

Subject: Comments on Proposed National Security Personnel System (NSPS)
Regulations--RIN 3206-AK76/0790-AH82

To:

Program Executive Office
National Security Personnel System
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I am writing with comments to the Proposed National Security Personnel System (NSPS) regulations. I am a Department of Defense (DoD) employee – my federal agency is DoD. I am in agreement with the legislation passed by the Congress and signed by the President, and I strongly support the legislation. In fact, matters such as linking compensation, rewards, and recognition to performance measurements have the support of both the current and the prior administration. Vice President Gore’s Partnership for Reinventing Government report “Serving the American Public: Best Practices in Performance Measurement Benchmarking Study” from June 1997 stated “compensation, rewards, and recognition should be linked to performance measurements. Most partners link performance evaluations and rewards to specific measures of success; they tie financial and nonfinancial incentives directly to performance. Such a linkage sends a clear and unambiguous message to the organization as to what’s important.” President Bush’s Management Agenda item on Strategic Management of Human Capital provides much the same recommendations. This also fits the principle of federal employment that “appropriate incentives and recognition should be provided for excellence in performance.” Similarly, the Department should have the same kinds of flexibilities that other employers have.

My specific comments follow, as identified by bolded text numbers (e.g., **1, 2, ...**), and they include subpart and section number or supplementary information, heading and page number. Page numbers refer to the PDF version.

My comments are to be treated as submitted anonymously.

1. Supplementary information, page 7556, “” Outreach to Employee Representatives” and "Outreach to Employees"

Page 7556 discusses the outreach that occurred to employee representatives and employees. For example, it speaks of 10 joint meetings with officials of 41 unions and speaks about 106 focus groups held throughout DOD. However, there is nothing at all in either section that specifically addresses the results of this outreach. Essentially, the proposed rule supplemental text provides in *output type* measure of how many meetings were conducted but not an *outcome type* measure of what the employees thought worked well in the current HR systems, what they thought should be changed, and what specifically or even generally DOD and OPM put or did not put in the proposed

regulations as a result of the outreach. Since I attended one of the outreach sessions, I must say that from reading the proposed rulemaking I do not see anything that seems to reflect the kinds of input that we provided.

H. R. 1558 requires “a means for ensuring employee involvement in the design and implementation of the system.” It is difficult to see how employee involvement in the design and implementation of the system would only report on the number of meetings held with officials unions and the number of focus groups held and not on the results of those meetings and groups.

Furthermore, if the Department holds meetings with employee representatives and 106 focus groups held throughout DOD and cannot even report on the value of these meetings in terms of outcomes, these do not appear to be an effective, economical, or efficient use of the Department's resources.

I would respectfully request that the supplemental information of the final rule include the top twenty-five or so *outcomes* of what the employees thought worked well in the current HR systems, what they thought should be changed, and what specifically or even generally DOD and OPM put or did not put in the proposed regulations as a result of the outreach. In addition, the Department and OPM should provide an assessment about how closely the comments on the proposed rulemaking tracked with the comments from the focus groups. I would also hope that the Department will prepare a rulemaking background document that includes all the proposed rule comments and how they are resolved.

2. Subpart A, Section 9901.101.

Request that the applicable merit system principles in 5 US Code 2301 that the Department will adopt be inserted as part of the regulation text. The redline strikeouts changes below illustrate how the text can be amplified, with numbering, to incorporate these principles. There are two basic reasons for incorporating the merit system principles into the regulatory text. First, 5 US Code 2301 says verbatim “Federal personnel management should be implemented consistent with the following merit system principles,” so the law says they “should” be implemented rather than “shall” be implemented. Second, many of the criticisms lodged against the National Security Personnel System as reported media deal specifically with issues involving compliance with these principles. Since the regulations already restate text in HR 1588, since I believe these principles need amplification within the Department, and since HR 1588 specifically requires that any system not waive, modify, or otherwise affect the public employment principles of merit and fitness, including these adds much and takes away little. Since the 5 US Code 2301 uses the word “should,” the Secretary and Director need to make it clear to everyone exactly how they read these principles and how they will address the wording of these principles.

