¹This may be the **antithesis of what is needed**. Even on the Battlefield, “Unit Cohesion” is supposed to encourage individual initiative based on an appreciation of the “Commander’s Intent”, not blind unthinking “Following Orders” . In peace time or in preparing Materiel & Employment Concepts for the next war, cohesion is the least useful approach – competing ideas must be freely examined without fear of suppression if they don’t conform to the wisdom

they are an integral part of an organization that has a military function. DoD civilians must complement and support the military around the world in every time zone, every day. Just as new threats, new missions, new technology, and new tactics are changing the work of the military, they are changing the work of our 700,000 civilians¹². To support the interests of the United States in today's national security environment--where unpredictability is the norm and greater[[Page 7553]]agility the imperative¹³--civilians must be an integrated, flexible, and responsive part of the team.

At best, the current personnel system is based on 20th century assumptions about the nature of public service and cannot adequately address the 21st century national security environment¹⁴. Although the current Federal personnel management system is based on important core principles, those principles are operationalized in an inflexible, one-size-fits-all system of defining work, hiring staff, managing people, assessing and rewarding performance, and advancing personnel.¹⁵ These inherent weaknesses make support of DoD's mission complex,

received from on high. The group think that allowed a Blinding NCW "Vision" to obscure the continuing need for basic "Small War" skills & equipment or allowed the failure to recognize the threat of Aircraft as Incendiary Missiles must be discouraged amongst Defense Personnel – not hard-wired into the "system" of rewards & punishment.

¹²What is the distribution of the DoD civilian population amongst real-time operational support to warriors, background performance of "Commercial Activities" that might be performed more cost-effectively by the "Private Sector" & long-term, "Inherently Governmental" functions in Materiel Research, Development & Acquisition (RD&A), Intelligence Collection & Interpretation & "Policy" formulation ?? How has it been determined that a single, uniform "Personnel System" would result in the most "Cost-Effective" Defense Effort as opposed to the minimum overhead cost for the Processing of Personnel Actions ??

¹³What are the "Time Scales" involved ? New Weapon Systems require decades to move from concept to deployment, development of Research / Engineering skills in Militarily-Relevant areas can take a lifetime. How does cutting a few months off of a infrequently occurring grievance process change things on a Global Scale? What are the costs & delays introduced by introducing fear & discontent in place of a spirit of shared purpose & dedication to a vital mission?

¹⁴What are these assumptions (fear in the workplace stifles creativity? only the boss knows how a job should be done?...)?; which changed when Y2K rolled over ?? Many of the principles & lessons in the current Materiel Support & Operational Challenges were visible in the Civil War era & most intervening struggles; none of the Organizational Development principles that are applicable to the age of the "Knowledge Worker" have become obsolete.

¹⁵Is the current CS / GS system inflexible or is its application inept ?? Will the same inept bosses become more creative under the proposed "System" which seems to have its own "Rigidity" & seems to stress punishment of the half of the population that is below average more

costly, and ultimately, risky¹⁶. Currently, pay and the movement of personnel are pegged to outdated, narrowly defined work definitions¹⁷, hiring processes are cumbersome¹⁸, high performers and low performers are paid alike¹⁹, and the labor system encourages a dispute-oriented, adversarial relationship between management and labor²⁰. These systemic

than team - building, life-time learning (individual & organizational) & innovation?

¹⁶How is the Military model with its defined specialties, assured annual & longevity raises & rigid grade structure able to overcome these objections ?

¹⁷Would the problem be solved if we had only one Position Description (“Defense Servant”)?; Did we hire too many Buggy Whip Technicians in the 20's & did their bosses fail to guide them to the training & rotational assignments that would have allowed them to develop new skills ? Did we put too many folks in “Career” positions that should have been hired as “Term” employees or had their function “Contracted Out”... Will the threat of pay-cuts or dismissal make the current bosses more attentive under the new system ?

¹⁸The Cumbersomeness arises from the procedural checks & balances that have yet to be imposed on the “New System”. The concept of “*Hire in haste, Retain at Leisure*” could have been part of this scheme but it’s not to be found. Many of the “Demonstration” programs extend the “Probationary” period to three years instead of one; any employee with supervisory duties should be able to make an “On-the-Spot” offer to any apparently qualified person without prior coordination as long as the New Hire agrees automatic dismissal before the Probationary term is over unless their qualifications & performance have been accepted by the “System” by then.

¹⁹This is an *undocumented calumny* that should not be allowed to appear in an Official Document... The current system provides a number of tools to deal with “low” performers ranging from denial of With-In Grade Increases (WIGIs) to dismissal after due process. No person could (should have been allowed to) advance to a higher grade without demonstrating, not only satisfactory performance, but notable growth in Knowledge Skills & Abilities and, for the Higher Grades, the person would be expected to “Compete” for the advanced position. If the “Supervisor” allowed a “Low Performer” to advance to (or remain in) a Higher Grade, it is they who have failed to perform to a Fully Acceptable standard and should be dealt with accordingly. None of this will change under a “New System”.

²⁰Nothing proposed here helps to build a collaborative, sharing relationship – it just gives “Management” (just another group of Employees) a bigger club to bludgeon “Labor” into submission. Jobs done by persons who could still perform effectively under such conditions should probably have been “Contracted - Out” in the first place. What is needed is a better class of “Managers” who can build teams, find consensus & bring continuous improvement to the “Process” (Japanese Management Model) but if DoD had these, the “New System” would look a lot different than this one.

inefficiencies detract from the potential effectiveness of the total force²¹. A more flexible, mission-driven system of human resources management that retains those core principles will provide a more cohesive total force²². The Department's 20 years of experience with transformational personnel demonstration projects, covering nearly 30,000 DoD employees, has shown that fundamental change in personnel management has positive results on individual career growth and opportunities, workforce responsiveness, and innovation²³; all these things multiply mission effectiveness.

The immense challenges facing DoD today require a civilian workforce transformation²⁴: civilians are being asked to assume new and different responsibilities, take more risk, and be more innovative, agile, and accountable than ever before²⁵. It is critical that DoD supports the entire civilian workforce with modern systems; particularly a human resources management system that supports and protects their critical role in DoD's total force effectiveness²⁶. Public Law 108-136 provides the Department of Defense with the authority to meet this transformation

²¹How is this measured ? How much would “Unintended Consequences” detract? What other “Management Interventions” were evaluated ? (The authorizing legislation describes a Pay - Banded “China Lake” - style model because that’s what the re-inventors wanted but the utility of the “Demos” is based on the “customized” details created to suit the personality of the “Laboratories” and make the actual implementation less “Mechanistic”.)

²²If cohesion means “Teamwork” & “Shared Purpose”, competition for a bigger share of fixed pay pool can only be destructive. If “Team Work” depends on the product of the effort of two uneven workers as opposed to the sum of their individual efforts, the maximum result is always obtained when both are paid the same, regardless of their relative individual performance.

²³Cite reference please. Most of the quantitative measures from the “Demo” projects differed by less than the statistical uncertainty and no study has attempted to control for the changing Economic Conditions during the period – from Internet Boom & Bust to “Lucky to be Working at All” in a “Jobless Recovery”. The true value of the “Demos” was in the “Local Control” & heavy emphasis on consensus building in sharing the “Pay Pool” – any attempt to force the “System” announced here to be “Uniform” across the DoD or to enforce performance score distributions (half of our people are always below average) will ensure that the small gains of the Demos are reversed.

²⁴Why doesn’t the Military side require a similar transformation ? All of the objections to the current Civil Service model apply *a fortiori* to Military (annual increases, rigid grades,...).

²⁵What are examples? If anything, more current civilians are expected to be “Knowledge Workers” as “Industrial” jobs are “Contracted Out” & the need for In-House Knowledge, Creativity & Innovation is growing.

²⁶Where is this defined ?

challenge through development and deployment of the NSPS.

More specifically, the law provides the Department and OPM--in collaboration with employee representatives--authority to establish a flexible and contemporary system of civilian human resources management for DoD civilians. **The attacks of September 11 made it clear that flexibility is not a policy preference**²⁷. It is nothing less than an absolute requirement and it must become the foundation of DoD civilian human resources management. NSPS is designed to promote a performance culture in which the **performance and contributions of the DoD civilian workforce are more fully recognized and rewarded**²⁸. The system will offer the civilian workforce a contemporary pay banding construct, which will include performance-based pay. As the Department moves away from the General Schedule system, it will become **more competitive in setting salaries and it will be able to adjust salaries based on various factors, including labor market conditions, performance, and changes in duties**²⁹. The HR management system will be the foundation for a **leaner, more flexible support structure**³⁰ and will help **attract skilled, talented,**

²⁷9/11 especially showed the importance of “Thinking Outside the Box” – the first criterion for any Personnel System should be that it fosters Individual Creativity & punishes “Group Think” & compliant / complacent attitudes.

²⁸Does this include all Employees or just those “Above Average”? Will there be a bigger “Award Pool” or just a bigger slice for the “Chosen Few”(“Demos were required to be “Cost - Neutral”, Management folks will be tempted to pay their Operational and Equipment replacement costs by squeezing the costs for Civilian Compensation – the best the Civilian might expect would be a “Zero - Sum Game” where Rewards for the Few will come from the Pay Checks of the Many) ?

²⁹The “Demos” found that the most useful feature was the ability to “Match” starting offers with Industry in a timely manner. The “Demos” have shied away from “Market” rates (More for a Computer Nerd whose once highly valued skills are now a glut on the market than for a PhD Chemist whose arcane work on Marine Corrosion has no commercial demand despite saving the Navy vast sums on a recurring basis ?) and have (almost) never cut the pay of an incumbent “Employee”(who is no longer an abstract statistic) even though the commercial demand for others in that Job Category has faded. (How will “Market Conditions” be compared if DoD has fewer, less specific, Position Descriptions? Does “Labor Market Conditions” mean the same as “Locality Pay” which has been recently denied to current DoD executives? Will there be a bigger “Pay Pool” or will every Increase have a corresponding Decrease (“Zero Sum Game” – as in Poker or the Stock Market) ? Will all Employees be allowed to apply or train for the more highly valued positions? Do Employees whose pay is cut also improve in Performance (ie everyone is always working at their minimum performance)? Do they degrade in Performance faster than the others improve?)

³⁰Fewer Personnelists or fewer Civilians? To what does “Support Structure” refer ?

and motivated people, while also retaining and improving the skills of the existing workforce.³¹

Despite the professionalism and dedication of DoD civilian employees, the limitations imposed by the current personnel system often prevent managers from using civilian employees effectively³². The Department sometimes uses military personnel or contractors when civilian employees could have and should have been the right answer³³. The current system limits opportunities for civilians at a time when the role of DoD's civilian workforce is expanding to include more significant participation in total force effectiveness³⁴. NSPS will generate more opportunities for DoD civilians by easing the administrative burden routinely required by the current system and providing an incentive for managers to turn to them first when certain vital tasks need doing.³⁵ This will free uniformed men and women to focus on matters unique to the military.³⁶

The law requires the Department to establish a contemporary and flexible system of human resources management³⁷. DoD and OPM are crafting NSPS through a collaborative process

³¹Is the current Workforce “unskilled” or “unmotivated” ? What are the “Retention” statistics now ? How much improvement is expected ? (MR England in his 10 Feb 2005 Pentagon WebCast { http://pentagonchannel.feedroom.com/index.jsp?fr_story=419214bad3e44fe2fc5c5dc1d36cf77ec55bd902 } admitted that he had no statistics on the number of underperforming Civil Servants under the current system. – a number of 1% or less is likely)

³²There is no separate “Manager” caste – they are also “Civilian Employees” whose “Position Description” includes various duties often attributed to the management function: assign tasks, provide resources, evaluate results, offer coaching & training to maintain skills, & c. The effectiveness of the “Management” aspects of the “Performance” of these employees (10 - 20% of the total ?) includes their ability to match “Employee” skills to the task, motivate / reward agility & flexibility in accepting assignments etc. How does this change under the “New System”? Will wide-open “Position Descriptions” allow freer assignment of tasks ? Will current “Managers” be replaced with more effective ones?

³³“Inherently Governmental” ? Cheaper? What jobs ? (Program Executive Officer, Researcher, ...)

³⁴Arabic Translation ? What roles are envisioned that are not possible under the current “System” ?

³⁵There needs to be an “Audit Trail” that ticks off the onerous “Requirements” of the Current “System” & identifies the clauses in this notice that correct each enumerated deficiency.

³⁶Only Combat is Unique to the Military... not yet encouraged for non-males.

³⁷If it exists today, it is “contemporary” – are there specific “Personnel Management” models that are widely recognized as more effective than the current CS / GS model (Toyota,

involving management, employees, and employee representatives, and are inviting comments from a broader community of other interested parties³⁸. DoD leadership³⁹ will ensure that supervisors and employees understand the new system and can function effectively within it.⁴⁰ The system will retain the core values of the civil service and allow employees to be paid and rewarded based on performance, innovation, and results.⁴¹ In addition, the system will provide employees with greater opportunities for career growth and mobility within the Department.

Relationship to the Department of Homeland Security

In developing the National Security Personnel System, the Department of Defense has benefited greatly from the efforts of the Department of Homeland Security (DHS). After more than 2 years of work, DHS and OPM have recently issued final regulations establishing Homeland Security's new human resources (HR) system, and the Secretary and the Director were extensively informed by the DHS experience, in terms of both process and results, in designing, developing, and drafting these proposed regulations⁴². In this regard, the DHS regulations were analyzed by staff-level working groups, as well as senior leadership, and where it made sense--that is, where it was consistent with and supported DoD's national security mission, operations, and statutory authorities--we adopted many of the concepts and approaches, and even much of the specific language set forth in the DHS regulations. For example, both regulations provide flexibilities in pay, performance management, labor relations, adverse actions, and appeals, while preserving the important core merit principles required by law. Similarly, both regulations provide essential management⁴³ flexibilities to respond to mission and operational exigencies⁴⁴. At the same time, where there are differences between DHS and DoD--in terms of scope, mission, organizational culture, and human capital challenges, as well as the statutes that authorize the respective HR

France's Director General of Armament (DGA) (put "Civilians" in their own uniforms?),...)?

³⁸Commenting in response to these FEDREG notice is the first /only "Official" channel offered to the present correspondent.

³⁹Military, Appointed ? All Civilians should be "Leaders" by Action to their subordinates & by Example to all others.

⁴⁰Did they do this with existing system? Did they try & fail ?

⁴¹The implication that a meaningful number are rewarded on any other bias under the current system is unsupported.

⁴²What are the differences ? Which are traceable to mission differences (Coast Guard vs Navy?)? How deficient would a "common" system be ?

⁴³Who is "Management" as distinct from "Employees" with Supervisory Duties ?

⁴⁴Deploy clerks to Iraq?

systems--DoD and OPM have broken new ground⁴⁵, and these proposed regulations are intended to stand on their own in that regard. Accordingly, this proposed regulation should not be viewed (or judged) in comparison to DHS, but rather as an independent effort, informed by the DHS experience, yet focused on DoD's mission and requirements.

