

BEFORE THE  
UNITED STATES DEPARTMENT OF DEFENSE  
and  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C.

National Security Personnel System:  
Proposed Rule

Docket No. NSPS--2005--001

COMMENTS of the  
MARINE ENGINEERS BENEFICIAL ASSOCIATION  
INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS  
AMERICAN MARITIME OFFICERS  
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA

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In Opposition to the Imposition of the National Security Personnel System (“NSPS”) Sought to be Established by the Proposed Rule on Licensed and Unlicensed Seafarers Employed on Board Vessels Operated by the Military Sealift Command (“MSC”) and the U.S. Army Corps of Engineers (“USACE”) and as Pilots for the U.S. Navy (collectively “CIVMARS”).

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MARCH 16, 2005

## INTRODUCTION AND SUMMARY OF POSITION

The Marine Engineers Beneficial Association (“MEBA”), the International Organization of Masters, Mates & Pilots (“MMP”), the American Maritime Officers (“AMO”), and the Seafarers International Union of North America (“SIU”)(collectively “the Unions”) represent federal employees employed as Civilian Mariners on board vessels operated by the Military Sealift Command (“MSC”) and the U.S. Army Corps of Engineers (“USACE”) within the Department of Defense (“DOD”), as well as pilots for the Department of the Navy guiding vessels into port (collectively referred to herein as “CIVMARS”). The Unions have attended meetings with DOD and the Office of Personnel Management (“OPM”) during the process leading to the Proposed Rule and welcome this opportunity to comment formally on the docket in opposition to the imposition of the National Security Personnel System (“NSPS”) sought to be established by the Proposed Rule on licensed and unlicensed CIVMARS.<sup>1</sup>

The human resources management system under which these seagoing employees are currently managed (hereinafter the “CIVMAR System”) has evolved over the last 30 years into a unique system of personnel management tailored to meeting DOD’s vessel operating needs in a demanding operational environment. Even if one accepts the rationale that the NSPS itself is intended to exempt DOD employees generally from the “inflexible, one-size-fits-all system” of human resources management that typifies the current Federal personnel management system,<sup>2</sup> the CIVMAR System has over the years proven its ability to provide DOD with a flexible, mission-driven system of personnel management and for this reason

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<sup>1</sup> 70 Fed. Reg. 7552 (February 14, 2005)(“National Security Personnel System: Proposed Rule)(NSPS-2005-001).

<sup>2</sup> 70 Fed. Reg. at 7553.

alone, there is no basis for replacing the CIVMAR System with NSPS and to impose on CIVMARS an “inflexible, one-size fits all” system.

These comments focus principally on the role played by the existing CIVMAR System in ensuring that DOD’s personnel management and total force effectiveness needs continue to be met, as well as on the benefits to DOD of that system, many of which will be lost if CIVMARS are forced into a one-size-fits-all NSPS for DOD civilian employees. As such, these comments underscore the reasons that CIVMARS should be excluded from the NSPS.

## **DISCUSSION**

The discussion which follows addresses:

- The unique legal status of CIVMARS;
- The CIVMAR System’s proven record of ensuring the mission effectiveness of crewed vessels;
- The ability of the CIVMAR System to ensure supervisory flexibility in the shipboard workplace; and
- Benefits of the CIVMAR System to DOD

### Unique Legal Status of CIVMARS

That the CIVMARS’ role as federal employees is not routine is demonstrated by the fact that unlike most other DOD employees, federal civilian mariners are considered legally excepted service employees, as opposed to competitive service employees, and are not covered by performance management systems as outlined in Title 5, U.S. Code.