(b) The system established under this part is designed to meet a number of essential requirements for the implementation of a new human resources management system for DoD. The guiding principles for establishing these requirements are to:

(1) put mission first;

(2) respect the individual;

(3) protect rights guaranteed by law, including the statutory merit system principles, as the Department adopts as stated below;

(i) Recruitment will be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement will be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.

(ii) All employees and applicants for employment will receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(iv) Equal pay will 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 should be provided for excellence in performance.

(v) All employees will maintain high standards of integrity, conduct, and concern for the public interest.

(vi) The Federal work force will be used efficiently and effectively.

(vii) Employees will be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees will be separated who cannot or will not improve their performance to meet required standards.

(ix) Employees will be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(x) Employees will be--

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees will be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--

- a violation of any law, rule, or regulation, or
- mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

- (4) value talent, performance, leadership, and commitment to public service;
 (5) be flexible, understandable, credible, responsive, and executable;
 (6) ensure accountability at all levels;
 (7) balance human resources system interoperability with unique mission requirements;
 and
 (8) be competitive and cost effective.

(c) The key operational characteristics and requirements of NSPS, which these regulations are designed to facilitate, are as follows:

- (1) High Performing Workforce and Management--employees and supervisors are compensated and retained based on their performance and contribution to mission;
- (2) Agile and Responsive Workforce and Management--workforce can be easily sized, shaped, and deployed to meet changing mission requirements;
- (3) Credible and Trusted--system assures openness, clarity, accountability, and adherence to the public employment principles of merit and fitness;
- (4) Fiscally Sound--aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance;
- (5) Supporting Infrastructure--information technology support, and training and change management plans are available and funded; and
- (6) Schedule--NSPS will be operational and demonstrate success prior to November 2009.

3. Entire regulation text.

Strongly recommend that the regulatory text be completely revised to use contemporary writing methods, such as the National Archives and Records Administration (NARA's) document "Making Regulations Readable."

HR 1588 requires that any system be contemporary. From www.m-w.com, contemporary means "marked by characteristics of the present period: modern, current."

NARA's Making Regulations Readable at http://www.archives.gov/federal_register/plain_language/making_regulations_readable.html and the American Bar Association urge agencies to use plain language in writing regulations, as a means of promoting the understanding of legal obligations, using such techniques as:

- o Organizing them for the convenience of their readers;
- o Using direct and easily understood language;

- o Writing in short sentences, in the active voice; and
- o Using helpful stylistic devices, such as question-and-answer formats, vertical lists, spacing that facilitates clarity, and tables.

Since these regulation should be written for the DOD employees, not for the lawyers or HR specialists, they should be understandable to me. For example, I find the supplementary material on page 7560 on performance-based pay to be much more understandable than the corresponding Subpart C regulatory text. For example, page 7560 uses a table showing a sample rating methodology and uses an example to calculate the pay. The NARA guidelines suggest using more tables and illustrations, stating that if-then tables display complex relationships simply. In fact, taken as a whole, the supplementary text on page 7556, General Provisions Subpart A, through page 7573, is a much better representation of contemporary, easy-to-understand regulations.

A great example of true “Gobblygook” is in Section 9901.102 (e) and (f)!

Most of the text on page 7562 should be added as a regulatory text!

4. Section 9901.401

Request that the regulations be modified to address specifically how the link is to be made between the performance management system and DoD's strategic plan. Request that by these regulatory requirements or by a commitment in the preamble to the final rule that the Department be required to (1) have its QDR include a description of how the goals and objectives are to be achieved, including a description of the skills and the human, capital resources required to meet those goals and objectives (2) update and keep current its own human capital strategy documents.