Authority To Establish a New HR System

The authority for NSPS is 5 U.S.C. 9902⁴⁶(a) through (h) and (k) through (m), which provide authority to establish a new human resources management system, appeals system, and labor relations system for the Department of Defense. NSPS allows the Department of Defense to establish a more flexible civilian personnel management system that is consistent with its overall human capital management strategy⁴⁷. NSPS will make the Department a more competitive and progressive employer⁴⁸ at a time when the country's national security demands a highly responsive[[Page 7554]]civilian workforce⁴⁹. The NSPS is a transformation lever to enhance the Department's ability to execute its national security mission⁵⁰. Subsection (a) of section 9902 provides that the Secretary of Defense may establish a human resources management system, known as the "National Security Personnel System" (NSPS), in regulations jointly prescribed with the Director of OPM. The system established under subsection (a) may differ from the traditional civil service system established under title 5, U.S. Code, in certain respects. It is also subject to certain requirements and limitations that are specified in subsections (b) through (h) and (l) of section 9902. For example, NSPS must be flexible, contemporary, and consistent with statutory merit system principles and prohibitions against prohibited personnel practices⁵¹ (in 5

⁴⁵Compared to what ? (Taylor, Demos, Toyota,...?)

⁴⁶Search on "Thomas" brings no result for 5 U.S.C. 9902 ?

⁴⁷Where is this documented?

⁴⁸More money for the few or a more nurturing work place for all?

⁴⁹This theme keeps recurring – why not make the Civilian plan more like the Military (Uniforms, Rigid Grades, Annual Increases,...) rather than less ?

⁵⁰Someone should insist on a "crosswalk" between the specific limits on the DoD's "ability to execute" its mission & the remedies that are proposed here, especially the difference between Military & Civilian "behavior" under the three Personnel Systems (Current Military, Current Civilian & New Civilian). (<http://www.thememoryhole.org/crs/RL31916.pdf> provides a comparison of "New DoD", Current Civil Service & Home Land Security "Law" as it was proposed ca 2003 but it hasn't been updated to include the present specifics or to examine Mission Enabling differences between the Military & Civilian models.)

⁵¹Again, a working definition of "Contemporary" as a opposed to unenlightened "Industrial Age Scientific Management" (Taylorism) is needed to understand what the architects

U.S.C. 2301 and 2302, respectively). The system must ensure that employees may organize and bargain collectively, subject to the provisions of chapter 99 of title 5 and other statutory requirements. The system must include a performance management system that incorporates certain elements listed in the law⁵². Also, in establishing the system, only certain provisions of title 5 may be waived⁵³ or modified by DoD and OPM:

Chapter 31, 33, and 35 (dealing with staffing, employment, and workforce shaping, as authorized by 5 U.S.C. 9902(k));

Chapter 43 (dealing with performance appraisal systems);

Chapter 51 (dealing with General Schedule job classification);

Chapter 53 (dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees);

Subchapter V of chapter 55 (dealing with premium pay), except section 5545b (dealing with firefighter pay);

Chapter 75 (dealing with adverse actions); and

of the “New System” are actually trying to accomplish & where potential conflicts with “Merit Principles” & “Prohibited Practices” are blocked by specific safeguards.

⁵²“Meaningful Distinctions” in performance ratings has been the “Code Word” for the requirement that “Half of the Performers must be Below Average” (the Inverse “Lake - Wobegon” Effect) even though the admirers of the Military Model are silent on the impact of the narrow range of near perfect “Fitness Reports” (FITREPs, 4.9 out of 5.0 is a serious slap) – again, an explicit enumeration of the requirements cross-referenced to the proposed provision & an assessment of the potential “Unintended Consequences” should be a prerequisite to approval of any “New Plan”. [MR England (Pentagon WebCast (op.cit.)) claimed that all would be expected to be able to perform at higher levels under the “New System” but rejected the notation that all would be eligible for an appropriate share of the “Pay Pool” – ie raises would go only to the High Performers under a forced Distribution or Ranking Scheme.]

⁵³The risk that “streamlined” appeals & new emphasis on “*Attitude*” will be used to stifle “Creative Dissent” needs to be weighed against the putative gains in “efficiency” & “responsiveness”. Participation of the “Knowledge Workers” at all levels in the debate about future “Policy”, Acquisition Priorities & Methods, &c is already not as free & open as it should be under the current system & the quest for lock-step, unquestioning (the Military Model?) obedience to “Management” may be more costly than the procedural friction that is to be eliminated. Like “Democracy”, the current “CS / GS” is the worst possible model – except for all others....

Chapter 77 (dealing with appeal of adverse actions and certain other actions⁵⁴).

In planning, developing, implementing, and adjusting NSPS established under subsection (a), DoD and OPM must use procedures that provide employee representatives with an opportunity to participate and collaborate in the process. This collaboration requirement is set forth in subsection (f) and is further described later in this Supplementary Information. The law provides that the collaboration procedures in subsection (f) are the “exclusive procedures” for the participation of employee representatives, provided in lieu of any collective bargaining requirements.⁵⁵

Subsection (h) of section 9902 provides authority to establish an appeals process for DoD employees covered by NSPS. This process must ensure that all affected DoD employees are afforded the protection of due process⁵⁶. Subsection (h) authorizes new standards and procedures for personnel actions based on either misconduct or performance that fails to meet expectations⁵⁷. The procedures may include a revised process for hearing appeals of adverse actions. Finally, subsection (h) provides that an employee against whom an adverse action is taken may seek review of the record of the case by the Merit Systems Protection Board. The Board may dismiss cases that do not raise substantial questions of fact or law. The Board may only order corrective action if it determines that the DoD decision was–

⁵⁴<http://www.gao.gov/archive/1996/gg96110t.pdf> – of 29k employee appeals (1994) Government Wide, only 36% went to the Merit Systems Protection Board (MSPB), 57% went to the Equal Employment Opportunity Commission (EEOC) – one expects that the complaints under the NSPS, especially those arising from “Attitude” (Uppityness) or “Over - Compensation” (Seniority) would simply migrate from MSPB to EEOC.

⁵⁵Is this limited to Union Members or do others have “representatives” at the discussions? – no one has ast the Broader Community of Stakeholders for Input until this FEDREG Notice appeared. DHS had a “Docket” on the EPA website (DHS-2004-0001) which provided documents from the various meetings & allowed comments to be placed on the record as the development proceeded – a similar forum for discussion the DoD plan has not been found. The NSPS website, <http://www.cpms.osd.mil/nsps/index.html> doesn’t provide a record of the comments received or gist of the “Town Hall” meetings. { Found one transcript from 7 Jul 2004: <http://www.defense.gov/transcripts/2004/tr20040707-0985.html> , still looking }.. Where is the border between meaningful “Participation & Collaboration” & “Bargaining” drawn ? (Only equals or folks with equally valuable assets “on the table” can “Bargain” ?)

⁵⁶Just less than currently available – note the proportion of verbiage here devoted to getting rid of current “Civilians” vs attracting / nurturing / retaining new ones.

⁵⁷Is there the perception by the authors that getting rid of existing staff is more important than gaining or developing new staff ? How many “Workers” must “Fail” before it dawns on us that it is “Management” that is failing the “Worker”?

Arbitrary, capricious, an abuse of discretion⁵⁸, or otherwise not in accordance with law;
Obtained without procedures required by law, rule or regulation having been followed; or

Unsupported by substantial evidence. Subsection (k) of section 9902 provides that, in establishing and implementing the NSPS under subsection (a), DoD and OPM are not limited by any provision of title 5 or implementing regulations relating to–

The methods of establishing qualification requirements for, recruitment for, and appointments to positions;

The methods of assigning, reassigning, detailing, transferring, or promoting employees⁵⁹; and

The methods of reducing overall agency staff and grade levels, except that performance, veterans' preference, tenure of employment, length of service, and such other factors as the Secretary considers necessary and appropriate must be considered in decisions to realign or reorganize the Department's workforce.

Thus, subsection (k) authorizes the modification of chapters 31, 33, and 35 of title 5, U.S. Code (dealing with staffing, employment, and workforce shaping). However, in implementing subsection (k), DoD must comply with veterans' preference requirements in 5 U.S.C. 2302(b)(11).

Subsection (m) provides a separate authority (independent of subsection (a) and notwithstanding subsection (d)) for the Secretary of Defense and the Director of OPM to establish a DoD labor relations system Subsection (m) establishes collaboration requirements to give employee representatives the opportunity to participate in developing, implementing, and adjusting the labor relations system⁶⁰. Subsection (m) provides authority to modify chapter 71. By law, the subsection (m) authority may not be used to expand the scope of bargaining. Also, by law, the DoD labor relations system supersedes all collective bargaining agreements for covered DoD bargaining units, except as otherwise determined by the Secretary. Finally, the law provides that the DoD labor relations system established under subsection (m) will expire 6 years after the date of enactment (i.e., November 24, 2009), unless extended by statute⁶¹. If subsection (m) expires, the provisions of chapter 71 of title 5, U.S. Code, would again apply. Subsections (i) and (j) in

⁵⁸Any action based on an Employee's "*Attitude*" would seem automatically to fit this category.

⁵⁹ie, these can be Arbitrary, Capricious, an Abuse of Discretion &c.

⁶⁰Collaboration need not result in something acceptable to the Employees or their "Representatives"

⁶¹Should the NSPS also revert back to the CS / GS model if there is no measurable improvement in quantitative results (Retention, Morale, ...) at the end of the same fixed period (Sunset?)?

section 9902 establish separate authorities that are not held jointly with OPM and are not addressed in these proposed regulations.

Process

Leadership

In April 2004, senior DoD leadership⁶² approved the collaborative process that the Department is using to design and implement NSPS. This process was crafted over a period of about 3 weeks by a group of 25 to 30 senior experts representing various elements within DoD, OPM, and the Office of Management and Budget.⁶³ The senior leaders⁶⁴ used the Defense Acquisition Management model as a way to establish the requirements for the design and implementation of NSPS⁶⁵. The senior leaders recommended Guiding Principles and Key Performance Parameters (KPPs), which defined the minimum requirements for NSPS. They also recommended establishing a Senior Executive and Program Executive Office (PEO), modeled after the Department's acquisition process. Subsequently, the Honorable Gordon England, was appointed by the Secretary of Defense as the NSPS Senior Executive, in addition to his duties as Secretary of the Navy, to design, develop, establish, implement, and adjust the NSPS on his behalf. As the NSPS Senior Executive, Secretary England established the NSPS PEO as the central DoD policy and program office to conduct the design, planning and development, deployment, assessment,

⁶²Who is this besides SECDEF ? Does “Leadership” imply anything beyond the Civilian Employee authorized to “approve”...? Neither “Leader” (sounds rather “Soviet”) nor “Leadership” is found amongst the current or proposed definition set – perhaps they should be added if only to demonstrate that the authors know the meaning of the terms.

⁶³Is this statistic intended to convey a careful effort or a hasty one ? Were these folks representing the interests of the (other) Employees? Were they experts on Organizational Development Psychology or Students of the full range of Alternative Management Schools?

⁶⁴One might be able to determine that they were (Civilian ?) Employees, but how did they qualify as “Leaders”?

⁶⁵Operational Requirements Document, System Engineering, Competitive Procurement, Test & Evaluation Master Plan ?? Where are these documents available for review as part of the Public Record ? {Found a “Requirement” Document <http://www.cpms.osd.mil/nsps/pdf/NSPSRequirementsDocument.pdf> – all measures of performance are “Subjective” restatements of the purported “Benefits”; “Metrics” are promised in another document (not found yet). There is (as yet) no comparison of the relative effectiveness of the current (CS / GS) system vs proposed (NSPS) in meeting these (or any other) Objective Requirements – A Cost and Operational Effectiveness Analysis (COEA) which compared alternative models to the status quo would be a prerequisite to the initiation of a DoD Acquisition Program... if anyone believed that this is an apt analogy

and full implementation of NSPS⁶⁶. The PEO provides direction to and oversight of the Component program managers who[[Page 7555]]are dual-hatted under their parent Component and the PEO.

At OPM, the Director designated the Senior Advisor on the Department of Defense to lead agency activities in the joint development of the NSPS. The Director received frequent and regular briefings on the progress of NSPS and on the status of key policy options across the spectrum of authorities granted in the NSPS statute. Subsequently, in periodic reviews the Director exercised policy options, thereby providing guidance to the OPM team. Policy and regulatory development for NSPS are specifically vested in the Division for Strategic Human Resources Policy, and OPM's work teams and leadership cadres⁶⁷ were drawn largely from this Division. In addition, a Senior Level Review Group reviewed NSPS decision documents⁶⁸ to ensure consistency with the Director's priorities.⁶⁹

An integrated executive management team composed of senior DoD and OPM leaders⁷⁰ provides overall policy and strategic advice to the PEO and serves as staff to the Senior Executive. The PEO meets with and consults with this team, the Overarching Integrated Product Team (OIPT), 8 to 10 times a month. The Senior Executive convenes meetings with the PEO and OIPT at least twice a month to monitor and direct the process⁷¹.

Guiding Principles and Key Performance Parameters

In setting up the process for the design of the system, senior leadership⁷² adopted a set of Guiding Principles as a compass to direct efforts throughout all phases of NSPS development. They

⁶⁶Is this information included to demonstrate the appropriateness of the Final Solution to the Human Resources Development task or to excuse the Mechanistic, Demotivational, Operationally Unsuitable outcome ?

⁶⁷Who did they lead – each other ?

⁶⁸Are these “Decision Documents” part of the Public Record ?

⁶⁹Which are ?

⁷⁰Personnel perhaps,...

⁷¹Present Tense ? – Design effort should have been complete before it is published in the FEDREG ?

⁷²Presumptuous, arrogant,... Responsible Officials, Assigned Employees,... if they have to tell everyone that they're “Leaders”, then they're probably not....

translate and communicate the broad requirements and priorities outlined in the legislation⁷³ into concise, understandable requirements that underscore the Department's purpose⁷⁴ and intent in creating NSPS. The Guiding Principles are:

Put mission first--support National Security goals and strategic objectives⁷⁵;

Respect the individual--protect rights guaranteed by law⁷⁶;

Value talent, performance, leadership and commitment to public service;

Be flexible, understandable, credible, responsive, and executable;

Ensure accountability at all levels;

Balance HR interoperability with unique mission requirements⁷⁷; and

Be competitive and cost effective⁷⁸.

In addition, senior leadership approved a set of Key Performance Parameters (KPPs), which define the minimum requirements and/or attributes of the system. Those KPPs are summarized below:

High Performing: Employees/supervisors are compensated/retained⁷⁹ based on performance/contribution to mission;

⁷³“Crosswalk” ?

⁷⁴The SECDEF ? – certainly not a Department - wide consensus.

⁷⁵Enlightened, Long Term – encourage creativity & dissent, not conformity.

⁷⁶Attract, Nurture & Retain as opposed to minimal “Miranda” rights ?

⁷⁷An Information Technology task or another reunderation of “Military Mission justifies Civilian abuse” argument ?

⁷⁸On an Enlightened Life - Cycle / Long Term basis – Retain “Corporate Knowledge”, Protect Competition in Procurement, Discourage “Group Think”, retain Special Skills despite weak Commercial Demand....

⁷⁹Will they be able to meet the “Mission” requirements without the others?

