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Program Executive Office
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Comments on Proposed NSPS Regulations - RIN
3206-AK76/0790-AH82

3 March 2005
U. S. Army Corps of Engineers

Program Executive Office
National Security Personnel System
Attn: Bradley B. Bunn
1400 Key Boulevard, Suite B-200
Arlington, VA 222095144

Dear Mr. Bunn;

Here are my Comments on Proposed NSPS Regulations, NSPS-2005-001 (RIN 3206-AK76 or 0790-AH82).

Page 7553: The Case for Action, Quote -

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 environment.

As you are no doubt aware, the Federal workforce is aging. The majority of Federal workers, including DoD civilian workers, are middle aged or older. Many were moved to join the Federal workforce by the words of President Kennedy, *ask not what your country can do for you, but what you can do for your country*, and have served proudly as stewards of the public trust for many years. The "20th century assumptions" of the quote above, are not assumptions. They are a contract, both implied and explicit, between the Federal civilian worker and the agency employing them.

Having read NSPS-2005-001, my overall impression of these proposed rules is that they are not nearly so much about creating a better way to pay the civilian employees, as they are about DoD seeking to shatter the long standing contract with its own civilian workforce and breaking faith with the public trust, in an effort to knowingly force the DoD civilian workforce into positions that may circumvent health and safety and EEO considerations, placing them in harms way while using the threat of reduced pay or even mandatory firing as a way of threatening or coercing civilians into these positions, thus creating a culture of fear in the workplace.

Question 1: Should a civilian employee of the DoD not wish to be deployed to an area outside the United States where s/he may be put into harm's way, will this be used as a reason to a. reduce their pay or b. fire them under the 'mandatory removal offense' rule?

Page 7553: The Case for Action, Quote -

These inherent weaknesses make support to DoD's mission complex, costly and ultimately risky.

In fact, this is untrue. After years in the private sector, it is obvious to me that civilian government workers not only can not, but should not, be competing with the private sector. In the private sector, there is a single imperative. Get in and out as fast as possible in order to make as much money as possible. There are few qualms about breaking or bending laws, rules and regulations in order to met this imperative. One has only to look at the front page of a newspaper to understand that, for many, to 'make as much money as possible' has become a sense of entitlement.

The civilian government worker, on the other hand, did not go into public service with accumulation of money as their goal. The great majority of civil servants entered the Federal government in order to make a difference. They proudly serve as stewards of the nation's trust, and feel it is most important to do a job correctly. They work diligently to ensure all laws, rules and regulations are met and followed, even when new ones appear near the end of a project.

The average civilian DoD worker has great endurance, scruples, creativity, honor, knowledge of their job, pride in their job, and skill in the job, and are not looking for a hand out or for a way to cut corners in order to achieve a greater cut of the dividends. The proposed NSPS is a slap in the face of all the public servants who have served their country so long and so well, including the many civilian DoD employees killed in the attacks of September 11.

It appears that very little in the proposed NSPS would, in fact, enhance the job of any civilian DoD employee. In point of fact, the sole purpose of its creation seems not to be an attempt to assist the civilian DoD workforce in doing the best job possible, but to knowingly force the DoD civilian workforce into positions that will place them in harms way, while using the threat of reduced pay or even mandatory firing as a way of coercing civilians into these positions, thus creating a culture of fear in the workplace.

Should this NSPS be adopted, I believe it will have a long lasting and negative effect on both the work force and public stewardship. And once the damage has been done, it will take a very long time to undue, and an even longer time to replace the civilian employee's trust in their employer, and the public's trust in their Federal civilian workforce.

Page 7574: Unfunded Mandate - Quote

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

The Case for Action calls the current DoD civilian force "costly". And yet this proposed 'unfunded' mandate would cost up to \$100 million dollars, annually, to State, local or tribal governments, at a time when none of these entities can afford this sort of budget outlay. The nation's economy is suffering, the dollar having fallen in the market for the first time in memory. When a nation is in economic straits, it makes little sense to replace a perfectly functioning system with one with the potential to cost each State, not to mention local and tribal entities, as much as \$100 million annually, for regulation adoption and enforcement only, not counting any other costs that might arise. Such entities would be forced to cut other funding, perhaps to important basic needs such as health, education and human welfare, in order to afford this 'unfunded mandate'. This seems a waste of money and a dangerous spending precedent to put in place during a time of economic crises.

Overall Comment:

Should the proposed NSPS be implemented, it will happen in only a few months. The amount of information missing from the proposal is enormous. “*To be determined*” is no longer a valid answer to any question, as the time to determine has passed. Of course, if the proposed NSPS is not adopted, process, methodology, etc. is moot.

Page 7576, 9901.103 Definitions - Quote

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.

Question 2: What are these mandatory offenses?

Question 3: When will they be published?

Question 4: How will they be communicated to the work force?

Question 5: Can an employee be fired under them *before* they are made public and *before* the employee would know their action was prohibited?