Since the Department of Defense is so huge and is required by the Government Performance Results Act to have only one strategic plan, recommend that before a DOD Component implements the NSPS that they be required by the regulations to (2) develop their own strategic plan, (2) develop their own human capital strategy that is linked to their organizational mission, vision, core values, goals, and objectives as stated in their strategic plan, following the requirements of the Presidents Management Agenda (i.e., linked to their strategic plan), (3) update and keep current their strategic plan and their human capital strategy documents. Also recommend that the regulations address how the Department's transformation roadmaps fit in with respect to human capital strategy.

Only with these documents will DoD have the foundation needed: comprehensive and integrated strategic plans and results-oriented performance measures. Then, with the proper tools, such as the balanced scorecard methodology and the Baldrige criteria, the Department's managers and supervisors can link institutional, unit, and individual performance goals and expectations to promote accountability for results.

Section 9901.401 (b) (3) is the only place where the words “strategic plan” appear, and the text merely restates the wording from HR 1588. Section HR 1588 requires the performance management system incorporate a link between the performance management system and the agency’s strategic plan. Unfortunately, merely restating the text of the statute does not provide the system requirements required by section 9902(a) and (b) of the statute (HR 1588).

Appendix A of the 2001 QDR states that "This QDR Report serves as the overall strategic planning document of the Department, as required by Public Law 103-62." Also unfortunate is the fact that Department’s strategic plan under the Government Performance and Results Act (GPRA), the QDR 2001, does not specify the requirements of GPRA for a strategic plan to provide a “a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives.” The Department's risk framework of mitigating (1) force management risk, (2) operational risks, (3) future challenges risk, and (4) institutional risks, are described in Section VII of the QDR, along with a variety of management initiatives for these areas. The QDR states that DoD will develop a strategic human resources plan to help size and shape the Department's personnel for the new strategy. It states this “plan will not only examine ways to ensure that DoD personnel have the necessary critical skills, but it will also examine the balance of personnel and work among the active, reserve, and civilian workforces.” The Department does have DoD Civilian Human Resources Strategic Plan posted at <http://www.cpms.osd.mil/strategicplan/strategicplan.html> . Unfortunately, the most current part is out of date - Annex D is the FY2004 Year of Execution Plan. There is no FY 2005 execution plan posted, even though we are already nearly 6 months into the fiscal year.

The budget materials at <http://www.defenselink.mil/comptroller/defbudget/fy2005/index.html> do not appear to provide the kind of transparent and understandable description of the future needs and changes in skills and technology and the human resources required to meet DoD's goals and objectives. Search of the “Green Book” for word "personnel" finds many listings of data numbers but, for example, the Army budget at <http://www.asafm.army.mil/budget/fybm/fybm.asp> shows just civilian End Strength.

So, in summary, the changes requested above will help provide the foundation needed for the Department’s human capital strategies to be linked to organizational mission, vision, core values, goals, and objectives. Then employees will see the clear and carefully aligned performance incentives for individual employees, for teams, and for its leadership that the President states in his Management Agenda.

5. Subpart D

Add a new section 9901.410 Employee Surveys, to read:

“(a) The NSPS performance management system will make use of employee surveys to assess—

(1) leadership and management practices that contribute to organization performance; and

(2) employee satisfaction with—

- leadership policies and practices;
- work environment;
- rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;
- opportunity for professional development and growth; and
- opportunity to contribute to achieving organizational mission.

(b) DoD will take appropriate action to address adverse results from the survey and any deficiencies identified. This action may include counsel, advice, or additional training for managers and supervisors; changes to leadership and management practices; or investigation and appropriate disciplinary or performance action against the applicable managers and supervisors.”

HR 1588 Section 1128 requires such surveys at the Agency level, so it is appropriate for a contemporary human resources management system to require them as well. Since some of the expected long-term results specified in the President’s Management Agenda from strategic management of human capital include government employee satisfaction increasing, it is necessary and appropriate to measure employee satisfaction. Since the NSPS is supposed to increase satisfaction, satisfaction needs to be measured. Since the NSPS is supposed to demonstrate success prior to November 2009, factors for success must be identified and measured. If the surveys are not used to effect positive change, they are useless.