Agile and Responsive: Workforce can be easily sized, shaped, and deployed⁸⁰ to meet changing mission requirements;

Credible and Trusted: System assures openness, clarity, accountability and merit principles⁸¹;

Fiscally Sound: Aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance, and managers will have flexibility to manage to budget⁸²;

Supporting Infrastructure: Information technology support and training and change management plans are available and funded⁸³; and

Schedule: NSPS will be operational and demonstrate success⁸⁴ prior to November 2009.

Working Groups

In July 2004, the PEO established Working Groups to begin the NSPS design process. Over 120 employees representing the Military Departments (Army, Navy, Air Force), the other DoD Components, and OPM began the process of identifying and developing options and alternatives

⁸⁰Is the intent to ship Civilians to Battle Field ? Will they be given pre-employment physicals, Basic Training & regular rotation to the Front to ensure that they don't become a liability in the Field?

⁸¹This would be measured by the trust & acceptance by those below the exclusive, highly rewarded "Leader"- grade folks – not awfully likely the way it's been created by fait & wielded as a tool to flog that half of the total under performers who happen to fall below the average.

⁸²"Managers" are the same Civilians that will be operated by this "System" – if rewards become subject to Budgetary Exigencies, the Pay - Out will become a "Zero - Sum Game" (at best) & the "Performance" of the Under Recognized Half will drop faster than the Over Recognized Leader - Manager - Hero Class can make up for the loss.

⁸³Did anyone think of trying the Training & Change Management thing before changing the Rules... We'll never know whether the "New System" or the better trained employees brought about the Improvement (Positive or Negative). Using "Spiral One" and the Rest as a "Test Sample" and "Control" with actual Measures of Effectiveness (MoE) would verify the Operational Effectiveness of the "New" System (or not).

⁸⁴Whether it is an actual, objectively measured, "Success" or not.... What are the MoEs in the TEMP ?? Is there a path back to the "Old System" if there are (inevitable) "Unintended Consequences"? Will there be a "Sunset" or "Renewal" date specified ?

for consideration in the design of NSPS⁸⁵. The Working Group members included representatives from the DoD human resources community, DoD military and civilian line managers, representatives from OPM, the legal community, and subject matter experts⁸⁶ in equal employment opportunity, information technology, and financial management. In addition, other subject matter experts participated.

The Working Groups were functionally aligned to cover the following human resources program areas: (1) Compensation (classification and pay banding); (2) performance management; (3) hiring, assignment, pay setting, and workforce shaping; (4) employee engagement; (5) adverse action and appeals; and (6) labor relations. Each group was co-chaired by an OPM and DoD subject matter expert. The Working Groups' review and analysis included a compilation of pertinent laws, rules, regulations, and other related documents that were forwarded to them for advance preparation. Working Groups were also provided with available information and input from NSPS focus groups and town hall sessions held at strategic locations worldwide, union consultation meetings, data review and analysis from alternative personnel systems and laboratory and acquisition demonstration projects,⁸⁷ the NSPS statute, Guiding Principles, as well as a review of earlier studies and working groups. In addition, subject matter experts briefed the Working Groups on a variety of topics, such as pay-for-performance systems, alternative personnel systems, pay pool management, and market sensitive compensation systems.

Option Development Process

In developing options for the NSPS, the Working Groups benefited⁸⁸ from the Government's experience under demonstration project authorities and alternative personnel systems, the DoD "Best Practices" initiative (68 FR 16120, April 2, 2003⁸⁹), and the compilation of research materials from the Department of Homeland Security HR Systems Design process. The Working Groups also received and considered input from employees⁹⁰ and their representatives. The

⁸⁵Are these "Alternatives" part of the "Public Record" ? Where are they posted for review?

⁸⁶Where any participants not Government Employees (subject to the Federal Advisory Committee Act (FACA – FEDREG Notice of Meetings, Open to Public)) ? {not listed on <http://www.fido.gov/facadatabase/committeeslist.asp?AID=773> }.

⁸⁷Where is this posted for (Public?) review ?

⁸⁸benefitted ?

⁸⁹ie The Laboratory Demonstration Program...

⁹⁰From *other* "Employees" since the "Working Group" folks were (presumably) Government Employees also?

resulting product was a set of options that covered a broad range of variations⁹¹ on the six areas of focus. Each option was evaluated against the Guiding Principles and Key Performance Parameters (KPPs).

To ensure that the options reflected the wide range of views and concerns expressed by various entities, the NSPS Working Groups did not attempt to reach consensus regarding the merits of the options. Consequently, none of the options necessarily represented a consensus view of the Working Groups. Some of the options integrate approaches to developing new HR systems across two or more of the six subject matter areas under consideration. This is especially true of the compensation architecture and pay-for-performance options, which were intended to illustrate how various classification, compensation, and performance system elements might work in combination. The performance and compensation/classification options also tended to cluster around several distinct themes, such as "function/occupation-focused," "performance-focused," and "contribution/mission-focused." The initial draft options were reviewed by the PEO and Senior Advisory Group (SAG) to capture feedback prior to finalizing them for submission to the Overarching Integrated Product Team (OIPT) for review⁹².

Outreach

A comprehensive outreach and communications strategy is essential for designing and implementing a new HR system. Outreach facilitates employee awareness and understanding of NSPS⁹³; [[Page 7556]] it's the primary strategy for sharing the NSPS vision⁹⁴. In April 2004, the PEO developed and implemented a communications strategy. The objectives of DoD's communications strategy are to (1) demonstrate the rationale for and benefits of NSPS⁹⁵; (2) demonstrate openness and transparency in the design⁹⁶ and process of converting to NSPS; (3) express DoD's commitment to ensuring NSPS is applied fairly and equitably; and (4) address potential criticism of NSPS.

⁹¹Where is this "Documented" ? Was the "Status Quo" (CS / GS) included as a Baseline ? Where the unique "Gains" expected of the NSPS separated from the Baseline by more than the Statistical Uncertainty?

⁹²Is there a Public Record of who these folks were? Were all Government Employees (exempt from FACA)?

⁹³Is this instead of "Collaboration, Participation" & actual "Enrollment" or a precursor to such.

⁹⁴Hype... when does the collaboration begin ?

⁹⁵Promoting the answer is not the same as Collaboration & Participation.

⁹⁶Putting the "Process" in the Public Record (as did the DHS "Docket" ?) would be a first step to "Openness".

The PEO identified channels for disseminating relevant, timely, and consistent information, including a wide variety of print and electronic media, e-mail, town hall meetings, focus groups, speeches, and briefings, and developed an action plan for communicating with each stakeholder⁹⁷. The PEO also developed key messages to include in stakeholder communications to reinforce the Guiding Principles of the NSPS HR systems design process. A website was developed and launched to serve as a primary, two-way communications tool for the workforce, other stakeholders, and the general public⁹⁸. PEO updates the website regularly with new information concerning the design, development, and implementation of NSPS. Further, the website includes the capability for visitors to submit questions and comments. To date, PEO has responded to thousands of questions and comments⁹⁹.

Outreach to Employee Representatives

Beginning in the spring of 2004 and continuing over the course of several months, the PEO sponsored a series of meetings with union leadership to discuss design elements of NSPS. Officials from DoD and OPM met throughout the summer and fall with union officials¹⁰⁰ representing many of the DoD civilians who are bargaining unit employees. These sessions provided the opportunity to discuss the design elements, options, and proposals under consideration for NSPS and solicit union feedback.

To date, DoD and OPM have conducted 10 joint meetings with officials of the 41 unions that represent DoD employees, including the 9 unions that currently have national consultation rights. These union officials represent some 1,500 separate bargaining units covering about 445,000 employees. These meetings involved as many as 80 union leaders from the national and local level at any one time, and addressed a variety of topics, including: the reasons change is needed and the Department's interests; the results of Department-wide focus group sessions held with a broad cross-section of DoD employees; the proposed NSPS implementation schedule; employee communications; and proposed design options in the areas of labor relations and collective bargaining, adverse actions and appeals, and pay and performance management.

Outreach to Employees

⁹⁷What became of these ? Why is this FEDREG Notice the first product at the “Implementation” level that is visible to the “Public” ? {Much potential for mischief remains in formulation of the Implementing Issuances }

⁹⁸Please provide the “Link”, <http://www.cpms.osd.mil/nsps/index.html> doesn't include any “Two Way” discussion antedating the Saint Valentine’s Day FEDREG notice

⁹⁹Please provide the “Link”....

¹⁰⁰What is the basis of the Union Lawsuit alleging “Failure to Collaborate” as required by the enabling legislation ?

In keeping with DoD's commitment to provide employees and managers an opportunity to participate in the development of NSPS, the PEO sponsored a number of Focus Group sessions and town hall meetings at various sites across DoD. Focus Group sessions began in mid-July 2004, and continued for approximately 3 weeks. A total of 106 focus groups were held throughout DoD, including overseas locations. Separate focus groups were held for employees, civilian and military supervisors, and managers and practitioners from HR, legal and EEO communities. Bargaining unit employees and union leaders were invited to participate. Each focus group was conducted by a trained facilitator. For the major system design elements, focus group participants were asked what they thought worked well in the current HR systems and what they thought should be changed. Over 10,000 comments, ideas and suggestions received¹⁰¹ during the Focus Group sessions were summarized and provided to NSPS Working Groups for use in developing options for the labor relations, appeals, adverse actions, and human resources design elements of NSPS.

In addition, town hall meetings were held in DoD facilities around the world during the summer of 2004, providing an opportunity to communicate with the workforce, provide the status of the design and development of NSPS, and solicit thoughts and ideas¹⁰². The NSPS Senior Executive, Secretary Gordon England, conducted the first town hall meeting at the Pentagon on July 7, 2004. The format for town hall meetings included an introductory presentation by a senior leader followed by a question and answer session where anyone in the audience was free to ask a question or make a comment. Some of the town hall meetings were broadcast live, as well as videotaped and rebroadcast on military television channels and Web sites to facilitate the widest possible dissemination.¹⁰³

The focus group sessions and town hall meetings, as well as the Working Groups and union consultation sessions, underscore the Department's commitment to ensuring an open, transparent design process. The sessions assured that civilian employees, managers, supervisors, union leadership, and other key stakeholders were involved in the design and implementation of NSPS and had ample opportunity to provide input¹⁰⁴.

Outreach to Other Stakeholders

In addition to reaching out to DoD employees and labor organizations, DoD and OPM met with

¹⁰¹Where is the Public Record available ??

¹⁰²How were the "Invitations" distributed ?

¹⁰³Is there a currently accessible "Archive" with the full "Two - Way" discussion?

¹⁰⁴Which, if any, of the Initial Features were modified in response to comments, suggestions, concerns received from these fora ? Who determined what is "Ample" ?

other groups who were thought to be interested in the design of a new HR system¹⁰⁵ for DoD. DoD and OPM invited selected stakeholders to participate in briefings held at OPM in August and September 2004.

The first stakeholder briefing was for public interest groups, such as the National Association of Public Administrators (NAPA), Coalition for Effective Change, and Partnership for Public Service. The second stakeholder briefing was for veterans' service organizations. A third stakeholder briefing was conducted with non-union employee advocacy groups. Attendees at all three briefings received background information about NSPS, an update on the PEO work plan, an overview of the NSPS Guiding Principles, and updates on the activities of the team, including town hall meetings and focus groups. Attendees were afforded an opportunity to participate in a question-and-answer session following these presentations¹⁰⁶.

Both before and after these three stakeholder briefings, DoD and OPM responded to dozens of requests for special briefings. DoD and OPM also met with the Government Accountability Office, Office of Management and Budget, and Department of Homeland Security to keep them up to date on the team's activities.

General Provisions--Subpart A

Subpart A of the proposed regulations provides the purpose and the establishment of the general provisions governing coverage under the new DoD HR system, and defines terms that are used throughout the new part 9901. Part 9901 applies to employees in DoD organizational and functional units identified under the regulations as eligible for coverage and who are approved for coverage, as of a specified date, by the Secretary of Defense. This enables DoD to phase in coverage of particular groups of employees or Components of the Department¹⁰⁷. Subpart A also allows DoD to prescribe internal Departmental issuances that further define the design characteristics of the new HR system¹⁰⁸. (See the "Next Steps" section at the end of this SUPPLEMENTARY INFORMATION.) Finally, subpart A clarifies the relationship of the regulations in part 9901 to other provisions of law and regulations outside those that are

¹⁰⁵FACA compliance ?

¹⁰⁶Public Record ?

¹⁰⁷If it were possible to make Quantitative (Objective) Observations of the "Outcomes" (Retention, Number of Qualified Applicants per Vacancy, Training Units Completed,...), the groups not included in the first "Spiral" could be used as a "Control" Group to evaluate the actual gains or losses in "Organizational Effectiveness". Unfortunately, the intent seems to be to propagate the new system throughout the Department before it's actual Impact could be Measured.

¹⁰⁸Change the experiment in mid-course ? Without re-consulting with the "Stake - Holders" ?

being waived with respect to DoD.

Purpose

The purpose of the proposed regulations is to establish a system designed to meet the statutory requirements, the NSPS KPPs and Guiding Principles.

Eligibility and Coverage

All DoD employees currently covered by the classification and pay systems established under chapter 51 or 53 of title 5, U.S. Code, are **eligible for coverage**¹⁰⁹ under one or more of subparts B through I of this part, except to the extent specifically prohibited by law (e.g., Executive Schedule officials, who, by law, remain covered by subchapter II of chapter 53). DoD will transition to the NSPS human resources system beginning with its General Schedule (GS) employees (and equivalent). Other categories of employees, including those covered by other systems outside of title 5, will be phased in as appropriate. SES members and certain other similar types of DoD employees will be eligible for coverage under the new DoD pay system. However, the proposed regulations provide that any new pay system covering SES members must be consistent with the performance-based features of the new Governmentwide SES pay-for-performance system authorized by section 1125 of the National Defense Authorization Act (Pub. L. 108-136, November 24, 2003). If DoD wishes to establish an SES pay system that varies substantially from the new Governmentwide SES pay-for-performance system, DoD and OPM will issue joint authorizing regulations consistent with all of the requirements of the National Security Personnel System, as set forth in 5 U.S.C. 9902. In addition, **DoD and OPM will involve SES members and other interested parties in the design and implementation of any new pay system for SES members employed by DoD**¹¹⁰.

Scope of Authority

Subject to the requirements and limitations in 5 U.S.C. 9902, the provisions in the **following chapters of title 5, U.S. Code, and any related regulations, may be waived or modified**¹¹¹:

The rules governing staffing, employment, and **workforce shaping**¹¹² (as permitted by 5 U.S.C. 9902(k)) established under chapters 31, 33, and 35;

¹⁰⁹**Liability** for coverage ? Can one “opt - out” as when (ca 1979) Super Grade folk could choose not to be part of the SES “System” with all of its Opportunities & Rewards?

¹¹⁰Does this mean that there will be no changes in the SES scheme before a separate development process is completed ?

¹¹¹Provided that such waivers don’t detract from Merit Principles &c....