Page 7578, 9901.107 - Relationship to other provisions, Paragraph (a)(1)

It appears that this paragraph breaks the implied and explicit contract under which all Federal workers were hired. It additionally appears that the contract is broken in a prejudicial manner, as this new system applies only to DoD civilian employees and to no other workers in any other branch of the Federal Government.

Question 6: Are their plans to have the proposed NSPS system adopted by all Federal Government offices in the future?

Page 7578, 9901.107 - Relationship to other provisions, Paragraph (d)

This paragraph ensures that under the NSPS proposed rules, EEO will still apply.

Question 7: How will it be possible for EEO to be enforced when the proposed NSPS removes most of the checks and balances which makes it possible for an employee or supervisor to know when an EEO violation occurs?

Page 7579, 9901.221 Classification requirements, Paragraph (a)

Question 8: When will this methodology be developed?

Question 9: When will the affected employees receive this information, before or after they have been affected?

Question 10: If the answer to Question 9 is ‘before they are affected’, then how many days previously?

Question 11: Will the employee, groups of affected employees, their supervisor(s) or groups of supervisors have any input on this methodology?

Question 12: If so, in what manner?

Question 13: If not, who is making these determinations? ('Working Groups' is not a valid answer).

Question 14: If not, how are these determinations being made without end user input?

Question 15: If not, without input from those who actually do the jobs, how can their methodology hope to reflect the actual jobs of those employees affected?

Page 7579, 9901.221 Classification requirements, Paragraph (b)(2)

Question 16: Who decides what is an appropriate career group? ('Working Groups' is not a valid answer).

Question 17: Will the employee, groups of affected employees, their supervisor(s) or groups of supervisors have any input on this methodology?

Question 18: If so, in what manner?

Page 7579, 9901.222 Reconsideration of classification decisions, Paragraph (a)

Question 19: Will these procedures be communicated to all employees before or after the proposed NSPS is in place?

Question 20: To whom will an individual employee make the request to consider?

Question 21: How long will they have to make this request?

Page 7579, 9901.222 Reconsideration of classification decisions, Paragraph (b)

Question 22: When will these be established?

Question 23: When will they be made available to the work force?

This seems to imply employees can be reduced in pay and duties. However, our installations Colonel and General have informed us that no employee will lose pay or duties.

Question 24: Which is correct?

Page 7579, 9901.222 Reconsideration of classification decisions, Paragraph (c)

Question 25: How long does an employee have to request an OPM review?

Question 26: What is the process to request an OPM review?

Page 7579, 9901.222 Reconsideration of classification decisions, Paragraph (d)

Question 27: Does the employee's supervisor have input on this decision?

Page 7579, 9901.222 Reconsideration of classification decisions, Paragraph (e)

Question 28: When will this criteria be issued?

Question 29: Where will this criteria be issued?

Question 30: How will its issuance be communicated to employees?

Question 31: How can employees access it?

Page 7580, 9901.231 Conversion of positions and employees to the NSPS classification system, Paragraph (b)

While this paragraph says, explicitly, that there will be no reduction in the employee's rate of pay, including basic and locality pay (if any), when they are converted to the NSPS system, 9901.222 *Reconsideration of classification decisions* and 9901.322 *Setting and adjusting rate ranges*, seems to imply differently, as does 9901.352 *Setting pay upon reassignment*, 9901.353 *Setting pay upon promotion*, and 9901.354 *Setting pay upon reduction in band*, and most especially, 9901.373 *Conversion of employees to the NSPS pay system*, which more than implies that the above paragraph's assurances are merely semantic in nature and that, indeed the employee's pay can be reduced.

Question 32: If an employee falls into a band that sets pay lower than that they are currently receiving, how long is the employee assured of their current pay after conversion to the banding system?

Page 7581, 9901.313 National security compensation comparability, Paragraph (a)

Question 33: Why does the dating start in 2004, a year prior to the time the proposed NSPS could possibly be adopted?

Question 34: The implication seems to be that, in 2008, the amount allocated could then be less. Is this true?

Page 7581, 9901.313 National security compensation comparability, Paragraph (b)

Question 35: ...to the maximum extent practicable. Who decides what this maximum extent might be?

Question 36: What assurances are there that this 'maximum extent' will be followed?

Question 37: How would the overall amount to be allocated be calculated if the DoD does not provide a full and workable formula?

Question 38: What protections do employees have that this will take place?

Question 39: Outside of pay banding, what 'changes in the function of the organization and other changed circumstances' could impact pay levels?

Question 40: This seems to imply that any civilian installations could be targeted and closed at whim. What are the protections against this happening?

Question 41: This seems to imply that amount allocations could be used as a cudgel against the workforce in any chosen installation. What are the protections against this happening?

Question 42: This seems to imply that civilians could be arbitrarily removed from their home installation on a permanent basis, forcing them to move from their home in order to retain their job. Is this true?

Question 43: If the above is true, and civilians could be arbitrarily removed from their home installation and home, what are the employee's rights and protections in such a scenario?

Question 44: If the above is true, and a civilian employee does not wish to be removed from their home installation and home, is this considered a Mandatory Removal Offense?