6. Entire proposed rulemaking document.

There appears to be no discussion at all about how the performance-based pay works with employees who are disabled or who become disabled, either temporarily or permanently. Since HR 1588 requires the system to not waive, modify, or otherwise affect existing laws and requires it to be fair, it is unclear what happens to qualified individuals with a disability and how they will be prevented from discrimination in employment for those who can perform the essential functions of a job with or without reasonable accommodations. For example, if an employee became disabled and could not see or hear as well but could still function, would their pay be reduced or might they even be subject to a mandatory removal offense just because their supervisor was not satisfied with their reduced performance because of their disability? Please address these concerns in the regulation.

7. Entire regulation

The regulations need to address a requirement that organizations report NSPS human resource results, with the aim of demonstrating how well each organization has been

creating and maintaining a productive, learning, and caring work environment for all employees. These results should be required to be reported to employees and to the public as well. The main emphasis should be on data that show effectiveness or outcomes. For example, data should include output data such as the number of employees in each rating level, and numbers and amounts of pay increases or bonuses or EPIs, as well as outcome data to show cause and effect relationships of NSPS on DOD mission, goals, and objectives. The Malcolm Baldrige National Quality Award program is an excellent model to use as a contemporary practice, and the Baldrige criteria would benefit the DoD in implementing NSPS in other ways as well. Nonprofit organizations, including government agencies, will be even eligible to apply for the Malcolm Baldrige National Quality Award as a result of legislation signed into law by President Bush on October 5, 2004.

8. Entire regulation

Since the eligibility and coverage under section 9901.102 is for all civilian employees of the Department of Defense, the regulations should make it clear that the requirements that apply to supervisors and managers being held accountable for (1) clearly and effectively communicating expectations and (2) the providing timely feedback regarding behavior and performance as well as (3) receiving adequate training and retraining in the implementation and operation of the performance management system, also includes military supervisors and managers, including the senior flag and general officers of the Department.

9. Entire regulation

The supplementary information page 7562 states that 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, it states that the proposed regulations require ongoing feedback with at least one interim performance review during each appraisal period. It is not clear how this improved communication will be achieved, because ongoing feedback with at least one interim performance review during each appraisal period is required even today, yet many managers and supervisors seem to have a very difficult time doing even one review per year. Requests the regulations address these concerns.

10. Page 7565, column one, 9901.712 Mandatory removal offenses

First, the supplementary text page 7565 states that the Department will identify and publish mandatory removal offenses through implementing issuances in advance of their application. However, there is no corresponding regulatory text that makes this statement. Sec. 9901.712 instead refers to them in “departmental regulations.”

Second, given the harshness of the penalty for these offenses, given their near equality with removal offenses under the Uniform Code of Military Justice which are prescribed

by law, and given that these offenses appear to deprive a person of life, liberty or property which requires due process of law, it would seem that these offenses would not be defined solely and only by the Secretary of Defense in Department issuances, but instead would either be identified and prescribed in the Code of Federal Regulations through a formal rule-making process with public comments or would be identified by statute by the Congress.

Third, the supplementary text on page 7565 states that mandatory removal of offenses would carry a mandatory penalty of removal from federal service. This seems to be extremely harsh penalty, and it would appear that an intermediate penalty would be removal from a national security personnel position while still allowing the employee to serve in another Federal agency. Recommend revising the text.

12. Entire regulation

Recommend that the regulations make clear that performance-based pay will not be used as a means to promote paying extra to employees who regularly work more than a 40-hour a week or 50-hour a week. HR 1588 requires an equitable method for appraising and compensating employees. While encouraging more work beyond 50-hours a week certainly puts DoD mission first, values commitment to public service, can be very competitive and cost effective, and promotes a high performing work force for a number of employees, it can have just the opposite effect on other parts of the work force, such as on families, women, single parent families with young children, and those furthering their education during their non-working hours.

13. Section 9901.103 definitions

Add definitions for the following terms used in the regulation: occupation, outcome, deploy (deployment), appointing authority, work level.