¹¹²As in cutting down to size ...(Section refers to “Buy - Outs”)

The rules governing performance appraisal systems established under chapter 43;

The General Schedule classification system established under chapter 51;

The pay systems for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees, as set forth in chapter 53;

The premium pay system for employees, as set forth in chapter 55, subsection V, except section 5545(b) relating to pay for firefighters;

The labor relations system (as authorized by 5 U.S.C. 9902 (m)) established under chapter 71;

The rules governing adverse actions and certain other actions taken under chapter 75; and

The rules governing the appeal of adverse actions and certain other actions under chapter 77.

Coordination Between DoD and OPM

In implementing the intent of Congress that the Secretary and the Director jointly prescribe regulations for NSPS, DoD and OPM recognize that both agencies have significant legitimate interests that must be taken into account¹¹³. DoD requires an agile and responsive civilian personnel system to support its Total Force and execute its national security mission¹¹⁴. At the same time, OPM is responsible for providing guidance and assistance to DoD in developing a new human resources management system while simultaneously protecting Governmentwide institutional interests regarding the civil service system.¹¹⁵

Section 9901.105 of the proposed regulations provides that the Secretary will advise and/or coordinate with OPM in advance, as applicable, regarding the proposed promulgation of certain DoD implementing issuances and certain other actions related to the ongoing operation of the NSPS where such actions could have a significant impact on other Federal agencies and the Federal civil service as a whole. The Secretary and the Director fully expect their staffs to work closely together on the matters specified in this section, before such matters are submitted for official OPM coordination and DoD decision, so as to maximize the opportunity for consensus

¹¹³What are the Legitimate (Legislatively Bestowed) “interests” (as opposed to their “Mission”, Authorities,...”) of the “Agency” (outside of the those of its personnel) defined ?

¹¹⁴What are the “measures” of “Agility” how do the current “Military” & “Civilian” models perform against these “measures”; what is the expected range of performance of the “New” System?

¹¹⁵Such as? (Protection from historical abuses, maintaining Objectivity, encouraging Innovation, protecting Competition in Procurement,...other interests that might compete / conflict with agile personnel actions,...)

and agreement before an issue is so submitted.¹¹⁶

When a matter requiring OPM coordination pursuant to the coordination requirements established in these regulations, is to be submitted to the Secretary for decision, the Director will be provided an opportunity, as part of the Department's normal coordination process, to review and comment on the recommendations and officially concur or nonconcur with all or part of them. The Secretary will take the Director's comments and concurrence/nonconcurrency into account, advise the Director of his or her determination, and provide the Director with reasonable advance notice of its effective date. Thereafter, the Secretary and the Director may take such action(s) as they deem appropriate, consistent with their respective statutory authorities and responsibilities.¹¹⁷

Continuing Collaboration

The NSPS law requires that the implementation of a new HR system for DoD will be carried out with the participation of, and in collaboration with, employee representatives¹¹⁸. The law spells out the specific process for involvement of employee representatives in the establishment of the system, known generally as the "30/30/30" process. These proposed regulations will be subject to that statutory process, which includes a comment period of 30 days, a minimum of 30 days for DoD and OPM to "meet and confer" with employee representatives on their recommendations, and a final 30 days for congressional notification prior to implementation. The NSPS law also provides that the Secretary and the Director develop a process to involve employee representatives in the further planning, development, and/or adjustment of the system¹¹⁹. To that end, Sec. 9901.106 establishes a process by which employee representatives will be provided an opportunity to review, comment, and participate in discussions regarding proposals for further adjustments to the system, including DoD implementing issuances. This process is called "continuing collaboration" and is a separate and distinct process from the provisions found in subpart I, Labor-Management Relations. While the proposed NSPS regulations establish the overall NSPS human resources management system, there are several areas that will require DoD to promulgate implementing directives, instructions, manuals, and other issuances that provide the detailed procedures needed to implement the system¹²⁰. For example, the proposed regulations provide for an administrative process in which employees may seek reconsideration of their

¹¹⁶Do folks beneath the "Staff" level get to provide their input also ??

¹¹⁷Subject to the limitations imposed by other statutory requirements (Defend "Merit Principles",...) – same under Old or New system.

¹¹⁸Are all employees "Represented" or just Union Members ?

¹¹⁹Why not all employees through a "Docket" or other "Modern" (Information Technology) Tool ?

¹²⁰This is where the "Mischief" & "Un-Intended Consequences" will appear.

performance ratings¹²¹; this is to ensure transparency in the performance management system. The specific procedures for that reconsideration process are not spelled out in these [[Page 7558]] proposed regulations; rather, they will be established in internal DoD issuances¹²². In order to ensure that the views and concerns of employee representatives are considered in the development of those procedures, DoD will engage in the "continuing collaboration" process.

Under continuing collaboration, employee representatives (for those employees affected by the proposed issuance) will be provided a draft proposal and given a timeframe to review and submit written comments on the proposal¹²³, and they will be afforded the opportunity to discuss their views and concerns with DoD officials prior to finalization of the issuance. At the Secretary's discretion, this collaboration may also be initiated prior to the drafting of proposed issuances (e.g., at the conceptual stage of the process). The proposed regulations guarantee that any written comments submitted within the timeframes will become part of the official record and be considered before final decisions are made.¹²⁴ While this process does not affect the right¹²⁵ of the

¹²¹Note the choice of a "Negative" example, not, say, a suggested change in the "Process" to speed up a Job Offer or to Improve Collaboration between the "Management" Caste & the Hoi Polloi,...

¹²²Thus, the "Transparency" of the re-invented process will be obscured until there is a Law Suit arguing that the Internal Instantiation does indeed subvert "Merit Principles"...

¹²³Since it's to be a "Collaboration" rather than a Labor / Management "Bargaining" process, can the "Worker" side initiate *issuances* as well as the "Boss" side ??

¹²⁴How will "All" employees (Every one below the SECDEF) be guaranteed a "Voice" in the process (free of fear of appearing to manifest a poor "Attitude") ?

¹²⁵Only the "People" have "Rights" under our Constitutional System, SECDEF has only defined "Authorities" prescribed by Law & Regulation – the phrase "**Management Rights**" has specific meaning under 5 USC 7106 {.... nothing in this chapter shall affect the authority of any management official...(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and (2) in accordance with applicable laws- (A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees; (B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted; (C) with respect to filling positions, to make selections for appointments ...} which boils down to saying those Employees with "management" duties in their Position Descriptions (including the SECDEF) can carry out those responsibilities as long as they don't break any laws. "Management Rights" doesn't amount to a "**Droit du Seigneur**" that exempts folks in management / supervisory positions from other legal requirements or from the need to practice Enlightened Human Resource Husbandry. *The attitude that workers & bosses exist in an perpetual Industrial-Age struggle, as opposed to being mutually supportive contributors to a Shared Mission, is a good indication of what's*

Secretary to make the final determination as to the content of implementing issuances, it offers the opportunity for employee representatives to participate meaningfully in the process and influence the further development and refinement of NSPS.

Relationship to Other Provisions of the Law

Paragraph (a)(2) of Sec. establishes a **rule of construction requiring all provisions of this part be interpreted in a way that recognizes the critical national security mission¹²⁶** of the Department. Each provision must be construed to promote the swift, flexible, and effective day-to-day accomplishment of that mission, as defined by the Secretary. **DoD's and OPM's interpretation of these regulations must be accorded great deference.¹²⁷**

Paragraph (b) of Sec. 9901.107 describes the relationship between the proposed part 9901 and laws that are not waivable or modifiable under the NSPS law. For the purpose of applying other provisions of law or Governmentwide regulations that reference provisions under the waivable or modifiable chapters (i.e., chapters 31, 33, 35, 43, 51, 53, 55 (subchapter V only), 71, 75, and 77 of title 5, U.S. Code), the referenced provisions are not waived but are modified consistent with the corresponding regulations in part 9901, except as otherwise provided in that part or in DoD implementing issuances. For example, physicians' comparability allowances under 5 U.S.C. 5948 are limited to physicians in certain listed pay systems, including the General Schedule. To ensure that DoD physicians continue to be eligible for physicians' comparability allowances when they convert from the General Schedule to the NSPS pay system, they will be deemed to be covered by the General Schedule for the purpose of applying section 5948. In addition, in applying the back pay law in 5 U.S.C. 5596 to DoD employees covered by subpart H of these proposed regulations (dealing with appeals), the reference in section 5596(b)(1)(A)(ii) to 5 U.S.C. 7701(g) (dealing with attorney fees) is considered to be a reference to a modified section 7701(g) that is consistent with Sec. 9901.807(h).

Classification--Subpart B

Subpart B provides DoD with the authority to replace the current GS and FWS classification and

really troubling the current "System"...

¹²⁶Please be more specific about what liberties must be taken with DoD Employee working conditions that are not common to DHS or other Federal Agencies that contribute to "National Security". If the intent is to "Deploy" / "Rotate" civilians as Military Personnel are now, please be specific & provide details as to how this will be incorporated in to the "Conditions of Employment", Physical Qualification & Training,... & how this will enhance Recruiting & Retention of highly qualified "Knowledge Workers"...

¹²⁷To the extent that they do not violate other law or regulation (EEO, Hostile Workplace,...) or they create a counterproductive atmosphere which might degrade the Harmony & Collegial Support necessary to an effective Knowledge Work Environment....

qualifications systems and other current classification systems with a new method of evaluating and classifying jobs by grouping them into occupational categories and levels of work for pay and other related purposes. Under this new system, DoD (in coordination with OPM) will have the authority to establish qualifications for positions and to assign occupations and positions to broad occupational career groups and pay bands (or levels). DoD (in coordination with OPM) will establish broad occupational career groups by grouping occupations and positions that are similar in types of work, mission, developmental/career paths, and/or competencies. The occupational career groups will serve as the basic framework for the NSPS classification and pay system. Within career groups, DoD may establish pay schedules that apply to subgroupings of related occupations. Within each pay schedule, DoD (in coordination with OPM) will establish broad salary ranges, commonly referred to as pay bands. The pay bands within a pay schedule represent progressively higher levels of work with correspondingly higher pay ranges. DoD may elect to phase in the coverage of specific categories of employees or occupations under the new classification and pay system established under these proposed regulations. DoD may use OPM-approved occupational series and titles to identify and assign positions to a particular career group and pay schedule. Pay schedules typically will include most or all of the following levels of work:

Entry/developmental work that involves a combination of formal training and/or on-the-job experience designed to provide the employee with the competencies needed to perform successfully at the full performance level.

Work that involves nonsupervisory duties and responsibilities at the full performance level of the occupation.

Nonsupervisory expert work that involves a high level of specialized knowledge or technical expertise clearly beyond the requirements for work at the full performance level upon which the employing organization relies for the accomplishment of critical mission goals and objectives.

Work that involves the supervision of employees at the full performance or expert level.

Managerial work whose primary purpose is to direct key DoD/Component scientific, medical, legal, administrative, or other programs.

Career groups, pay schedules, and pay bands provide clearly defined career paths for occupations. Table 1 illustrates the career group structure concept. [[Page 7559]][[GRAPHIC] [TIFF OMITTED] TP14FE05.000

The new classification system for DoD will result in a streamlined method of classifying positions that no longer relies on lengthy classification standards and position descriptions. The new system does not require artificial distinctions between closely related levels of work, as currently required under the GS and Federal Wage System (FWS) classification systems. This more fully supports the merit system principle that "equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in

the private sector, and appropriate incentives and recognition * * * for excellence in performance." Employees will be permitted to request reconsideration of the classification (career group, pay schedule, occupational series, or pay band) of their official positions of record at any time with DoD and/or OPM, as they can today under the GS system. The system described here, together with the new pay system described below, will provide DoD with greater flexibility to adapt the Department's job and pay structure to meet present and future mission requirements.

Pay and Pay Administration--Subpart C

This subpart contains proposed regulations establishing pay structures and pay administration rules for covered DoD employees to replace the pay structures and pay administration rules established under 5 U.S.C. chapter 53 and 5 U.S.C. chapter 55, subchapter V. This new system links pay to employees' performance ratings and is designed to promote a high-performance culture within DoD.

National Security Compensation Comparability

In accordance with the NSPS law, to the maximum extent practicable, for fiscal years 2004 through 2008, the aggregate amount allocated for compensation of DoD civilian employees under NSPS will not be less than if they had not been converted to the NSPS. This takes into account potential step increases and rates of promotion had employees remained in their previous pay¹²⁸ schedule.

In addition, NSPS implementing issuances will provide a formula for calculating the aggregate compensation amount, for fiscal years after fiscal year 2008. The formula will ensure that, to the maximum extent practicable, in the aggregate, employees are not disadvantaged in the overall amount of pay available as a result of conversion to the NSPS, while providing flexibility to accommodate changes in the function of the organization, changes in the mix of employees performing those functions, and other changed circumstances that might impact pay levels.

Setting and Adjusting Rate Ranges

Setting Rate Ranges and Local Market Supplements: The proposed regulations establish a pay system that governs the setting and adjusting of covered employees' rates of pay. The system will have a rate range, with a minimum and maximum rate, for each band in each career group based on factors such as labor market rates, recruitment and retention information, mission requirements, operational needs, and overall budgetary constraints. The bands will have open pay ranges, with no fixed step rates. DoD will also set local market supplements (a supplement to basic pay in lieu of locality pay) for rate ranges based on geographic and occupational factors. DoD will coordinate setting and adjusting rate ranges and local market supplements with OPM.

¹²⁸Everybody antes up to build the pot that will fund pay outs to Meaningfully Distinct folks...

Adjusting Rate Ranges and Local Market Supplements: DoD will[[Page 7560]]determine the rate range adjustments and local market supplements considering mission requirements, labor market conditions¹²⁹, availability of funds, pay adjustments received by employees in other Federal agencies, allowances and differentials under 5 U.S.C. chapter 59, and other relevant factors. Rate range adjustments and local market supplements may differ by career group, pay schedule, or pay band. The minimum and maximum of a range may be adjusted at different rates. DoD may determine local market areas as well as the timing of these pay adjustments.

The proposed regulations provide that employees may receive pay adjustments as a result of a rate range adjustment. Generally, employees will receive an adjustment equal to any increase to the minimum rate of their band and will receive any applicable local market supplement. In keeping with the desire of the Secretary and the Director to achieve and sustain a culture of high performance, the proposed regulations provide that these pay adjustments will not be provided to employees with an unacceptable performance rating.

Performance-Based Pay

The NSPS pay system will be a performance-based pay system that will result in a distribution of pay raises and bonuses based upon individual performance, individual contribution, organizational performance, team performance, or a combination of those elements. The NSPS system will use pay pools to manage, control, and distribute performance-based pay increases and bonuses. Under the proposed regulations, the term "pay pool" means the organizational elements/units or other categories of employees that are combined for the purpose of determining performance payouts or the dollar value of the funds set aside for performance payouts for employees covered by a pay pool. The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees¹³⁰.

Annual Performance-based Payouts: Employees will receive annual performance-based payouts based on their rating of record and assigned shares. Each rating level will have a share or range of shares associated with it.

Rating Methodology: DoD implementing issuances will define the specific methodologies and practices that will be used in the Department. DoD expects to use a methodology that includes at

¹²⁹eg the average Physicist in the DC area makes \$97,260 while the average Materials Scientist makes \$86,050 (http://www.bls.gov/oes/current/naics5_541710.htm#b19-0000) of course, the Government is (probably) the dominant employer for both groups.