Page 7581, 9901.322 Setting and adjusting rate ranges, Paragraph (a)

There is absolutely NO assurance the DoD will, in fact, consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies or any other relevant factor when setting and adjusting rate ranges.

Question 45: This strongly implies that the assurances given in *9901.231 Conversion of positions and employees to the NSPS classification system, Paragraph (b)* are good only for an extremely short period of time. Is this true?

Question 46: How long will an employee be assured of their current rate of pay?

Question 47: This strongly implies that the pay bandwidth can be set well below the current rate when setting and adjusting rate ranges. What are the employee's protections against this?

Question 48: What are the safeguards in place to ensure this does not result in EEO violations [example: the vast majority of secretaries are women, many of them of a minority group; a reduction in their pay band would be an obvious discriminatory act toward a certain class of civilian woman workers]?

Question 49: What are the checks and balances to ensure this system works fairly for all employees?

Page 7581, 9901.322 Setting and adjusting rate ranges, Paragraph (d)

Question 50: This implies there is no pay protection for DoD civilian employees at all, and pay bands can be set at the whim of the DoD. What are the checks and balances to ensure these pay band adjustments are enacted fairly?

Page 7581, 9901.322 Eligibility for pay increase associated with a rate range adjustment, Paragraph (c)

Question 51: What criteria will the DoD use for those employees who do not have a current rating on record?

Question 52: Will they use the employee's last rating?

Question 53: Will the employee and/or their supervisor have any input into this decision?

Question 54: If not, why?

Page 7582, 9901.332 Local market supplements, Paragraph (a)

Question 55: This implies the DoD may very well not establish local market supplements, and do away with locality pay. Is this true?

Page 7582, 9901.333 Local market supplements, Paragraph (b)

Question 56: This implies the DoD may review the local market supplements not only annually, but also at any time it wishes, and use its removal as a threat against any civilian installation, should it so wish. What are the checks and balances that keep this happening?

Question 57: What are the checks and balances to keep the amount of locality pay given (if any), and to what installations it is given, from being used as a form of cronyism?

Page 7582, 9901.334 Eligibility for pay increase associated with a supplement adjustment, Paragraph (c)

The same concerns and questions as Page 7581, 9901.322:

Question 50/58: What criteria will the DoD use for those employees who do not have a current rating on record?

Question 51/59: Will they use the employee's last rating?

Question 52/60: Will the employee and/or their supervisor have any input into this decision?

Question 53/61: If not, why?

Page 7582, 9901.341 Performance based pay, Paragraph (a)(2)

Question 62: Who is considered the appropriate rating official?

Question 63: This implies the 'rating official' who determines a rating is 'inconsistent' with an earlier one could lower good ratings as well as raise bad ones, for unspecified reasons. This could easily be perceived to be used for, or, indeed, actually be used for, cronyism, a way to circumvent EEO, and a way to attack a specific employee, group of employees, or supervisor. What are the checks and balances in place to keep any of these things from happening?

Question 64: For what reasons, other than (f), (g) and being a new hire, could an employee not be eligible to have a rating of record for a current rating cycle, making them not eligible for pay increase or bonus pay?

Question 65: Could an employee whose rating cycle falls outside the one used for performance payouts be excluded?

Question 66: Could an employee whose rating cycle was late due to illness of themselves or their supervisor, or other unforeseen circumstances, be excluded?

Question 67: If the circumstances in Questions 64 and 65 are true, what recourse does an employee to make themselves eligible?

Question 68: If the circumstances in Questions 64 and 65 are true, what checks and balances are in place to ensure such circumstances are not purposefully created in order to further cronyism, circumvent EEO, or purposefully exclude/punish a specific employee or group of employees?

Page 7582, 9901.341 Performance based pay, Paragraph (b)(1)

Question 69: When will these be issued?

Question 70: How will they be communicated to the civilian workforce?

Page 7582, 9901.341 Performance based pay, Paragraph (b)(2)

The language implies DoD may, or may not, determine a percentage of pay, etc.

Question 71: What are the checks and balances to ensure that performance pay pools are allotted equitably according to merit and not favoritism nor to circumvent EEO?

Question 72: What are the checks and balances to ensure that performance pay pools are not used as a way to punish/control a group of civilian employees, an installation or its commander(s)?

Page 7582, 9901.341 Performance based pay, Paragraph (d)(1)

Question 73: When will this methodology be established?

Question 74: Who will establish it?

Question 75: Will supervisors and employees have any say in how it is established?

Question 76: How will this methodology be communicated to the civilian workforce?

Question 77: What are the checks and balances in place to ensure this cannot be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7582, 9901.341 Performance based pay, Paragraph (d)(3)

The DoD may, or may not, provide for establishment of control points etc.

Question 78: How would the establishment or non-establishment of control points be accomplished?

Question 79: What system is in place to ensure the establishment or non-establishment of control points is done by those who understand each job and what it entails?

Question 80: What checks and balances are in place to ensure the establishment or non establishment of control points can not be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7583, 9901.341 Performance based pay, Paragraph (d)(4)

As this is written, it seems that even if an employee performs above and beyond, they may still not be suitably rewarded, depending on their position in their pay band, thus creating inequality in the way performance based pay is given and opening the area for abuse.