14. Section 9901.101 Purpose and page 7570 .Management Rights

Page 7570 states “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 delay.” Section 9901.101 states that one of the operational characteristics and requirements is “agile and responsive workforce and management--workforce can be easily sized, shaped, and deployed to meet changing mission requirements.”

The word “deployment” needs to be defined, and the bounds of what is acceptable under the law and DoD policy need to be addressed. NSPS has stated that a myth is that “DoD civilians can be assigned anywhere in the world, even to a war zone, with little or no notice.” And fact is that “Currently DoD has the authority to reassign employees, including reassignment to overseas locations, when necessary to support the mission.

We do this under today's system. This authority is unaffected by NSPS. One of the goals of NSPS is to reduce its reliance on military to perform jobs that could be performed by civilians.”

Under DoD Directive 1000.4, Guidance for Manpower, a long standing directive recently revised February 12, 2005, the Department states “Manpower shall be designated as civilian except when military incumbency is required for reasons of law, command and control of crisis situations, combat readiness, or esprit de corps; when unusual working conditions are not conducive to civilian employment; or when military-unique knowledge and skills are required for successful performance of the duties.”

It would be clear to most that unusual working conditions not conducive to civilian employment would be sending DoD civilians anywhere in the world, and especially to a war zone, with little or no notice. US Code Title 5 § 3341 on details; within Executive or military departments, would also appear to apply. Even the oath of office as a citizen states that “I will perform work of national importance under civilian direction when required by the law,” but it does not say I will go anywhere in the world, and especially to a war zone, with little or no notice. The latter message (go anywhere in the world, and especially to a war zone, with little or no notice) is one of a military person, and in particular the “soldier” in the citizen soldier as a military reservist.

Rather, advertisement and appropriate incentives, such as hazardous duty pay, should be used to get civilians to go anywhere in the world, and especially to a war zone, with little or no notice.

15. Section 9901.106

Add a new subsection (c) titled “*Continued collaboration with employees*” to read” (1) Within reasonable time frames specified by the Secretary, employees will be provided with an opportunity to submit written comments to proposed final draft Department-level implementing issuances that carry out the provisions of this part. (2) DoD will establish an ongoing mechanism whereby employees can submit observations and recommendations for the purpose of improving the National Security Personnel System. The mechanism shall allow submitting comments in either paper or electronic form, and it shall also allow anonymous submissions.”

HR 1588 requires the performance management system to incorporate a means for ensuring employee involvement in the design and implementation of the system. Many employees, including supervisors, do not have bargaining unit representatives. In addition, there should always be means to solicit employee recommendations to improve the National Security Personnel System, and this means should not be such that an employee is required to follow a chain of command to submit recommendations.

16. Section 9901.108 Program evaluation

Add the word “periodically” to ensure the regulations are reviewed at regular intervals and add the words “and effectiveness” to ensure the regulations are effective as well as being implemented, to read:

- (a) “DoD will establish procedures for **periodically** evaluating the regulations in this part and their implementation and effectiveness. DoD will provide designated employee representatives with an opportunity to be briefed and a specified timeframe to provide comments on the design and results of program evaluations.
- (b) DoD will establish an ongoing mechanism whereby employees can submit observations and recommendations for the purpose of improving the National Security Personnel System. The mechanism shall allow submitting comments in either paper or electronic form, and it shall also allow anonymous submissions.
- (c) ...”

17. Section 9901.301 (b)

Section 990 1.301 (b) uses the words “any pay system.” Please clarify in the regulations whether there will be one or more pay systems, because Section 9901.311 is preceded with the word “Overview of Pay System,” in section 9901.311 speaks of establishing “a pay system,” which implies just one system.

18. Section 9901.304

Add the words used in the regulation “conduct,” “pay system,” and “rate range” to the definitions.