¹³⁰In practice, the "Demos" have to decide how they want to distribute the available funds and then assign the "Ratings" necessary to obtain this result; since the total amount of funds is fixed, and the potential for "De-motivation" is huge, the allocation rarely produces wide variations between Employees or denies the moral equivalent of a Cost-Of-Living-Allowance to anyone who is not a irretrievably incompetent or insubordinate.

least three rating levels and identifies a range of performance shares that can be assigned for rating levels. An example of a possible rating methodology is provided by Table 2. This example illustrates a five-level rating methodology with associated share ranges in which level five signifies the highest level of performance. The rater will prepare and recommend the rating, number of shares, and the distribution of the payout¹³¹ between basic pay increase and bonus, as applicable, for each employee. These recommendations will then be reviewed by the pay pool panel to ensure equitable rating criteria and methodology have been applied to all pay pool employees. The final determination of the rating, number of shares, and payout distribution will be a function of the pay pool panel process and will be approved by the pay pool manager. The criteria used to determine the number of shares to assign an employee may include assessment of the employee's contribution to the mission, the employee's type and level of work, consideration of specific achievements, or other job-related significant accomplishments or contributions.

Table 2.--Sample Rating Methodology

Rating level	Share range ¹³²
5.....	6-8
4.....	3-6
3.....	1-2
2.....	0
1.....	N/A

Performance Pay Pools: Performance pay pools will be established by combining organizational elements, functional groupings, or other categories of employees. Distinctions may also be made using criteria such as location or mission. Each pay pool will be managed by a pay pool manager in concert with appropriate management officials. The pay pool manager is the individual charged with the overall responsibility for rating determinations and distribution of the payout funds in a given pay pool. The funding of a performance pay pool consists of the money allocated for performance-based payouts for a defined group of employees. The amount of money available within a pay pool is normally based on the money that would have been available for

¹³¹These discussions seem to be the most useful feature of the “Demos”; Bosses must argue for special rewards for their noteworthy achievers that might make less money available for the other groups’ achievers – in practice, money rarely shifts between the proportionate share of the “Sub-Pool” and the Bosses overseeing more than one “Pool” never shift the pre-set allocation between Pools to recognize a Group Achievement or a difference in the Operational Value of the various efforts.

¹³²How does this compare to the actual practice under the “Demos”? How many Level 5 folks got 8 times what a Level 3 Employee got (the COLA component of the pool is usually the “Floor” for “Acceptable” performance)

within-grade increases, quality step increases, promotions between grades that have been banded in the NSPS pay system, and applicable across-the-board pay increases. Funds previously used for end-of-rating cycle performance awards or incentive awards may also be used to fund the pay pool. Note that the provisions of 5 U.S.C. chapter 45, "Incentive Awards," remain in place and provide a valuable means to recognize employee achievements throughout the rating cycle.

Performance Payout: The performance payout is composed of an increase to basic pay, a bonus, or a combination of these. A bonus is a one-time lump-sum payment that is not paid as basic pay. Subject to DoD guidelines, pay pool managers will have the discretion to determine the proportion of an employee's total performance payout paid as an increase to basic pay or as a bonus. Increases to basic pay may not cause the basic pay of an employee to exceed the maximum of his or her pay band. In such situations, the amount of the payout that exceeds the maximum of the pay band will be paid in the form of a bonus. Example: If the maximum of a pay band is \$30,000, and an employee earning \$28,750 is awarded a payout of \$3,000, then the employee may receive an increase in basic pay of not more than \$1,250 ($\$28,750 + \$1,250 = \$30,000$) with the remainder (at least \$1,750) paid as a bonus. In addition, the proposed regulations allow DoD to establish "control points" or other mechanisms within a band, beyond which basic pay increases may be granted only for meeting criteria established by DoD. An example of such a control point is a requirement for the employee to have achieved the highest performance rating.

Other Performance Payouts: Extraordinary pay increases (EPI), organizational achievement recognition, or other special payments may be paid to employees in accordance with implementing issuances. The amount of such payments may not cause the employee's basic pay to exceed the maximum rate of the employee's assigned pay band. **Extraordinary Pay Increase:** An extraordinary pay increase (EPI) is a basic pay increase to reward employees when the payout formula does not adequately compensate them for their extraordinary performance. It is to be used sparingly and only to reward exceptionally high-performing employees whose performance and contributions to the organization are of an exceedingly high value. The performance must be expected to continue at an extraordinarily high level in the future.

Organizational Achievement Recognition: This type of recognition may take the form of additional compensation paid to employees of a team, unit, branch, or organization[[Page 7561]]whose performance and contributions have successfully and directly advanced organizational goal(s).

Developmental Positions: Employees in developmental positions may receive pay adjustments as they acquire the competencies, skills, and knowledge necessary to advance to the full performance level.

Pay Administration

The new DoD pay system provides the Department with an enhanced ability to establish and adjust overall pay levels in keeping with changes in national and local labor markets. It is designed to adjust individual pay levels based on the acquisition and assessment of competencies,

skills, and knowledge and on the basis of performance or contributions to mission. The new system is capable of adapting to changing circumstances and mission requirements.

Initial Conversion: Upon implementation of the new system, employees will be converted based on their official position of record. Initial entry into NSPS will ensure that each employee is placed in the appropriate pay band without loss of pay.

New Appointments/Reinstatements: When an employee is newly appointed or reinstated to a position in NSPS, management may establish pay at any rate up to the maximum of the pay band in accordance with implementing issuances. The hiring official will determine starting pay based on available labor market considerations; specific qualification requirements; scarcity of qualified applicants; program needs; education or experience of the candidate; and other criteria as appropriate. When an employee moves to a pay band with a higher earning potential, pay will be set in accordance with implementing issuances.

Temporary Promotion: Employees on temporary promotions will be returned to their official position of record prior to conversion. GS employees will be converted at their current rate of basic pay, including any locality payment, adjusted on a one-time, pro-rata basis, for the time spent towards their next within-grade increase.

Career-ladder Positions: Employees in career-ladder positions below the full performance level will be placed in the appropriate career group, pay schedule, and entry or developmental band.

Promotion: Promotion pay increases (from a lower band to a higher band in the same cluster or to a higher band in a different cluster) generally will be a fixed percent of the employee's rate of basic pay or the amount necessary to reach the minimum rate of the higher band, whichever is greater. This amount is roughly equivalent to the value of a promotion to a higher grade within the GS system.

Reassignment: An employee who moves to a position in a comparable pay band will have pay set depending on whether the move is voluntary or involuntary as a result of unacceptable performance and/or conduct. If the move is voluntary or involuntary and not due to unacceptable performance and/or conduct, pay will generally be set at the existing rate of pay; however, pay may be set at a higher rate within limitations specified in DoD implementing issuances. If the move is involuntary due to unacceptable performance and/or conduct, there may be a reduction in basic pay of up to 10 percent as provided in these proposed regulations and in DoD implementing issuances. Pay may not be set lower than the minimum of the pay band level or exceed the maximum of the pay band level.

Reduction in Band: When an employee moves to a lower pay band, pay will be set depending on whether the move is voluntary or involuntary. If the move is voluntary, pay may generally be set anywhere within the pay band within limits specified in the implementing issuances. If the move is involuntary due to an adverse action based on unacceptable performance and/or conduct, there may be a reduction in basic pay within the limits specified in these proposed regulations and in

DoD implementing issuances (not to exceed 10 percent, unless a larger reduction is needed to place the employee at the maximum rate of the lower band). For other involuntary moves, any reduction in pay will be limited in accordance with DoD implementing issuances. Where pay retention is applicable (e.g., following a reduction in force), the employee's pay will be protected under conditions and parameters to be identified in the implementing issuances.

Premium Pay

Section 9901.361 of the proposed regulations addresses DoD's authority to waive and replace the premium pay provisions in 5 U.S.C. chapter 55, subchapter V (except section 5545b), in whole or in part for employees in a category approved by the Secretary. DoD (in coordination with OPM) will establish any NSPS premium payments through implementing issuances.

Performance Management--Subpart D

The current performance management system is burdensome because of its actual and/or perceived inflexibility and strict adherence to written elements and standards established at the beginning of a rating cycle. Supervisors feel restricted in making any mid-course corrections or modifications to a performance plan, resulting in a final assessment that does not meet their needs. These static standards make it difficult for managers to adjust performance requirements and expectations in response to the Department's rapidly changing work environment, hold individual employees accountable for those general and/or assignment-specific work requirements and expectations, and make meaningful distinctions in employee performance as they accomplish those assignments. The proposed regulations are designed to address these deficiencies.

DoD has decided to waive the provisions of chapter 43 of title 5, U.S. Code, in order to design a performance management system that will complement and support the Department's proposed performance-based pay system described above. The proposed system will also ensure greater employee and supervisor accountability with respect to individual performance expectations, as well as organizational results. The proposed system builds in the flexibility to modify, amend, and change performance and behavioral expectations during the course of a performance year, subject to employees being advised of, and involved in to the maximum feasible extent, the adjusted expectations. For example, supervisors have the option of establishing and communicating performance expectations during the course of the appraisal period through specific work assignments or other means. These other means may include standard operating procedures, organizational directives, manuals, and other generally established job requirements that apply to employees in a particular occupation and/or unit.

Coverage

Generally, DoD employees who are currently covered by chapter 43 of title 5, U.S. Code, are eligible for coverage under the new performance management provisions in subpart D of the proposed regulations. Employees who are currently excluded by chapter 43 of title 5, such as

administrative law judges and presidential appointees, will not be eligible for coverage. Certain categories of employees are currently excluded from chapter 43 by OPM administrative action, as authorized by 5 CFR 430.202(d). Such employees are eligible for coverage under the new DoD[[Page 7562]]performance management provisions. DoD will decide which of those categories of otherwise eligible employees are covered by the Department's new performance management system or systems. The proposed regulations also allow DoD to develop, implement, and administer systems tailored to specific organizations and/or categories of employees.

Performance and Behavior Accountability

Typically, poor behavior or misconduct has been addressed only through the disciplinary process. Little attention has been paid to the impact of behavior, good or bad, on performance outcomes of the employee and the organization. DoD has determined that conduct and behavior affecting performance outcomes (actions, attitude, manner of completion, and/or **conduct or professional demeanor**) should be a tracked and measured aspect of an employee's **performance**¹³³. The NSPS regulations provide for consideration of employee behavior as a performance factor, element, or objective, such as ``teamwork/cooperation."

When an employee's behavior enhances or impairs task/job accomplishment, it should affect the employee's performance appraisal¹³⁴. Behavior that significantly enhances the mission should also be noted.

This does not change a supervisor's responsibility to take prompt corrective action in the event of actionable misconduct; it merely recognizes the fact that behavior can and does affect an employee's overall performance and should be recognized. For example, an employee may receive corrective action at the time of misconduct. The **nature of that misconduct has an impact on the successful execution of duties**¹³⁵ and should therefore impact the employee's performance assessment at the conclusion of the performance rating period. The impact of misconduct on the employee's performance rating will depend on its seriousness, evidence of correction, and any other relevant factors.

Though behavior must be addressed in the performance management system, it need not be a

¹³³This is an explicit statement of the "Go along to get along" performance factor that could easily be abused to stifle dissent or discourage innovative thought.

¹³⁴"Behavior" needs to be closely defined – it is neither a Competency nor a Contribution & Safe Guards are need to ensure that the threat of punishment for an "Eye Roll" in response to a goofy idea is not part of program to stifle dissent or limit the exploration of alternative visions during the creative phases of any Defense Policy Formulation, System Design Trade - Off, Acquisition Strategy Development ,...

¹³⁵"If the nature..." ? Many "Behaviors" may be essential to the "Successful Execution of Duties" even if they annoy the immediate "Bosses"...

separate factor, element, or objective, if sufficiently covered by a more general factor, **element, or objective, such as teamwork / cooperation.**¹³⁶ Whether constructed as a separate or combined factor, element, or as an objective, the **behavioral expectations must be set by the supervisor**¹³⁷ at the beginning of an appraisal period, and as with other performance expectations, modified or reinforced throughout the appraisal cycle. These expectations normally would include the general behavioral expectations for all employees as stated in the Standards of Ethical Conduct for Employees in the Executive Branch and the DoD Joint Ethics Regulations, as well as any behavioral expectations specifically related to the local organization.

By providing supervisors and managers realistic alternatives for setting employee expectations, and assessing behavior and performance against those expectations, **DoD will be better able to hold its employees accountable and recognize and reward those who excel.**¹³⁸ As part of the performance management system, supervisors and employees should stay aware of the status of performance and behavior and be better able to anticipate and address difficulties. **The performance management system is intended to assist in employee performance and behavior development, recognize and reward exemplary performance and behaviors, and identify and remedy shortfalls**¹³⁹. Employees share the responsibility of identifying and communicating difficulties, whether due to problems in understanding, communication, or accomplishment of expectations. By the same token, supervisors and managers will be held accountable for clearly and effectively communicating expectations and providing timely feedback regarding behavior and performance. **Supervisors and managers must make meaningful behavior and performance**

¹³⁶“Teamwork / Cooperation” may be a useful tool in appropriate situations but it is Never an “Objective” in itself & it can not be allow to limit the Creation & Competition of Ideas expect in extraordinary circumstances that are almost never encountered outside of the Heat of Combat.

¹³⁷Head - Down, shuffle along three steps behind, speak only when spoken to,....

¹³⁸DoD has no ethereal existence outside of its Employees, some of which may have “Supervisory” duties – a discussion of the desired Excellent Outcomes would be more useful than threats against undefined yet nonetheless untoward “Behaviors”...

¹³⁹Behavior Modification through systematic rewards & punishment as in Pavlov’s “Conditioned Response” or the training of Circus Animals as opposed to a shared commitment to a common mission developed under the leadership & coaching of the Supervisory Colleagues... Nicely captures the Tayloristic view of the Industrial Age worker who is only expected to do exactly what he / she has been told to do – in the manner prescribed, with unthinking alacrity & a willing smile. Also exactly the least productive approach to bringing the talents of Information - Age “Knowledge Workers” to bear on complex tasks that could not be perfectly understood by any “Boss”, let alone one who is more focused on maintaining Control than on sharing in the Learning Experience.

distinctions¹⁴⁰ in support of DoD's new performance-based pay system, as well as identifying and addressing unacceptable performance and misconduct.

Further, **supervisors and managers will have a broad range of options for dealing with unacceptable performance**¹⁴¹. These include but are not limited to remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, or adverse action defined in subpart G of these proposed regulations, including a reduction in rate of basic pay or pay band. Resolution of **employment difficulties**¹⁴² must utilize appropriate methodologies, using remedial and corrective actions, when appropriate, prior to consideration of taking an adverse action. The range of adverse actions will include the involuntary movement of an employee to a lower pay band, giving supervisors and managers another means of dealing with unacceptable performance. These proposed regulations lay the foundation for a performance management system that is fair, credible, and transparent, and that holds employees, supervisors, and managers accountable for results. However, **a performance management system is only as effective as its implementation and administration**¹⁴³. To that end, DoD is committed to providing its **employees, supervisors, and managers**¹⁴⁴ with extensive training on the new performance management system and its relationship to other HR policies and programs.