Section 5348 of Title 5, U.S. Code, while noting that CIVMARS are excepted from the general classification scheme for federal employees set forth in Chapter 51 of Title 5, requires that the pay of CIVMARS shall be fixed and adjusted in accordance with prevailing rates and practices in the maritime industry. As a result, CIVMAR crewing practices mirror

commercial deep sea practices established under collective bargaining agreements negotiated by maritime labor and commercial operators. The utilization of these crewing practices in MSC/CIVMAR operations ensures that MSC vessels will incorporate the most effective crewing practices within the industry. Conversely, including CIVMARS within the coverage of the NSPS will sever this linkage with the best practices of the maritime industry generally, and will reduce the effectiveness of the CIVMAR personnel management system that has proven itself effective over the years.

Because CIVMARS are exempt from competitive promotion principles and performance management principles governing other DOD employees, the other portions of the NSPS would be inapplicable to the CIVMARS. Moreover, maritime labor has traditionally recognized the unique and arduous conditions inherent within a shipboard environment. Hence, the existing Civilian Personnel Management Instruction (“CMPI”) as well as the collective bargaining agreements negotiated by the unions and commercial operators provide, as a rule, more stringent performance standards for shipboard personnel and less shelter for poor performers than those afforded by NSPS.

If DOD’s purpose is to create a workable, rational system of personnel management for these employees, there is little wisdom to creating a confusing hybrid system in which CIVMARS are covered by NSPS labor relations provisions, but not its pay provisions, while at the same time destroying the symmetry with the commercial industry that has served as the foundation for the current system.

## Role of CIVMAR System in Ensuring Mission Effectiveness

The evolution of the CIVMAR System has ensured that vessels operated by MSC performing DOD military or military-related missions meet the same level of operational readiness, reliability, and expertise in performing those missions as would be achieved through military crewing, but in a much more cost effective manner. This degree of readiness, reliability, and expertise has been achieved and maintained over the years only because MSC had assured access to a sufficient number of experienced seafarers. These licensed and unlicensed mariners are skilled in the operation of vessels performing military missions, and are employed under arrangements that embody the best practices of the commercial industry. And, most importantly for the issue at hand, these arrangements and practices have and continue to give MSC the requisite flexibility and control over personnel assignments and performance that are necessary to meet its operational needs.

Through collective bargaining agreements entered into with the commercial industry that are mirrored in the Civilian Personnel Management Instruction (“CMPI”), MSC and the other Federal employers covered by the CIVMAR System, already have in place a system of human resources management that is flexible, integrated, and mission-oriented; a system that has worked well over the years and which already embodies all the same goals the NSPS is intended to achieve. Under this arrangement, CIVMARS serve under employment terms that mirror the commercial industry, but do so in a working environment more like that of regular commissioned ships of the U.S. Navy. Unlike their shore-side brethren in the DOD civilian workforce, CIVMARS routinely deploy on short notice for extended periods to meet the needs of the Navy for logistics support worldwide, with all the risks and inherent dangers associated with the seagoing environment. To assure stability in its workforce under such

conditions, MSC has worked directly with the Unions to develop and maintain a pool of skilled, experienced seafarers to crew the ever expanding MSC fleet.

On a daily basis, and during contingencies and national emergencies, the existing CIVMAR System and the working relationship between MSC and the Unions has ensured that CIVMAR-crewed ships will be ready to support the U.S. military in global operations. As has historically been the case, MSC has been delivering equipment and supplies for U.S. troops since the beginning of the war in Iraq in early 2003 on ships that are crewed by CIVMARS and commercial mariners who are represented by the Unions.

For example, during Operation Iraqi Freedom II, MSC transported the combat gear for 240,000 U.S. troops as the first major force rotation of Operation Iraqi Freedom. This troop rotation is the largest and fastest combat cargo movement since World War II and involved moving 10 million square feet of combat equipment and supplies into Iraq for 110,000 troops and the movement of 14 million square feet of cargo out of Iraq for the 130,000 troops leaving the theater. The ships participating in this massive sealift operation are either operated directly by MSC, on a contract with MSC, or operated by commercial shipping companies for MSC. Collectively these vessels are moving 95% of all equipment and supplies into the theater.