19. Section 9901 .311

Section 9901 .311 states “Through the issuance of implementing issuances, DoD will establish a pay system that governs the setting and adjusting of covered employees' rates of pay and the setting of covered employees' rates of premium pay.” This appears to contradict HR 1588 which states that “the Secretary may, in regulations prescribed jointly with the Director, establish and from time to time adjust a human resources management system.” It is unclear how the law can require regulations to establish a system in the regulations, and the regulations can say that the DOD issuances will establish the system. The latter seems to contradict the law. Please correct by using the regulation is to establish the and adjust the system.

20. Section 9901.323(c) and 9901.334

Instead of adding yet another regulatory requirement that must be addressed in implementing issuances, why not just use paragraph (a) for employees who do not have a current rating a record???

21. Section 9901.351

In Subpart E., I make a recommendation that the National Security Personnel System include the option to provide signing bonuses for certain employees. Section 9901.351 would be a good place to mention these bonuses as well.

Also, the text should state the factors for setting pay anywhere within the assigned pay band to read: “Subject to DoD implementing issuances, DoD may set the starting rate of pay for individuals who are newly appointed or reappointed to the Federal service anywhere within the assigned pay band, **based upon education, prior experience, grades in school, or other experience or performance factors.**” Section 9901.353 should use similar words.

Finally, section 9901.351 four starting pay and section 9901.352 for pay upon a reassignment should make reference to the various kinds of special pay and allowances, such as hazardous duty pay for serving in a war zone, where subsidies for living in high costs overseas areas, should be discussed in context.

22. Section 9901.405 (a)

Section 9901 .405 states “Through the issuance of implementing issuances, DoD will establish a performance management system for DOD employees, subject to the requirements set forth in this subpart.” This appears to contradict HR 1588 which states that “the Secretary may, in regulations prescribed jointly with the Director, establish and from time to time adjust a human resources management system.” It is unclear how the law can require regulations to establish a system and the regulations can say that the DOD issuances will establish the system. Please correct and use the regulations to establish a system.

23. Section 9901.405 (b) (4)

The text says the NSPS performance management system will hold supervisors and managers accountable for effectively managing the performance of employees under their supervision. However, the regulations do not say how supervisors and managers will be held accountable, nor do the regulations state that managers and supervisors will be subject to the same range of options for dealing with unacceptable performance. 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. Recommend that the regulations make it clear how supervisors can and will be held accountable. The regulations should also make it clear that these requirements apply to both military and civil service managers and supervisors, to the extent allowable by statute. Recommend also that the regulations provide a mechanism for employees to rate supervisors and managers on their effectiveness in managing the employees under their supervision and that the ratings be used as another means to hold supervisors and managers accountable.

Ideally, DOD should require peer ratings of supervisors and managers, and the supervisors and managers should not receive the full pay share if they receive levels of one or two on a scale of five from employees.

24. Section 9901.406 (a)

The regulation refers to strategic goals and annual performance plans. Currently, the Office of Management and Budget is allowing GPRA annual performance plans to be included as part of a performance based budget. Thus you may want to use the words “annual performance plans or performance-based budgets.” Also, suggest using the terminology strategic plan goals to be consistent with HR 1588 that uses the terminology strategic plan.

By the way, for my personal observation, making this alignment and cascading from the Department’s strategic goals as specified in the QDR down to the individual employee level is very difficult. Thus, any amplification that the regulations can provide on how this will be done would be a significant addition!

25. Section 9901.408

The regulation does not address the intermediate phase when an employee's performance is on a trend to becoming unacceptable, so as a result the text as written is a bit too harsh. Recommend that the supervisor be required to take action if he or she sees that an employee's performance is becoming unacceptable, to read:

“(b) If during the appraisal period a supervisor determines that an employee's performance is unacceptable **or is becoming poor or unacceptable**, 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 consequences.

(3) Except for a new hires probationary period, take no adverse action or issue no written reprimand at the first signs of performance becoming poor or unacceptable until at least some form of remedial action and at least one improvement period of at least 90 days have occurred.”