Setting and Communicating Performance Expectations

Supervisors and managers must establish performance expectations and communicate them to employees. Performance expectations must align with and support the DoD mission and goals. Performance expectations may take the form of goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level, and **may include observable or verifiable descriptions of manner, quality, quantity, timeliness, and cost effectiveness**¹⁴⁵. Performance expectations will be communicated to the employee prior to holding

¹⁴⁰Sample (objective, meaningful, quantifiable,...) Yardsticks (Metersticks?) for Behavior Distinctions would be help here if only to clarify the author's intent...

¹⁴¹That do not violate Merit Principles or other provisions of the "Code" – Since the formulation of the "Options" could create the most counterproductive aspects of the "New" System, these should delimited here rather than deferred to a less visible instantiation...

¹⁴²Please include a definition....

¹⁴³Duh... if the CS / GS System was effectively implemented & administrated, we wouldn't be laboring through all of this verbiage...

¹⁴⁴"Supervisors & Managers" are a "Subset" of Employees to be controlled by the same "System"...

¹⁴⁵"May" or "Must" ?? Is the intent to "Rate" some "Employees" by "Unobservable", "Unverifiable" "Descriptions" ?? (Please add "Observable", "Verifiable",... to the definition

the employee accountable and promptly adjusted as changes occur. Supervisors will involve employees in the planning process to the maximum extent practicable. In so doing employees will better understand the goals of the organization, what needs to be done, why it needs to be done, and how well it should be done. **Final determinations in setting expectations, however, are within the authority of the supervisor.**¹⁴⁶

Monitoring Performance and Providing Feedback

One of the main objectives of the pay-for-performance system is to replace the culture of pay-for-longevity with pay-for-results-driven performance. Over time, there should be individual distinctions based on performance, and high performers should receive more pay than average or low performers. Performance-based pay requires improved communication of expectations and performance feedback on the part of supervisors, since employees must understand what they have to do in order to receive higher ratings and increased pay. To achieve that objective, the proposed regulations require ongoing feedback with at least one interim performance review during each appraisal period. [[Page 7563]]

Performance Rating Challenges

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8. Attorney Fees

OPM and DoD have modified the current standard for recovering attorney fees. Under the current standard, the Department may be required to pay attorney fees based on facts that were not known to management when the action was taken. This is an unreasonable standard that can deter the Department from taking action in appropriate cases and has a chilling effect on the Department's ability to carry out its mission. Accordingly, the proposed regulations provide that a prevailing appellant may recover attorney fees if the Department's action was clearly without

list...) The Boss could count the number of ingots stacked by “Schmidt” at a glance but he / she can’t measure the elegance or finesse of a novel insight without considerable study or the passage of many rating periods...

¹⁴⁶How will it be determined that the Setter’s Determined Expectations are not Prejudicial to the Merit of the Settee – ie ***All Employees have an Equal Opportunity to Exceed their Expectations, Equally Adequate Resources have been allocated by “Management”, .. ?*** Failure of an “Employee” to Exceed Expectations is also a Failure of the “Manager” to match the “Employee” to the Task, Marshall necessary Resources, &c. Since half of all “Employees” will be Below Average in a System” the “Makes Meaningful Distinctions”, half of the “Managers” must also be Below Average for failing to set the Conditions for “Success”...

merit based upon facts known to management when the action was taken¹⁴⁷. The proposed regulations also continue to require attorney fees if a prohibited personnel practice was committed by the Department.

9. Alternative Dispute Resolution

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7. Management Rights

To carry out its national security mission, the Department must have the authority to take actions quickly when circumstances demand; it must be able to develop and rapidly deploy resources to confront threats in an ever-changing national security environment; and it must be able to act without unnecessary delay¹⁴⁸.

Actions such as these involve the exercise of management's reserved rights and lie at the very core of how DoD carries out its mission¹⁴⁹. Under chapter 71 of title 5, the obligation to notify the union well ahead of any changes in the workplace and complete all negotiations before making any changes can seriously impede the Department's ability to meet mission demands. To ensure that the Department has the flexibility it needs, the Department and OPM propose to revise the management rights provisions of chapter 71. Expanding the list of nonnegotiable subjects in section 7106 to include what are now permissive subjects of bargaining--the numbers, types, and grades of employees and the technology, methods, and means of performing work--is proposed. The proposed regulations prohibit bargaining over the exercise of these rights and over other rights enumerated in chapter 71, including the right to determine mission, budget, organization, and internal security practices, and the right to hire, assign and direct employees, and contract out.

¹⁴⁷This would have chilling effect on the employee's decision to appeal mistreatment – management has a duty to know the pertinent facts before taking action; especially if the employee has directed management's attention to these facts in the course of discussion of ratings, punitive objectives, unattainable standards &c.

¹⁴⁸Except in dynamic / live-fire combat situations, very few DoD activities (Policy Definition, Material Acquisition, Research,...) proceed on time scales that are short compared to any Personnel Actions under traditional Civil Service rules. Use of Warfighting Dynamics as a justification for short cuts in dealing with civilian employees bring into questions the underlying motivation of the designers of the "New" system.

¹⁴⁹"Management" is merely another category of Employee that has duties including the direction or oversight of other employee, not a transcendent caste of super-being with extra legal privileges; their ability to motivate their subordinates, provide necessary resources & support &c are factors in their Performance Rating, not a reflection on the subordinates' abilities, effort or potential...

In addition, the proposed regulations prohibit bargaining over the procedures management will follow in the exercise of certain of its rights--to determine the mission, budget, organization, number of employees, and internal security practices of the Department; to hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; to determine the numbers, types, pay schedules, pay bands and grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission. **The Department**¹⁵⁰ can take action in any of these areas without advance notice to the union.

The Department will bargain over procedures and appropriate arrangements management will follow in the exercise of certain other rights--to lay off and retain employees, or to suspend; remove; reduce in pay, pay band, or grade; or take other disciplinary action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion or from any other appropriate source--as provided for in these regulations. This bargaining may be prospective, that is, after management has exercised such right. Where management is not required to negotiate over procedures stemming from the exercise of its rights, the proposed regulations provide a mechanism for obtaining an exclusive representative's views and recommendations regarding such procedures.

8. Exclusive Recognition of Labor Organizations

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11. Representation Rights and Duties

As in chapter 71, these proposed regulations provide that recognized unions are the exclusive representatives of the employees in the unit and act for and negotiate on their behalf, consistent with law and regulation.

Under current law, a union has the right to send a representative to a formal discussion ("formal meetings") called by management to discuss general working conditions with employees. Determining what is and is not a formal discussion, as FLRA and courts have interpreted that term, requires managers to balance numerous factors concerning the relative formality of the meeting and the precise subject matter discussed. Because of the complicated and confusing criteria, front-line managers and supervisors are often reluctant to hold discussions with employees concerning everyday workplace issues, which can affect work unit effectiveness and

¹⁵⁰The "Department" doesn't not have a separate "Ethereal" being; it is merely the total of its employees, physical resources & legislative "warrants"; only people can take action – not an abstract "Department"

efficiency and inhibit communication and problem solving.

The proposed language redefines formal discussions as discussions or announcements of new or substantially changed personnel policies, practices, or working conditions. It specifically excludes discussions on operational matters where discussions do not involve the establishment of new policies or practices.

An exclusive representative is entitled to attend discussions regarding grievances filed under its negotiated grievance procedure. Moreover, these proposed regulations resolve any uncertainty resulting from litigation about whether unions have an institutional right to be present during EEO proceedings, to include mediation efforts, after a formal EEO complaint has been filed or other matters appealed by employees. Under these proposed regulations, unions do not have such a right unless the complainant raises the matter in the negotiated grievance procedures.

Where an employee elects to use a procedure outside the negotiated grievance procedure (such as EEO), the employee has the choice of personal representatives (including, at the employee's option, a union official acting as personal representative). However, the union has no institutional right to represent the employee or attend meetings related to the resolution of the employee's issues. Where a resolution impacts the bargaining unit as a whole, the union will be fully advised and afforded the opportunity to exercise applicable rights. This change strikes an appropriate balance between the union's institutional rights and employee privacy and, with regard to complaint processes other than negotiated grievance procedures.

The proposed regulations also preserve what has come to be known as the "Weingarten" right, which permits union representation at the employee's request when management examines an employee during an investigation and the employee reasonably believes that discipline will follow. However, the proposed regulations exclude investigations conducted by the Offices of the Inspectors General and other independent Department or Component investigatory organizations, such as U.S. Army Criminal Investigation Command and the Air Force Office of Special Investigations; "Weingarten" representation rights do not apply in such investigations. These exclusions were identified to ensure that independent bodies can conduct truly independent investigations. Further, this change ensures that investigations involving criminal matters are not affected by unnecessary delay, harm to the integrity of the investigation, or issues of confidentiality.

Under these regulations, the Department will hold employee representatives to the same conduct requirements as any other DoD employees. The proposed regulations clarify that the Department may address the misconduct of any employee, including employees acting as union representatives, as long as the agency does not treat employees more severely because they are engaging in union activity. The Department will no longer be bound by FLRA's "flagrant misconduct" standard or any other test developed through case decisions which may immunize union representatives engaged in otherwise actionable misconduct. However, the proposed

regulation is not intended to target the content of ideas¹⁵¹.

This section also retains the requirement that the parties are to negotiate in good faith and approach negotiations with a sincere resolve to reach a collective bargaining agreement. Such agreements will be subject to agency head review as currently provided in chapter 71.

Under chapter 71, a union has the right to information maintained by the agency if the information is necessary and relevant to the union's representational responsibilities. This right is maintained with some modifications in these regulations. Under these regulations, disclosure of information is not required if adequate alternative means exist for obtaining the requested information, or if proper discussion, understanding, or negotiation of a particular subject within the scope of collective bargaining is possible without recourse to the information. This change also relieves management of the unnecessary administrative burden of producing information that can readily be obtained some other way and recognizes technological advances in information access and sharing. The proposed regulations further provide that information may not be disclosed if an authorized official determines that disclosure would compromise the Department's mission, security, or employee safety.

The regulations specify that sensitive information such as personal addresses, personal telephone numbers, personal e-mail addresses, or any other information not related to an employee's work, may not be disclosed. While this is not a change in existing statutory interpretation, it is necessary to specify these limitations in the proposed regulations, given the extremely sensitive nature of the Department's mission and the serious consequences if such information were deliberately or inadvertently disclosed to an inappropriate source.

In recognition of the foregoing duties of the union, the regulations preserve the official time provisions in chapter 71. In so doing, we have clarified that, consistent with current law, official time is not permitted for representational duties outside the exclusive representative's bargaining unit. However, we have provided an exception for multi-unit bargaining and bargaining above the level of exclusive recognition, subject to mutual agreement of the parties. Current chapter 71 authorizations and requirements concerning allotments also are retained in this section.

12. Unfair Labor Practices

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Next Steps

¹⁵¹The "Department" doesn't take action outside of the actions of its employees; human employees must demonstrate that their actions are Not targeted at divergent "thought" (ideas) or the individuals voicing or legitimately acting on those thoughts.

The National Defense Authorization Act for Fiscal Year 2004 provides that the development and implementation of a new HR system for DoD will be carried out with the participation of, and in collaboration with, employee representatives. The Secretary and the Director must provide employee representatives with a written description of the proposed new or modified HR system. The description contained in this Federal Register notice satisfies this requirement. The Act further provides that employee representatives must be given 30 calendar days to review and make recommendations regarding the proposal. Any recommendations must be given full and fair consideration. If the Secretary and Director do not accept one or more recommendations, they must notify Congress of the disagreement and then meet and confer with employee representatives for at least 30 calendar days in an effort to reach agreement. The Federal Mediation and Conciliation Service may provide assistance at the Secretary's option, or if requested by a majority of employee representatives who have made recommendations. If there is no objection to or recommendation on a proposal, it may be implemented immediately. Similarly, when the Secretary and the Director accept any recommendation from employee representatives, the revised proposal may be implemented immediately. If the Secretary and the Director do not fully accept a recommendation, the Secretary may implement the proposal (including any modifications made in response to the recommendations) at any time after 30 calendar days have elapsed since the initiation of congressional notification, consultation, and mediation procedures. To proceed with implementation in this circumstance, the Secretary must determine (in his/her sole and unreviewable discretion) that further consultation and mediation are unlikely to produce agreement. The Secretary must notify Congress promptly of the implementation of any such contested proposal. The Secretary and the Director must develop a method under which each employee representative may participate in any further planning or development in connection with implementation of a proposal. Also, the Secretary and the Director must give each employee or representative adequate access to information to make that participation productive. DoD plans to make the new labor relations provisions effective 30 days after the issuance of final regulations, and notification to Congress as required by the law. At this time, DoD intends to implement the new HR system in phases, or spirals. The tentative schedule for implementing the spirals is outlined as follows:

In the first spiral, up to 300,000 General Schedule (GS and GM), Acquisition Demonstration Project, and certain alternative personnel system employees will be brought into the system through incremental deployments.

After the assessment cycle and certification of the performance management system are completed, the second spiral will be deployed.

Spiral two will consist of Federal Wage System employees, overseas employees, and all other eligible employees.

E.O. 12866, Regulatory Review

DoD and OPM have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 because there is a significant public interest in revisions of the

Federal employment system. DoD and OPM have analyzed the expected costs and benefits of the proposed HR system to be adopted for DoD, and that analysis is presented below.

Among the NSPS design requirements is to build a system that is competitive, cost effective, and fiscally sound, while also being flexible, credible, and trusted. NSPS will bring many flexibilities and modern HR practices, including a movement towards market sensitive pay, **pay increases based on performance rather than the passage of time**¹⁵², and the flexibility to offer competitive salaries. This requires striking a balance among the values of pay flexibility, valuing high performance, fiscal constraint, and credibility. While these flexibilities will improve DoD's ability to attract and retain a high-performing workforce, it is expected that actual payroll costs under this system will be constrained by the amount budgeted for overall DoD payroll expenditures, as is the case with the present GS pay system. DoD anticipates that accessions, separations, and promotions will net out and, as with the present system, not add to the overall cost of administering the system.

The implementation of NSPS will, however, result in some initial implementation costs, which can be expressed in two basic categories: (1) Program implementation costs and (2) NSLRB startup costs. The program implementation category refers to the costs associated with designing and implementing the system. This includes establishing and funding the operations of the Program Executive Office, executing the system design process, developing and delivering new training specifically for NSPS, conducting outreach to employees and other parties, engaging in collaboration activities with employee representatives, and modifying automated human resources information systems, including personnel and payroll transaction processing systems. In the areas of training and HR automated systems, the costs associated with implementing NSPS will not be extensive, since DoD has significant training and IT infrastructures in place for current operations. DoD will not have to build new systems or delivery mechanisms, but rather will modify existing systems and approaches to accommodate changes brought about by NSPS. The other cost category refers to the cost to establish the proposed National Security Labor Relations Board. This includes typical organizational stand-up costs, as well as staffing the NSLRB with members and a professional staff. It is expected that the NSLRB will develop streamlined processes and procedures and leverage existing infrastructures and technology to minimize startup and sustainment costs.