Question 81: What checks and balances are in place to ensure equitable rewards for duty above and beyond [i.e. "I would have given you a bonus but I couldn't"]?

Question 82: What checks and balances are in place to ensure this cannot be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7583, 9901.341 Performance based pay, Paragraph (d)(5)

Question 83: When will this be determined?

Question 84: What criteria will be used for determination?

Question 85: When and how will the employees be informed of this determination?

Page 7583, 9901.341 Performance based pay, Paragraph (d)(6)

Question 86: When will this be determined?

Question 87: What criteria will be used for determination?

Question 88: When and how will the employees be informed of this determination?

Page 7583, 9901.341 Performance based pay, Paragraphs (e)

Question 89: When will these be issued?

Question 90: When and how will the employees be informed?

Page 7583, 9901.341 Performance based pay, Paragraphs (f)

Question 91: When will these be issued?

Question 92: When and how will the employees be informed?

Page 7583, 9901.341 Performance based pay, Paragraphs (g)

Question 93: When will these be issued?

Question 94: When and how will the employees be informed?

Page 7583, 9901.343 Pay reduction based on unacceptable performance and/or conduct

This appears to be wide open for abuse by unscrupulous or poor supervisors.

Question 95: Who makes the final determination on pay reductions?

Question 96: Without the checks and balances of the current pay system, in which all employee pay is equal across a grade or step, what are the checks and balances in place to ensure this can not be used as a tool of unfair punishment, coercion, cronyism, or to circumvent EEO?

Page 7583, 9901.344 Other performance payments, Paragraph (a) (1)

Question 97: Will such a reward be given to an entire team, or only selected members thereof?

Page 7583, 9901.344 Other performance payments, Paragraph (a) (2)

In most instances, an employee who performed extraordinarily did not do it in a vacuum, but had help and assistance from others. This is especially true of project and team leaders/managers, though some leaders/managers SHOULD be rewarded for being such excellent

leaders/managers, yet rarely are. While most extraordinary performers are only too happy to acknowledge those who helped them, those who give out the rewards often seem blind to such assistance. In addition, every installation has their 'glory hog' who takes all credit for any extraordinary accomplishment (and is often quick to spread the blame on others for that which fails for any reason).

Question 98: Will those who give rewards discover if any other persons also deserve recognition for an 'extraordinary individual performance'?

Question 99: Will 'glory hogs' continue to be rewarded while those whose accomplishments may be equally as extraordinary, or even more so, but who do not continually fling themselves forward nor excessively crow about their achievements, continue to be ignored?

Page 7583, 9901.344 Other performance payments, Paragraph (b)

This seems to imply that once an employee performs extraordinarily on a task, they will then be held to a performance standard unequal to that of all other civilian employees within (or without) their pay band, and, in fact, are being 'set up to fail' by being held to an inflated standard which any reasonable person would understand to be impossible to meet year after year.

Mission issues, problems and dilemmas, stakeholder issues, personal impacts such as births, deaths or illness, and many other things outside an employee's control, can, and will, contribute to times when they will be unable to meet these inflated 'extraordinary standards'.

By insisting on higher 'extraordinary' standards for a specific employee, inflated standards that few if any could continue to meet year after year, the EPI becomes an astonishingly wide open door to allow in abuses of all sorts.

Question 100: Who determines what this 'extraordinarily high level' might be?

Question 101: What happens when such inflated standards cannot be met?

Question 102: Does the employee start losing pay?

Question 103: Can they be removed from their job?

Question 104: What checks and balances are in place to ensure this cannot be used as a way to punish a employee, nor as a tool of coercion, cronyism, nor to circumvent EEO?

Page 7583, 9901.345 Treatment of developmental positions

Question 105: Who determines what these 'certain standardized assessment or certification points' may be?

Question 106: Under what circumstances would the DoD decided to do (or not do) this?

Page 7583, 9901.352 Setting pay upon reassignment, Paragraph (a)

This seems to leaves little question that it is possible for a civilian employee to be involuntarily reassigned, possibly to an installation that is not their home installation, possibly to an installation that will put them in harm's way, into a job that they may or may not be qualified for, and to add insult to injury, can also lose pay, as they can be assigned anywhere within an assigned pay band. This is another door left wide open for abuses of all sorts.

Question 107: What right does a civilian employee have in the case of involuntary assignment?

Question 108: What rights does a civilian employee have to not endure catastrophic economic impacts by being involuntarily assigned well away from their home installation?

Question 109: What rights does a civilian employee have to not be put into harm's way?

Question 110: What provisions have been made to ensure employees whose health would preclude such assignments will not suffer adverse impacts nor be involuntarily reassigned to an area outside their home installation or in harm's way?

Question 111: What provisions have been made to ensure employees who are nursing mothers will not suffer adverse impacts nor be involuntarily reassigned to an area outside their home installation or in harm's way?

Question 112: What provisions have been made to ensure employees whose age and/or fitness would make them extremely poor candidates for such an assignment will not suffer adverse impacts nor be involuntarily reassigned to an area outside their home installation or in harm's way?