26. Subpart E

Subpart E does not seem to address many contemporary and flexible employment practices, such as contracting for employment agencies and using contracted “headhunters,” signing bonuses, recruitment bonuses, making initial offers, fair and open competition in more limited environments such as recruiting and even making an initial

job offer at job fairs, at colleges and universities, or other venues or groups of a hundred or more candidates would be competing openly and fairly. Recommend the text be revised to make it clear about what kinds of contemporary practices like these are acceptable.

It would seem that a contemporary and flexible employment practice would be one whereby a senior executive service manager could place a simple advertisement in a newspaper or on a web site, receive résumés within a week or two, review a set of résumés from an advertisement in a newspaper or a USA jobs advertised under fair and open competition, select candidates from that set to interview, run a national agency check on candidates, do the interviews, have a quick (within days to a week) background reference check run on candidates, make an offer, and have an employee begin work within a week. However in reading the regulation text, this does not appear to be the case.

Section 9901.511 (b) needs to be clarified concerning the terminology “noncompetitive appointments” in light of the merit system principle that “recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.”

27. Section 9901.514

It is difficult to see how the National Security Personnel System could allow hiring non-citizens for the national security mission of DoD, given the oath of office all civil servants are required to swear or affirm to by 5 US Code § 3331 to “solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” Even the Oath of Allegiance to become a citizen of the United States of America under 8 US Code § 1448 states that “I hereby declare, on oath, that I absolutely and entirely **renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty**, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; **that I will perform work of national importance under civilian direction when required by the law**; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.”

Request that this section be eliminated or substantially clarified.

28. Subpart F

Recommend moving text in Section 990 1.103 on furlough to this subpart, because it is part of work force shaping more than it is an adverse action. Since furlough does not appear to involve the performance and or conduct of individual employees since section 9901.103 states furlough is 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.

Recommend allowing the Secretary of Defense to authorize a temporary reduction in pay of up to 5% for up to two pay periods as an alternative to furlough because of lack of work or funds or other non disciplinary reasons. This allowance should extend from a DOD component to the entire Department of Defense.

29. Section 9901.603

Recommend adding the term “tenure” as used in the regulations to the definitions.

30. Entire proposed rulemaking document

The rulemaking refers extensively to issuance of implementing issuances. While there will undoubtedly be a need for the DOD to issue internal guidance to implement the national security personnel system, it would appear that the extensive use of implementing issuances will create yet another stove-piped system for DoD, rather than promoting a federal government-wide personnel system. Recommend substantially reducing the number of references to DOD issuances and replacing them with changes to the regulations.

31. Section 9901 .322

Change the word “may” to “must” so that pay for employees in DOD will be comparable to pay for employees of other Federal agencies and vice versa to read “In determining the rate ranges, DoD **must** ~~may~~ consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.”

32. Section 9901 .342 (a)

Add the word “team” to be consistent with the text in section 9901 .341 to read “ (1) The NSPS pay system will be a pay-for-performance system and, when implemented, will result in a distribution of available performance pay funds based upon individual performance, individual contribution, **team or** organizational performance, or a combination of those elements. ...”

33. Section 9901.342 (d) (1)

Explain or define just who the “authorized officials” are that will determine the value of a performance share.

34. Entire regulation

The regulation and/or the preamble should discuss the kinds of employee to supervisor ratios that the Department envisions or expects should exist in a high-performing and fiscally sound workforce.

35. Entire regulation

The regulation should discuss and support contemporary work practices such as a 10 month work year, part-time employment, job sharing (e.g., when two mothers from two different families with young children share a single full-time equivalent), professionals working to tasks during an 80 hour two-week period or working to billable hours rather than “working the clock” to an eight hour day/ 40 hour week, telecommuting,

39. Entire regulation

The Department should require use of contemporary tools such as the balanced scorecard and the Malcolm Baldrige award criteria. The Malcolm Baldrige criteria provided excellent framework to address cause and effect relationships, linkages, focus on results, and human resources management. While the criteria may not be applicable if the level of every command, they are applicable for DOD military department and Defense agency Components.