During the height of Operation Iraqi Freedom I, MSC was operating 214 active ships, 167 of which were directly supporting the war. Of these ships, federal civilian service mariners – CIVMARS – operated 26 vessels, and 141 vessels were crewed by commercial contract merchant mariners. Throughout Operations Iraqi Freedom I-III the total number of CIVMAR ships employed for missions in support of those operations has ranged between 39 and 41.

As an example of the type of coordination made possible under the CIVMAR System, the seagoing unions played a major role in training most of the officers and crew on those vessels in Chemical, Biological, and Radiological Defense (“CBR-D”). In fact, in January of 2003, the government was activating such a large number of ships simultaneously that there was not enough time to send the mariners to MSC training courses for CBR-D instruction. Instead, based on the solid and harmonious working relationship between the government and the seagoing unions, the union training schools flew their union instructors to the ships at their stateside loading ports in order to train the mariners against CBR attacks as part of MSC’s “Tiger Teams.”

More recently, the U.S. Pacific Command enlisted the support of MSC and its civilian mariners for the Tsunami relief effort in Southeast Asia. Currently there are twelve (12) ships from MSC supporting the United States’ relief effort, including CIVMAR-crewed vessels. These ships carry food, fuel, medical supplies, construction and road building equipment, electrical power and generating equipment, airfield matting and Navy field hospital equipment. This humanitarian effort is considered the largest disaster relief effort ever undertaken by MSC.

#### CIVMAR System Ensures Supervisory Flexibility in the Workplace

As is the case with the personnel management system being implemented within the Department of Homeland Security, one objective of the NSPS initiative within DOD is to establish a system that grants supervisory personnel the flexibility to remove or re-assign low or non-performing personnel before their performance, or lack thereof, adversely impacts mission performance. As with mission effectiveness at the broader level discussed above, this again is an area in which the current CIVMAR System already meets or exceeds what

NSPS would establish. Under U.S. Navy Regulations, the Master of an MSC vessel crewed by CIVMARS possesses the same absolute authority over embarked members of the crew as does the Commanding Officer of a commissioned ship of the U.S. Navy.<sup>3</sup> Thus, the NSPS would add nothing to what the CIVMAR System and Navy Regulations already provide in this respect.

CIVMARS are governed by SECNAV instructions such as the CMPI. The CMPI provides its own performance directives unlike those that govern the typical DOD employee. As exempt, excepted, prevailing wage mariners, the CIVMAR is not included in any civil service performance management system nor subject to any performance based adverse action protections. Moreover, the present system provides the ability to react immediately to any situation that could give rise to a grievance.

Ultimate authority remains with each Master of every MSC CIVMAR-crewed vessel to remove or re-assign low or non-performing personnel before their performance, or lack thereof, adversely impacts mission performance. The existing authority to immediately repatriate any potential or unacceptable performer provides even greater flexibility to supervisors than the NSPS concepts intends.

#### Benefits of CIVMAR System

The commercial collective bargaining agreements negotiated industry-wide by the seagoing unions and commercial operators are at the heart of the CIVMAR System. Because the SECNAV CMP Instructions are designed to be consistent with the unions' similar collective bargaining agreements for merchant mariners employed in the commercial

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<sup>3</sup> The responsibility of a Commanding Officer for his or her command is absolute and “[t]he authority of the commanding officer is commensurate with his or her responsibility.” Article 802; 32 C.F.R. § 700.802 (1990). Article 847 of Navy Regulations describes the authority of the Master of an in-service ship of the Military Sealift Command in exactly those same terms.



industry, under the CIVMAR System DOD obtains benefits that enhance and help ensure the stability of the manpower pool available to MSC and the other federal employers. Because the NSPS would sever DOD's and MSC's existing close working relationship with the unions under these agreements, those benefits would be lost if NSPS is imposed on CIVMARS. These include the ability to "cross deck" seafarers across agencies and the commercial industry, and the ability to maintain pay comparability with the commercial industry. Similarly, these agreements already call for the kind of "right-sizing" of employee work units that some state is another goal of NSPS.