As has been the practice with implementing other alternative personnel systems, DoD expects to

¹⁵²Phrasing “rather than the passage of time” is pejorative & prejudicial to the discussion of the putative benefits of the “New” system... Civil Service “Raises” (With-In Grade Increases (WIGIs) have allow ways been conditioned on the supervisor’s certification that the employees “performance “ was at least satisfactory during the preceding period... Similarly, Grade increases (promotions) have always been contingent on performance that exceeded the expectations of the previous rate or/and have been subject to competition before being awarded... The “New” system doesn’t add anything here or ensure that the persons encumbering “Management” positions will behave any more effectively.

incur an initial payroll cost related to the conversion of employees to the pay banding system. This is often referred to as a within-grade increase (WGI) "buyout," in which an employee's basic pay, upon conversion, is adjusted by the amount of the WGI earned to date. While this increase is paid earlier than scheduled, it represents a cost that would have been incurred under the current system at some point. However, under the NSPS proposed regulations,[[Page 7574]]WGIs no longer exist; **once under NSPS, such pay increases will be based on performance**¹⁵³. Accordingly, the total cost of the accelerated WGI "buyout" should not be treated as a "new" cost attributed to implementation of NSPS, since it is a cost that DoD would bear under the current HR system in the absence of NSPS authority and implementing regulations. The portion of the WGI buyout cost attributable to NSPS implementation is the marginal difference between paying out the earned portion of a WGI upon conversion and the cost of paying the same WGI according to the current schedule. In the absence of NSPS, WGIs would be spread out over time instead of being paid "up front." The marginal cost of the accelerated payment of earned WGIs is difficult to estimate, but is not a significant factor in the benefit cost analysis for regulatory review purposes.

DoD estimates the overall costs associated with implementing the new DoD HR system--including the development and implementation of a new human resources management system and the creation of the NSLRB--will be approximately \$158M through FY 2008. Less than \$100 million will be spent in any 12-month period.

The **primary benefit to the public of this new system resides in the HR flexibilities that will enable DoD to attract, build, and retain a high-performing workforce focused on effective and efficient mission accomplishment**¹⁵⁴. A performance-based pay system that rewards excellent performance will result in a more qualified and proficient workforce and will generate a greater return on investment in terms of productivity and effectiveness. It is also expected that new flexibilities and improved processes in labor management relations, adverse actions, and appeals will result in more efficient and faster resolution of workplace and labor disputes, timelier and less costly bargaining processes, and quicker implementation of workplace changes needed to carry out the national security mission of the Department, while preserving basic employee rights. Taken as a whole, the changes included in these proposed regulations will result in a contemporary, merit-based HR system that focuses on performance, generates respect and trust,

¹⁵³“Such” increases have always been contingent on satisfactory performance; if persons failed to perform their management functions effectively, it is not an inherent fault in the current Civil Service system nor one that would be fixed by the “New” system...

¹⁵⁴This is the fundamental premise supposed to be motivating the dismantling of the current Civil Service system; it is unsupported by any empirical evidence from the various “Personnel Demonstration” programs that is distinguishable from statistical fluctuations or changes in the underlying economic conditions; many of the overt & implied features are relics of Industrial Age “Piece Work” that have been largely discredited by forward thinking scholars of Management Psychology & have been identified as de-motivating to “Knowledge Workers” of the Information Age..

and supports the primary mission of DoD.

Regulatory Flexibility Act

DoD and OPM have determined that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This proposed regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

E.O. 12988, Civil Justice Reform

This proposed regulation is consistent with the requirements of E.O. 12988. The regulation clearly specifies the effects on existing Federal law or regulation; provides clear legal standards; has no retroactive effects; specifies procedures for administrative and court actions; defines key terms; and is drafted clearly.

E.O. 13132, Federalism

DoD and OPM have determined these proposed regulations would not have federalism implications because they would apply only to Federal agencies and employees. The proposed regulations would not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates

These proposed regulations would not result in the expenditure by State, local, or tribal governments of more than \$100 million annually. Thus, no written assessment of unfunded mandates is required.

List of Subjects in 5 CFR Part 9901

Administrative practice and procedure, Government employees, Labor management relations, Labor unions, Reporting and recordkeeping requirements, Wages.

Department of Defense.
Donald Rumsfeld,
Secretary.

Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, under the authority of section 9902 of title 5, United States Code, the Department of Defense and the Office of Personnel Management are proposing to amend title 5, Code of Federal Regulations, by establishing chapter XCIX consisting of part 9901 as follows:

{new §9901 to separate file}

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**CHAPTER XCIX--DEPARTMENT OF DEFENSE NATIONAL SECURITY
PERSONNEL SYSTEM (DEPARTMENT OF DEFENSE--OFFICE OF PERSONNEL
MANAGEMENT){Section9901X.wpd}**

**PART 9901--DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL
SYSTEM¹**

Sec. 9901.103 Definitions.

In this part:

Band means pay band.

Basic pay means an employee's rate of pay before any deductions and exclusive of additional pay of any kind, except as expressly provided by law or regulation. For the specific purposes prescribed in Sec. 9901.332(c), basic pay includes any local market supplement.

Career group means a grouping of one or more associated or related occupations. A career group may include one or more pay schedules. Competencies means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics that an individual needs to perform a particular job or job function successfully.

Contribution means a work product, service, output, or result provided or produced by an employee or group of employees that supports the Departmental or organizational mission, goals, or objectives.²

Day means a calendar day.

Department or DoD means the Department of Defense.

Director means the Director of the Office of Personnel Management.

Employee means an employee within the meaning of that term in **5 U.S.C. 2105³**.

¹Comments on selected sections to illustrate potential concerns – neither time nor patience available to labor through all the line-in / line-out / justification / intention / potential un-intended consequence etc – 2005.03.14

²Is this sufficiently broad to recognize “Knowledge Work” contributions (Process Innovations, Contrarian Visions, Team Building, Mentoring / Coaching ,...)?

³Includes SECDEF

Furlough means the placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

General Schedule or GS means the General Schedule classification and pay system established under chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code.

Implementing issuances means documents issued at the Departmental level by the Secretary to carry out any policy or procedure established in accordance with this part. These issuances may apply Department-wide or to any part of DoD as determined by the Secretary at his or her sole and exclusive discretion.

Mandatory removal offense (MRO) means an offense that the Secretary determines in his or her sole, exclusive, and unreviewable discretion has a direct and substantial adverse impact on the Department's national security mission.

National Security Personnel System (NSPS) means the human resources management system authorized by 5 U.S.C. 9902(a). It may also refer to the labor relations system authorized by 5 U.S.C. 9902(m).

Occupational series means a group or family of positions performing similar types of work. Occupational series are assigned a number for workforce information purposes (for example: 0110, Economist Series; 1410, Librarian Series).

OPM means the Office of Personnel Management.

Pay band or band means a work level and associated pay range within a pay schedule.

Pay schedule means a set of related pay bands for a specified category of employees within a career group.

Performance means accomplishment of work assignments or responsibilities and contribution to achieving organizational goals, including an employee's behavior and professional demeanor (actions, **attitude**⁴, and manner of performance), as demonstrated by his or her approach to completing work assignments.

Promotion means the movement of an employee from one pay band to a higher pay band under DoD implementing issuances. This includes movement of an employee currently covered by a non-NSPS Federal personnel system to a position determined to be at a higher level of work in NSPS.

⁴“Attitude” will always be subjective & its inclusion as a factor in determining “Pay for Performance” can only be used to stifle descent & to inhibit the presentation of alternative approaches to the solution of a problem – the very essence of “Knowledge Work”;;

Rating of record means a performance appraisal prepared–

(1) At the end of an appraisal period covering an employee's performance of assigned duties against performance expectations over the applicable period; or

(2) As needed to reflect a substantial and sustained change in the employee's performance since the last rating of record as provided in DoD implementing issuances.

Reassignment means the movement of an employee from his or her position of record to a different position or set of duties in the same or a comparable pay band under DoD implementing issuances on a permanent or temporary/time-limited basis. This includes the movement of an employee between[[Page 7577]]positions at a comparable level of work in NSPS and a non-NSPS Federal personnel system.

Reduction in band means the voluntary or involuntary movement of an employee from one pay band to a lower pay band under DoD implementing issuances. This includes movement of an employee currently covered by a non-NSPS Federal personnel system to a position determined to be at a lower level of work in NSPS.

Secretary means the Secretary of Defense.

SES means the Senior Executive Service established under 5 U.S.C. chapter 31, subchapter II.

SL/ST refers to an employee serving in a senior-level position paid under 5 U.S.C. 5376. The term ``SL" identifies a senior-level employee covered by 5 U.S.C. 3324 and 5108. The term ``ST" identifies an employee who is appointed under the special authority in 5 U.S.C. 3325 to a scientific or professional position established under 5 U.S.C. 3104.

Unacceptable performance means the failure to meet one or more performance expectations.

Sec. 9901.104 Scope of authority.

The authority for this part is 5 U.S.C. 9902. The provisions in the following chapters of title 5, U.S. Code, and **any related regulations**⁵, may be waived or modified in exercising the authority in 5 U.S.C. 9902:

(a) Chapters 31, 33, and 35, dealing with staffing, employment, and workforce shaping (as authorized by 5 U.S.C. 9902(k));

(b) Chapter 43, dealing with performance appraisal systems;

⁵Need to enumerate these rather than provide a Carte Blanc “*any*”...

- (c) Chapter 51, dealing with General Schedule job classification;
- (d) Chapter 53, dealing with pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees;
- (e) Chapter 55, subchapter V, dealing with premium pay, except section 5545b;
- (f) Chapter 71, dealing with labor relations (as authorized by 5 U.S.C. 9902(m));
- (g) Chapter 75, dealing with adverse actions and certain other actions; and
- (h) Chapter 77, dealing with the appeal of adverse actions and certain other actions.

Sec. 9901.106 Continuing collaboration.

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Sec. 9901.108 Program evaluation.

(a) DoD will establish procedures for evaluating the regulations in this part and their implementation. DoD will provide **designated employee representatives**⁶ with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations.

(b) Involvement in the evaluation process does not waive the rights of any party under applicable law or regulations.

Subpart B--Classification

General

Sec. 9901.201 Purpose.

(a) This subpart contains regulations establishing a classification structure and rules for covered DoD employees and positions to replace the classification structure and rules in 5 U.S.C. chapter 51 and the job grading system in 5 U.S.C. chapter 53, subchapter IV, in accordance with the merit principle that equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and[[Page 7579]]appropriate incentives and recognition should be provided for excellence in performance.

⁶Why not All Employees ?? How is the “Baseline” performance of the Current (CS / GS) to be measured ?

(b) Any classification system prescribed under this subpart will be established in conjunction with the pay system described in subpart C of this part.

Sec. 9901.202 Coverage.

(a) This subpart applies to eligible DoD employees and positions listed in paragraph (b) of this section, subject to a determination by the Secretary under Sec. 9901.102(b)(2).

(b) The following employees of, or positions in, DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions that would otherwise be covered by the General Schedule classification system established under 5 U.S.C. chapter 51;

(2) Employees and positions that would otherwise be covered by a prevailing rate system established under 5 U.S.C. chapter 53, subchapter IV;

(3) Employees in senior-level (SL) and scientific or professional (ST) positions who would otherwise be covered by 5 U.S.C. 5376;

(4) Members of the Senior Executive Service (SES) who would otherwise be covered by 5 U.S.C. chapter 53, subchapter VIII, subject to Sec. 9901.102(d); and

(5) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

Sec. 9901.203 Waivers.

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Sec. 9901.406 Setting and communicating performance expectations.

(a) Performance expectations will support and align with the DoD mission and its strategic goals, organizational program and policy objectives, annual performance plans, and other measures of performance.

(b) Supervisors and managers will communicate performance expectations, including those that may affect an employee's retention in the job. Performance expectations will be communicated to the employee prior to holding the employee accountable for them. However, notwithstanding this requirement, employees are always accountable for demonstrating professionalism and standards of appropriate conduct and behavior, such as civility and respect for others.

(c) Performance expectations for supervisors and managers will include assessment and measurement of how well supervisors and managers plan, monitor, develop, correct, and assess subordinate employees' performance.

(d) Performance expectations may take the form of–

(1) Goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level;[[Page 7586]]

(2) Organizational, occupational, or other work requirements, such as standard operating procedures, operating instructions, manuals, internal rules and directives, and/or other instructions that are generally applicable and available to the employee;

(3) A particular work assignment, including expectations regarding the quality, quantity, accuracy, timeliness, and/or other expected characteristics of the completed assignment;

(4) Competencies an employee is expected to demonstrate on the job, and/or the contributions an employee is expected to make; or

(5) Any other means, provided that the expectation would be clear to a reasonable person.

(e) Supervisors will involve employees, insofar as practicable, in the development of their performance expectations. However, **final decisions regarding performance expectations are within the sole and exclusive discretion of management**⁷.

Sec. 9901.407 Monitoring performance and providing feedback.

In applying the requirements of the performance management system and its implementing issuances and policies, supervisors will–

(a) Monitor the performance of their employees and their contribution to the organization; and

(b) Provide ongoing (i.e., regular and timely) feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period.

Sec. 9901.408 Developing performance and addressing poor performance.

(a) DoD implementing issuances will prescribe procedures that supervisors will use to develop

⁷“Management” doesn’t exist as an abstract entity; this is either the Employee’s Immediate Supervisor or the person to whom these discretions have been delegated by the SECDEF.

employee performance and to address poor performance.

(b) If during the appraisal period a supervisor determines that an employee's performance is unacceptable⁸, 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 letter of counseling, 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 consequences⁹.

(c) As specified in subpart H of this part, employees may appeal adverse actions (e.g., suspensions of more than 14 days, reductions in pay and pay band, and removal) based on unacceptable performance.

Sec. 9901.409 Rating and rewarding performance.

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External Recruitment and Internal Placement

Sec. 9901.511 Appointing authorities.

(a) Competitive and excepted appointing authorities. DoD may continue to use excepted and competitive appointing authorities and entitlements under chapters 31 and 33 of title 5, U.S. Code, Governmentwide regulations, or Executive orders, as well as other statutes, and those individuals will be given career or time-limited appointments, as appropriate.

(b) Additional appointing authorities. (1) The Secretary and the Director may enter into written agreements providing for new excepted and competitive appointing authorities for positions covered by the National Security Personnel System, including noncompetitive appointments, and

⁸Supervisor must ensure that the Employee has been provided with Resources & Authorities necessary to perform up the expectations & that the expectations are commensurate with the Employees qualifications & experience; Supervisor's own Performance Rating must reflect his / her effectiveness in obtaining resources, matching performer to task & providing adequate guidance & coaching throughout the performance period.

⁹And that the responsibility for the unacceptable performance & consequences rests entirely on factors under the Employees control.

excepted appointments that may lead to a subsequent noncompetitive appointment to the competitive service.

(2)(i) DoD and OPM will jointly publish a notice in the Federal Register when establishing a new competitive appointing authority or a new excepted appointing authority that may lead to a subsequent noncompetitive appointment to a competitive position in the career service. DoD and OPM will issue a notice with a public comment period before establishing such authority, except as provided in paragraph (b)(2)(ii) of this section.