Question 113: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee or an installation, nor as a tool of coercion, cronyism, nor to circumvent EEO, hazardous work conditions, health and safety, and Americans with disabilities laws, rules and regulations?

Page 7583, 9901.353 Setting pay upon promotion

Again, an open door to abuse.

Question 114: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee, a band of employees, an installation or the commander(s) of an installation, or be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7583, 9901.354 Setting pay upon reduction in band, Paragraph (a)

Question 115: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee, a band of employees, an installation or the commander(s) of an installation, or be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7583, 9901.354 Setting pay upon reduction in band, Paragraph (b)

And yet again, a door wide open to abuse.

Question 116: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee, a band of employees, an installation or the commander(s) of an installation, or be used as a tool of coercion, cronyism, or to circumvent EEO, hazardous work conditions, health and safety, and Americans with disabilities laws, rules and regulations?

Page 7584, 9901.355 Pay retention, Paragraph (b)

Question 117: Who is eligible for pay retention?

Question 118: How and by whom is this decided?

Question 119: How and when will the workforce know who is eligible for pay retention?

Page 7584, 9901.356 Miscellaneous, Paragraph (d)

Question 120: Or may not. Who decides this?

Question 121: What criteria are used to make the decision?

Question 122: What recourse does an employee have if this is not done?

Question 123: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee, or a band of employees, or be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7584, 9901.356 Miscellaneous, Paragraph (e)

Clearly states that the DoD can set the rate of basic pay for an employee upon the expiration of a temporary assignments or promotion at any rate they choose, which may well be below the employee's pay rate before taking the temporary assignment, and the employee has no recourse to challenge the decisions.

This will no doubt prove a disincentive to any employee to accept a temporary assignment or promotion if they can not be assured they will receive, at minimum, the same basic pay rate as they had before the assignment.

This is, and should be seen as, a tool of repression and coercion, and possibly a threat to civilian employees, and seems obviously meant to be used as such.

In addition, it is yet another doorway wide open for abuse, allowing DoD the latitude to set pay for an employee returning from a temporary assignment or promotion *at whim*, while leaving the employee with no recourse to challenge this decision.

Question 124: Where are the safeguards, checks and balances that ensure this can not be used as a way to control/punish an employee, strip them of their basic pay, nor be used as a tool of coercion, cronyism, or to circumvent EEO?

Page 7584, 9901.361 Premium Pay, General, Paragraph (a)

Like many other parts of the proposed NSPS, this is yet another case of breaking of the implied and explicit contract the Federal Government, in the entity of DoD, made with its civilian employees at the time of their hiring.

The Secretary may waive the rights of any employee or group of employees to premium pay categories, at whim.

Question 125: What safeguards, checks and balances are in place to ensure this can not be used as a way to control/punish an employee, or a band of employees, or be used as a tool of coercion, cronyism, or to circumvent EEO?

Question 126: What rights does a civilian employee or group of employees have to challenge such a decision?

Page 7584, 9901.361 Premium Pay, General, Paragraph (b)(6)

Question 127: Who is eligible for hazard pay?

Question 128: How is it determined?

Question 129: If a civilian employee should not be receiving hazard pay, but is injured or killed while in either a voluntary or involuntary reassignment, as a direct or indirect result of military actions, can they or their surviving dependants receive retroactive hazard pay, as they had obviously been put in harm's way?

Question 130: What safeguards, checks and balances are in place to ensure no civilian employee is knowingly put into harms way as the result of either a voluntary or involuntary reassignment?

Question 131: What safeguards, checks and balances are in place to ensure that lack of hazard pay can not be used as a way to control/punish an employee, a band or group of employees, an installation, or be used as a tool of coercion, cronyism, or to circumvent EEO, hazardous work conditions, health and safety, and Americans with disabilities laws, rules and regulations?

Page 7584, 9901.371 Conversion Provisions, General, Paragraph (b)

Question 132: When will these policies and procedures be issued?

Question 133: When and how will they be communicated to the civilian workforce?

Page 7584, 9901.372 Creating initial pay ranges

DoD *may* link pay ranges to the ranges that apply to converted employees. Or they may not. This appears to be breaking faith with the entire civilian workforce, not to mention breaking faith with *9901.231 Conversion of positions and employees to the NSPS classification system, Paragraph (b)*, which states explicitly, that there will be no reduction in the employees rate of pay, including basic and locality pay (if any), should an employee be converted to the NSPS system.

Page 7584, 9901.373 Conversion of employees to the NSPS pay system, Paragraph (b)

9901.231 Conversion of positions and employees to the NSPS classification system, Paragraph (b), states explicitly, that there will be no reduction in the employees rate of pay, including basic and locality pay (if any), when they are converted to the NSPS system.

However, in this paragraph, it very much seems as if the above is true only because the conversion *will not be considered as resulting in a reduction in basic pay*, even if, in actuality, it does. In addition, the employee has no redress should this happen.