### Cross Decking

The federal civilian mariners serving aboard vessels operated by MSC, the USACE and NOAA have the ability to cross over from one government agency to the other. Further, the seagoing unions have the ability to provide relief personnel for shorthanded vessels via the unions' hiring halls because of existing collective bargaining relationships. For example, over the past few years NOAA has been experiencing a shortage of qualified federal civilian mariners for its vessels. To solve this problem, MEBA and the SIU have expanded their collective bargaining relationships with NOAA to allow the agency to use the unions' hiring halls to fill vacant seagoing billets for licensed engineers and unlicensed personnel from within the unions' broader pool of commercial merchant mariners.

In effect, rather than MSC or the other agencies being required to maintain and rely solely upon their own pool of qualified seafarers to crew their vessels, the collective bargaining arrangements that exist under the CIVMAR System allow them to draw on each other, and on the much larger pool maintained by the commercial industry, to meet their manpower needs. The DOD NSPS proposal threatens this type of cooperation and

flexibility. For example, the solution described above would not have worked if the agency and the Unions did not have in effect the current collective bargaining relationship.

*Workforce Stability*

The unique nature of the types of MSC vessels that are CIVMAR-crewed and of the missions performed by them place an added premium on maintaining a stable workforce to man those vessels as compared to the commercial industry generally. As indicated, one objective of the NSPS for DOD is to establish a more competitive pay system that can be adjusted for factors including labor market conditions, performance, and changes in duties.<sup>4</sup> Once again, however, what NSPS would seek to accomplish DOD-wide, the CIVMAR System already accomplishes more effectively through its reliance on commercial collective bargaining agreements.

Because the commercial industry's demand for experienced seafarers is substantially greater than MSC's, if there were a significant differential between pay and benefits between the CIVMARS and commercial seafarers, the effect would be to attract CIVMARS to the commercial side of the industry, destabilizing MSC's already limited manpower pool. The parity that exists between the commercial bargaining agreements of the seagoing unions and those for CIVMARS helps keep this from occurring. Without the tie to the commercial side of the industry that exists under those agreements, however, an NSPS-type system will run the risk of creating a gap with the unintended result that MSC would either (a) be unable to crew its ships, or (b) be forced to exceed the prevailing commercial wage scale to attract seafarers, particularly in light of the military nature of CIVMAR vessel operations compared to commercial vessels.

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<sup>4</sup> 70 Fed. Reg. at 7553.

### Staffing

The ability to “right size” crewing for CIVMAR-crewed vessels through the collective bargaining agreement process, a third objective of the NSPS initiative, is once again a function that is already performed more effectively under the CIVMAR System. Historically, replacing military crews onboard MSC-operated ships with CIVMARS for vessel operating and maintenance functions, even though the vessel itself is still operated for military purposes, has resulted in substantial reductions in manning, cost savings to the government, and the ability of the Navy to better manage its pool of uniformed service personnel. As with the areas discussed above, replacing the existing system that is tailored to the unique needs of MSC and the Navy in this process with a one-size-fits-all NSPS system threatens the ability to achieve similar benefits in the future.

### **SUMMARY**

In sum, there is nothing to be gained and a lot to be lost by imposing the NSPS as established under the Proposed Rule on the federally-employed civilian workforce that currently crews vessels operated for DOD by MSC and the USACE. The existing CIVMAR System has been honed over time to meet the unique manpower needs of these agencies and to ensure their ability to fulfill their national security missions. The CIVMAR System has stood the test of time and daily proves itself in peace and war. DOD and OPM are strongly encouraged NOT to impose the NSPS on a proven personnel management system with a working labor management relations program serving as its foundation. The current system works, and works well. As a result, CIVMARS should be specifically excluded for the NSPS in the best interest of national security.