(ii) If DoD determines that a critical mission requirement exists, DoD and OPM may establish a new appointing authority as described in paragraph (b)(2)(i) of this section effective upon publication of a Federal Register notice without a preceding comment period. However, the notice will invite public comments, and DoD and OPM will issue another notice if the authority is revised based on those comments.

(3) DoD will prescribe appropriate implementing issuances to administer a new appointing authority established under paragraph (b) of this section.

(4) At least annually, DoD will publish in the Federal Register a consolidated list of all appointing authorities established under this section and currently in effect.

(c) Severe shortage/critical need hiring authority.

(1) DoD may determine that there is a severe shortage of candidates or a critical hiring need, as defined in 5 U.S.C. 3304(a)(3) and 5 CFR part 337, subpart B, for particular occupations, pay bands, career groups, and/or geographic locations, and **establish a specific authority to make appointments without regard**¹⁰ to Sec. 9901.515. Public notice will be provided in accordance with 5 U.S.C. 3304(a)(3)(A).

(2) For each specific authority, DoD will document the basis for the severe shortage or critical hiring need, consistent with 5 CFR 337.204(b) or 337.205(b), as applicable.

(3) DoD will terminate or modify a specific authority to make appointments under paragraph (a) of this section when it determines that the severe shortage or critical need upon which the authority was based no longer exists.

(4) DoD will prescribe appropriate implementing issuances to administer this authority and will notify OPM of determinations made under this section.

(d) Time-limited appointing authorities.

¹⁰Should have provision to advertise these position to all current Employees so that position can be filled “Competitively”....

(1) The Secretary may prescribe the procedures for appointing employees, the duration of such appointments, and the appropriate uses of time-limited employees.

(2) The Secretary will prescribe implementing issuances establishing the procedures under which a time-limited employee (e.g., an individual employed on a temporary or term basis) serving in a competitive service position may be converted without further competition to the career service if–

(i) The vacancy announcement met the requirements of Sec. 9901.515(a) and included the possibility of noncompetitive conversion to a competitive position in the career service at a later date;

(ii) The individual was appointed using the competitive examining procedures set forth in Sec. 9901.515(b) and (c); and

(iii) The employee completed at least 2 years of continuous service at the fully successful level of performance or better.

Sec. 9901.512 Probationary periods.

The Secretary may establish probationary periods as deemed appropriate for employees appointed to positions in the competitive and excepted service covered by the National Security Personnel System. DoD will prescribe the conditions for such periods, including creditable service, in implementing issuances. A preference eligible who has **completed 1 year of a probationary period**¹¹ is covered by subparts G and H of this part. An employee who fails to complete an in-service probationary period established under Sec. 9901.516 will be returned to a position and rate of pay comparable to the position and rate of pay he or she held before the probationary period.

Sec. 9901.513 Qualification standards.

DoD may continue to use qualification standards established or approved by OPM. DoD also

¹¹One of the more useful features of the various LAB DEMO programs is the 3 - year extended Probation which, if coupled with reduced pre-employment “Checks & Balances”, could increase the responsiveness of the NSPS (reduce the delays) in making offers to New Employees. Any “Supervisor” could extend an immediate offer to a plausible candidate at or beneath the Supervisor’s Rate of Pay provided that the New Employee agreed to accept summary termination if the designated approving official determined that the New Employees qualification were sub-standard, that the Supervisor failed to examine a wide enough pool of candidates, considered factors other than merit,... or if the Supervisor (or anyone in the Chain of Command) determined that the New Employee’s On - The - Job Performance failed to meet Expectations at any time during the (extended) Probationary Period .

may establish qualification standards for positions covered by the National Security Personnel System.

Sec. 9901.514 Non-citizen hiring.

DoD may establish procedures for appointing non-citizens to positions within NSPS under the following conditions:

(a) In the absence of a qualified U.S. citizen¹², DoD may appoint a qualified non-citizen in the excepted service¹³; and

(b) Immigration and security requirements will apply to these appointments.

Sec. 9901.515 Competitive examining procedures.

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Sec. 9901.605 Competitive area.

(a) Basis for competitive area. The Department¹⁴ may establish a competitive area on the basis of one or more of the following considerations:

- (1) Geographical location(s);
- (2) Line(s) of business;
- (3) Product line(s);
- (4) Organizational unit(s); and
- (5) Funding line(s).

(b) Employees included in competitive area. A competitive area will include all competing employees holding official positions of record in the defined competitive area.

¹²Should be determined by advertising the position to all current DoD employees...

¹³Only the “Excepted Service” (provide reference to definition?) ?? Only if having Verified Eligibility for the Appropriate Security Clearance / Background Check ?

¹⁴Inconsistent use of “The Secretary”, DoD or Department – should always say the Secretary of Defense (SECDEF) or delegated person (Office) – never a inanimate Organization – may limit delegation in some cases to Secretary of (Department). &c.

(c) Review of competitive area determinations. The Department will make all competitive area definitions available for review.

(d) Change of competitive area. Competitive areas will be established for a minimum of 90 days before the effective date of a reduction in force. In implementing issuances, DoD will establish approval procedure requirements for any competitive area identified less than 90 days before the effective date of a reduction in force.

(e) Limitations. 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 an individual employee for reduction in forces on the basis of nonmerit factors.

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Sec. 9901.611 Reduction in force appeals.

(a) An employee who believes the Department did not properly apply the provisions of this subpart **may appeal**¹⁵ the reduction in force action to the Merit Systems Protection Board as provided for in 5 CFR 351.901 if the employee was released from the retention list and was–

- (1) Separated by reduction in force;
- (2) Reduced in band by reduction in force; or
- (3) Furloughed by reduction in force for more than 30 consecutive days.

(b) Paragraph (a) of this section does not apply to actions taken under internal DoD placement programs, including the DoD Priority Placement Program.

Subpart G--Adverse Actions

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Sec. 9901.711 Standard for action.

¹⁵Employee may appeal under other “Titles” (eg: 42 – Equal Employment Opportunity,...) if Employee *perceives* that action was applied unfairly to him / her based on Age, *Attitude*, Whistle - Blowing, Liberal Politics,...as a result of a Hostile Work Place,...

The Department may take an adverse action under this subpart only for such cause as will promote the efficiency of the service¹⁶.

Sec. 9901.712 Mandatory removal offenses¹⁷.

(a) The Secretary has the sole, exclusive, and unreviewable discretion to identify offenses that have a direct and substantial adverse impact on the Department's national security mission. Such offenses will be identified in advance as part of departmental regulations¹⁸, and made known to all employees upon identification.

(b) The procedures in Sec. Sec. 9901.713 through 9901.716 apply to actions taken under this section. However, a proposed notice required by Sec. 9901.714 may be issued to the employee in question only after the Secretary's review and approval.

(c) The Secretary has the sole, exclusive, and unreviewable discretion to mitigate the removal penalty on his or her own initiative or at the request of the employee in question.

(d) Nothing in this section limits the discretion of the Department to remove employees for offenses other than those identified by the Secretary as an MRO.

Sec. 9901.713 Procedures.

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Sec. 9901.804 Definitions.

In this subpart:

Administrative judge or AJ means the official, including an administrative law judge, authorized by MSPB to hold a hearing in a matter covered by this subpart and subpart G of this part, or to decide such a matter without a hearing.

Class appeal means an appeal brought by a representative(s) of a group of similarly situated

¹⁶Standards for making this determination ? or a Carte Blanc to eliminate dissent, perhaps based on Principled Behavior ?

¹⁷Only Reference found (so far) 5 USC 7371 seems to apply only to Law Enforcement Officers – if intent is to generalize, need to be more explicit.

¹⁸Will these be different from current MROs? Would they always involve a Felony (“direct and substantial adverse impact on the Department's national security...”)?

employees consistent with the provisions of Federal Rule of Civil Procedure 23.

Harmful error means error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

Mandatory removal offense (MRO) has the meaning given that term in Sec. 9901.103.

MSPB means the Merit Systems Protection Board.

Petition for review (PFR) means a request for full MSPB review of a final Department decision.

Preponderance of the evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, would **accept as sufficient to find that a contested fact is more likely to be true than untrue**¹⁹.

Request for review (RFR) means a preliminary request for review of an initial decision of an MSPB administrative judge before that decision has become a final Department decision.

Sec. 9901.805 Coverage.

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Sec. 9901.909 Powers and duties of the Federal Labor Relations Authority.

(a) To the extent provided in this subpart (pursuant to the authority in 5 U.S.C. 9902), the Federal Labor Relations Authority, in accordance with conforming regulations prescribed by the Authority, may—

(1) Determine the appropriateness of bargaining units pursuant to the provisions of Sec. 9901.912; and

(2) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer 5 U.S.C. 7111 (relating to the according of exclusive recognition to labor organizations), which is not waived for the purpose of this subpart.

(b) In any matter filed with the Authority, if the responding party believes that the Authority lacks jurisdiction, that party will timely raise the issue with the Authority and simultaneously file

¹⁹ie. a nearly 50% probability of error...

a copy of its response with the Board in accordance with regulations established by the Authority. The Authority will promptly transfer the case to the Board, which will determine whether the matter is within the Board's jurisdiction. If the Board determines that the matter is not within its jurisdiction, the Board will return the matter to the Authority for a decision on the merits of the case. The Board's determination with regard to its jurisdiction in a particular matter is final and not subject to review by the Authority. The Authority will promptly decide those cases that the Board has determined are within the jurisdiction of the Authority.

(c) Judicial review of any Authority decision is as prescribed in 5 U.S.C. 7123(a), which is not modified.

Sec. 9901.910 **Management rights**²⁰.

(a) Subject to paragraphs (b), (c), and (d) of this section, nothing in this subpart may affect the authority of any management official **or supervisor**²¹ of the Department—

(1) To determine the mission, budget, organization, number of employees, and internal security practices of the Department;

(2) ²²To hire, assign, and direct employees in the Department; to assign work, make determinations with respect to contracting out, and to determine the personnel by which Departmental operations may be conducted; **to determine the numbers, types, pay schedules, pay bands and/or grades of employees or positions assigned to any organizational subdivision, work project or tour of duty, and the technology, methods, and means of performing work; to assign employees to meet any operational demand; and to take whatever other actions may be necessary to carry out the Department's mission;**²³ and

²⁰There is no distinct “Management” entity; all persons are Employees of the DoD, some Employees have duties which include the tasking, oversight, evaluation of other employees; such Employees (Supervisors) have no distinct or superior rights to other Employees. The Secretary of Defense (SECDEF) is the Alpha Employee who sets Department Strategy & Performance Standards & who allocates specific Tasks & Resource to other Employees who “Act” on his behalf & provide the Information & Advice that he relies on in the Performance of his/ her duties. SECDEF has no (Devine) “Rights” distinct or superior to those of other Employee... [Why isn't this just a reference to §7106 – are there differences?]

²¹“Or Supervisor” added – defined in §7103(a)(10)

²²Omits: “in accordance with applicable laws”

²³As blend of §7106(a)(2)(A) &...(B) with significant additions.. Note especially “**means of performing work**” – an archaic “Industrial Age” model where it is assumed that only the Bosses know how a job “should” be done – offensive to the “Knowledge Work” Model where the Workers Method are neither visible nor (totally) comprehensible to the Boss ...

(3) To lay off and retain employees, or to suspend; remove; reduce in pay, pay band, or grade; or take other disciplinary action against such employees or, with respect to filling positions, to make selections for appointments from properly ranked and certified candidates for promotion²⁴ or from any other appropriate source.

(b) Management is prohibited from bargaining²⁵ over the exercise of any authority under paragraph (a) of this section or the procedures that it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section.

(c) Notwithstanding paragraph (b) of this section and at the request of an exclusive representative, management will consult as required under Sec. 9901.917²⁶ over the procedures it will observe in exercising the authorities set forth in paragraphs (a)(1) and (2) of this section. Consultation does not require that the parties reach agreement on any covered matter. The parties may, upon mutual agreement, provide for FMCS or another third party to assist in this process. Neither the Board nor the Authority may intervene in this process.

(d) If an obligation exists under Sec. 9901.917 to bargain or consult regarding any authority under paragraph (a) of this section, management will provide notice to the exclusive representative concurrently with the exercise of that authority. However, at its sole, exclusive, and unreviewable discretion, management may provide notice to an exclusive representative of its intention to exercise an authority under paragraph (a) of this section as far in advance as practicable. Further, nothing in paragraph (d) of this section establishes an independent right to bargain or consult.

(e) When an obligation exists under Sec. 9901.913, management will provide the exclusive representative an opportunity to present its views and recommendations regarding the exercise of an authority under paragraph (a) of this section, and the parties will bargain at the level of recognition (unless otherwise delegated below that level, at their mutual agreement) over otherwise negotiable—

(1) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(3) of this section and procedures which management officials and

²⁴From 5 USC §7106(a)(2)(C)(I) & ... (ii)... Could have been referenced -- But some “Demos” had features intended to Streamline Hiring which may be impeded by the “ranking & certifying” overhead...

²⁵“*Prohibited from*” replaces “*Nothing...shall Preclude*” {§7106(b)} – seems to betray some special anti-labor agenda; reasons for not allowing “Management” the choice (may?) should be examined.

²⁶“Exclusive Representative” – a Organization that has received “Exclusive Recognition” as a result of an election under the Federal Service Labor - Management Relations Statute (§7111)

supervisors will observe in exercising any authority under paragraph (a)(3) of this section; and

(2)(i) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraphs (a)(1) and (2) of this section, provided that the effects of such exercise is foreseeable, substantial, and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change. Appropriate arrangements within the duty to bargain include proposals on matters such as personal hardships and safety measures.

(ii) Appropriate arrangements within the duty to bargain do not include proposals on matters such as—

(A) The routine assignment to specific duties, shifts, or work on a regular or overtime basis; and

(B) Pay or credit for work not actually performed.

(f) Where a proposal falls within the coverage of both paragraph (a)(1) and [[Page 7598]]

(a)(3) of this section or paragraph (a)(2) and (a)(3) of this section, the matter will be determined to be covered by paragraph (a)(1) or (a)(2) of this section for the purpose of collective bargaining. (g) Nothing in this section will delay or prevent the Department from exercising its authority. Any agreements reached with respect to paragraph (e)(2) of this section will not be precedential or binding on subsequent acts, or retroactively applied, except at the Department's sole, exclusive, and unreviewable discretion.

(h) Nothing in the process established under this section or in Sec. 9901.917, will delay the exercise of a management right under Sec. 9901.910(a)(1), (2) or (3).

(i) Management retains the sole, exclusive, and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in Sec. 9901.910(a)(1) and (2) and to deviate from such procedures, as necessary.

Sec. 9901.911 Exclusive recognition of labor organizations..

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Sec. 9901.928 Savings provisions.

This subpart does not apply to grievances or other administrative proceedings already pending on the date of coverage of this subpart, as determined under Sec. 9901.102(b)(1). Any remedy that applies after the date of coverage under any provision of this part and that is in conflict with applicable provisions of this part is not enforceable.

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