This can well be seen as breaking the implied and explicit contract with all members of the civilian workforce, as well as breaking faith with the civilian workforce by using semantics to cover what, indeed, appears to be a false statement used to lull employees into a state of complacency.

Question 134: Please compare and contrast this paragraph with *9901.231 Conversion of positions and employees to the NSPS classification system, Paragraph (b)*. Explain in detailed and simple to understand language how exactly these two paragraphs are meant to be read, how they impact on each other, and what impact they have, in specific terms, on an employee receiving their basic pay and locality pay (if any) after conversion.

Page 7585, 9901.401, Purpose, Paragraph (b)(6)

Question 135: What is this process, specifically?

Question 136: Who created it?

Page 7585, 9901.401, Purpose, Paragraph (b)(7)

Question 137: What are these safeguards, specifically?

Question 138: How do they work?

Page 7585, 9901.403, Waivers

Again breaking faith with the civilian workforce and their implied and explicit contract.

Page 7585, 9901.405, Performance management system requirements, Paragraph (a)

Question 139: When?

Question 140: Who created them?

Question 141: When and how will the civilian employees receive them?

Page 7585, 9901.405, Performance management system requirements, Paragraphs (5)&(6)

Currently, civilian employees and their supervisors work together to specify performance expectations, criteria etc.

Question 142: Will these tasks be stripped from supervisors and civilian employees?

Question 143: Specifically, how will this performance management system impact how civilian ratings are performed?

Question 144: What safeguards and checks and balances are in place to keep a poor supervisor from using these requirements as a way to control/punish an employee, or use them as a tool of coercion, cronyism, or to circumvent EEO?

Page 7585, 9901.405, Performance management system requirements, Paragraph (c)(1)

Question 145: Who now sets the performance expectations?

Question 146: Who decides if they are, in fact, attainable, reasonable accomplishments?

Question 147: What safeguards, checks and balances are in place to ensure that performance expectations are, in fact, attainable, reasonable accomplishments and are not being used as a way to control/punish an employee, as a tool of coercion, cronyism, or to circumvent EEO?

Page 7585, 9901.405, Performance management system requirements, Paragraph (c)(2)

This seems to imply that a supervisor must have a good performer, a medium performer and a poor performer, which is, of course, ridiculous. A good supervisor will have hired the best people for the job and will be getting the best out of them, and therefore will have nothing but good to excellent performers. To then insist they do not have an appropriate 'spread' is clearly the myopic view of a poor supervisor. Forcing a good supervisor to adhere to such an artificial construct would lead to the well known poor moral, frustration and rapid turn over common in the offices of poor and/or unscrupulous supervisors.

Question 148: What is meant by meaningful distinctions among employees?

Question 149: Does a supervisor's rating depend on having an artificially constructed 'spread'?

Page 7585, 9901.406, Setting and communicating performance expectations, Paragraph (a)

Question 150: Who decides if the performance expectations align with the DoD mission?

Page 7585, 9901.406, Setting and communicating performance expectations, Paragraph (b)

Question 151: Who creates these performance expectations?

Question 152: Will being deployed to an area where military actions (i.e. fighting of any type) are taking place be considered one of these performance expectations?

Question 153: Does a civilian employee not wishing to be put into harm's way (i.e. deployed in an area where: a. military actions (fighting of any type) are taking place; b. their health would be negatively impacted c. their family would be negatively impacted, fall into the area referred to as 'affecting the employee's retention in the job'?

Question 154: Are all DoD managers, all the way up the chain of command, held to the standard of behavior that includes civility and respect for others?

Question 155: If the answer is yes, then why is the proposed NSPS so lacking in respect for its civilian work force that they are willing to break faith with them, break the implied and explicit contract with them, remove pay levels that can be easily tracked to prevent abuse, and remove many of their rights in what seems a transparent attempt to remove their civilian status and put them into harm's way through involuntary deployments to dangerous areas of the world?

Page 7585, 9901.406, Setting and communicating performance expectations, Paragraph (c)

Question 156: Who creates the supervisor and manager performance expectations?

Question 157: What safeguards, checks and balances are in place to ensure that supervisor and manager performance expectations are, in fact, attainable, reasonable accomplishments and are not being used as a way to control/punish a manager, an office, an employee, an installation, the commander(s) of an installation, as a tool of coercion, cronyism, or to circumvent EEO, or to create a culture of fear?

Page 7586, 9901.406, Setting and communicating performance expectations, Paragraph (e)

A poor and/or unscrupulous supervisor may have inherited their workforce or hired employees through cronyism, or because they have issues that make them easy for the supervisor to bend to their will. Therefore, a poor and/or unscrupulous supervisor may grade a good performer whom they do not like, poorly, while grading a poor performer who strokes their ego, never questions their decisions, even if they are bad/illegal/immoral, etc. as a good performer. This seems to leave the door wide open for supervisory abuse.

Question 158: What safeguards, checks and balances are in place to ensure that performance expectations are, in fact, attainable, reasonable accomplishments and are not being used as a way to control/punish an employee or groups of employees, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Page 7586, 9901.408, Developing performance and addressing poor performance, Paragraph (a)

Question 159: Who decides these?

Question 160: When will these be issued?

Question 161: How will they be issue?

Question 162: How will they be communicated to employees?

Page 7586, 9901.409, Rating and rewarding performance, Paragraph (b)(3)

Question 163: This is incredibly vague. Will a list of these actions be published prior to the adoption of the proposed NSPS, should it be adopted?

Question 164: If so, how will they be communicated to employees?

Question 165: If not, why not?

Question 166: If not, are these actions being kept secret in order to create a culture of fear among the civilian employees? Because that is certainly what it seems.

Page 7586, 9901.409, Rating and rewarding performance, Paragraph (g)

Question 167: When will the information on how to do this be issued?

Question 168: How will it be communicated to employees?

Question 169: It certainly seems this limited challenge process would be wide open to abuse, especially by a poor or unscrupulous supervisor. What are the safeguards and checks and balances to keep this from happening?

Page 7586, 9901.409, Rating and rewarding performance, Paragraph (I)

Question 170: When will these be established?

Question 171: When will they be communicated to employees?

Question 172: How will they be communicated to employees?

Page 7587, 9901.511, Appointing authorities, Paragraph (b)(1)

Question 173: This seems to imply all employees will have to compete for their own jobs. Is this true?

Question 174: If this is true, why (be specific)?

Question 175: If only a selected group of employees will have to compete for their own jobs, who are these employees?

Question 176: Why should they have to compete for their own jobs when others do not?

Question 177: Is the purpose of this to create a culture of fear, as it certainly seems so?

Question 178: What safeguards, checks and balances are in place to ensure that this is not being used as a way to control/punish an employee, a group of employees, a supervisor or manager or group of supervisors or managers, or an installation, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Page 7587, 9901.511, Appointing authorities, Paragraph (ii)

Question 179: This seems to imply that employee's jobs can be changed at whim. Is this true?

Question 180: This further seems to lead to a culture of fear, poor moral, and lack of employees. What safeguards, checks and balances are in place to ensure that this is not being used as a way to control/punish an employee, a group of employees, a supervisor or manager or group of supervisors or managers, or an installation, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Question 181: What safeguards and checks and balances are in place to ensure this is not merely a tool to send civilian employees into harm's way?

Page 7587, 9901.511, Appointing authorities, Paragraph (c)(3)

Question 182: This seems to imply that an office or installation can be terminated or gutted at whim. Is this true?

Question 183: This further seems to lead to a culture of fear, poor moral, and lack of employees. What safeguards, checks and balances are in place to ensure that this is not being used as a way to control/punish a group of employees, an installation, the commander(s) of an installation, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Question 184: What safeguards and checks and balances are in place to ensure that those who know and understand the mission of an installation are not replaced by a 'favored group' who do not, but are 'favored' for whatever reason?

Page 7587, 9901.512, Probationary periods

Question 185: When will DoD prescribe the conditions for such periods?

Question 186: How will these conditions be communicated to the employees?

Question 187: Can these conditions be prescribed for a civilian employee who is changing jobs?

Question 188: Can these conditions be prescribed for a civilian employee who is changing pay bands?

Question 189: Can these conditions be prescribed for a civilian employee who is coming back from a temporary assignment or promotion?

Page 7587, 9901.514, Non-citizen hiring, Paragraph (a)

While non-citizen hiring most certainly seems the wisest, most economical and logical choice for installations outside the borders of the United States, there should be no need for it whatsoever within the nation.

Question 190: Will non-citizens be hired for installations within the borders of the United States of America?

Question 191: If so, how can this be justified in either hiring practices or security?

Page 7587, 9901.514, Non-citizen hiring, Paragraph (b)

Question 192: What kind of security clearance will the non-citizen's have to pass?

Question 193: What assurances are there that language barriers do not form a barrier to mission accomplishment, especially should they be hired within the borders of the United States?

Question 194: What assurances are there that cultural barriers do not form a barrier to mission accomplishment, especially should they be hired within the borders of the United States?

Page 7587, 9901.515, Competitive examining procedure, Paragraph (a)(3)

Question 195: Does this mean some upper DoD group does all hiring, or does each local installation retain the ability to do their own hiring?

Question 196: If it is an upper DoD group instead of the local installation, what is the justification for this (be specific)?

Page 7588, 9901.516, Internal placement

Question 197: Does the employee have any say over their own placement?

Question 198: Does the employee have any say over where they work?

Question 199: Does the employee have the right to remain in their own commute area?

Question 200: What rights does the employee have on their own placement?

Page 7588, 9901.601, Purpose and applicability

Question 201: What planned elimination, addition or redistribution of functions, etc.?

Question 202: Where do the employees find this plan?

Page 7591, 9901.712, Mandatory removal offenses, Paragraph (a)

The secrecy surrounding these offenses certainly gives the impression of attempting to create a culture of fear.

Question 203: When will these be identified and published?

Question 204: When and how will employees be informed of these offenses?

Question 205: Will employees know what these offenses are before or after such an offense occurs?

Question 206: If after, how is an employee supposed to know what is forbidden?

Question 207: How many witnesses to a 'forbidden offense' are required?

Question 208: What if it is a one on one situation?

Question 209: What if witnesses give conflicting testimony?

Question 210: What safeguards and checks and balances are in place to ensure that this is not being used as a way to control/punish an employee, a group of employees, a supervisor or manager or group of supervisors or managers, or an installation, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Page 7591, 9901.714, Proposal notice, Paragraph (b)

The employee's inability to review evidence the Department deems it cannot disclose denies due process to the accused, strips them of their rights, and creates a culture of fear in which the door is wide open for abuse and witch hunts.

Page 7591, 9901.715, Opportunity to reply, Paragraph (b)

Again, seems a denial of due process to the accused, leaving the door wide open for this to be used as a witch hunt and create a culture of fear, where any employee can be accused of anything, and have very few rights to confirm their innocence. In direct violation of the legal codes of the United States, the employee is considered guilty until proved innocent, and may not see all evidence if it is conveniently deemed undisclosable, and can not even question a witness.

Question 211: Why is the accused or their representative prevented from examining the witnesses?

Page 7591, 9901.715, Opportunity to reply, Paragraph (f)(1)

Seems a denial of due process to the accused, as the accuser can also make the decision on who can or cannot act as the representative for the accused.

Question 212: Who makes this decision?

Question 213: What are the specific criteria?

Page 7591, 9901.715, Opportunity to reply, Paragraph (f)(2)

Again seems a denial of due process to the accused, as the accuser can also make the decision on who can or cannot act as the representative for the accused. Open to railroading an employee or witch hunts as well as a culture of fear in the workplace, leading to low moral and health problems among the work force.

Question 214: Who makes this decision?

Question 215: What are the specific criteria?

Page 7591, 9901.715, Opportunity to reply, Paragraph (g)(1)

My reading of this paragraph is that, any employee whom the DoD attempts to involuntarily reassign to an area that would have a negative impact on a pre-existing health issue, such as an area that would put them into harm's way, will not automatically be free of such involuntary reassignment. And, in fact, may be removed from their job, which would certainly be a violation of employee rights.

Question 216: Can the DoD attempt to forcibly reassign an employee with a pre-existing health issue to an area that would have a negative impact on that health condition, and could lead to increased health problems, disability or death?

Question 217: If the answer to the above is yes, does the employee's pre-existing health condition preclude them from such a reassignment?

Question 218: If the answer to Question 216 is no, why not?

If the answer is no, it seems that we are not just looking at a breaking of trust, the implied and explicit contract and a lack of due process, but a genuine attempt to create not just a culture of fear, but to knowingly put any employee; those with a pre-existing health condition, young pregnant or nursing mothers, grandparents, and others who would never be considered for military duty, into harm's way. If true, this is an astonishing abridgement of civilian rights and due process, and seems to infer the accusing parties are bereft of both morality and honor in such cases.

Question 219: Please address the above statement and say if it is true or not true, and if it is true, on what grounds it can possibly be justified.

Page 7591, 9901.715, Opportunity to reply, Paragraph (g)(2)

Question 220: Does the employee's physician have the right to rebut the findings of the medical examiner provided by the employee's accusers?

Question 221: If not, why not? Justify such an abridgement of rights in detail, please.

Page 7591/2, 9901.715, Opportunity to reply, Paragraph (3)(I)(ii)&(iii)

At no point does it say an employee's medical evidence has to be taken into consideration. In fact, the implication is that it will not be.

Question 222: Is it, in fact, true that the employee's medical evidence has no bearing on the outcome of their case, should such medical evidence be pertinent to the case (i.e. a health condition preventing the safe deployment to a specific area)?

Question 223: If the above statement is true, please justify such abridgement of rights in detail

If the above statement is not true, rewrite this section of the proposed NSPS to reflect the fact that an accused employee's medical evidence *has* bearing on the outcome of their case, and will be considered when such medical evidence is pertinent to the case (i.e. a health condition preventing the safe deployment to a specific area), and will specifically prove the employee innocent of charges.

Page 7592, 9901.716, Decision Notice, Paragraph (a)

Question 224: Explain this paragraph. What is the Proposal notice?

Question 225: Does it come from the accused or the accuser?

Question 226: If from the accuser, what is to keep it from being written in a way that removes all traces of a reasonable reason for an action?

Question 227: What is to keep it from being a story made up out of whole cloth?

Question 228: What are the safeguards included to ensure employee rights are not violated?

7588 - 7592, All parts of Subpart F - Workforce Shaping

A system without checks and balances to ensure equal rights to all employees, and to ensure due process, is no longer a democracy as defined in the Constitution, Bill of Rights and Declaration of Independence, Those who would abridge, remove and disdain the rights of others in order to achieve their own ends create, at best, a coercive institution with fear and witch hunting as its base, and at worse, a dictatorship, which has no part in a democracy by, for and of the people.

Page 7592, 9901.805, Coverage, Paragraph (a)

Question 229: When will the Secretary make this determination?

Question 230: How will this determination be communicated to the employees?

Page 7592, 9901.805, Coverage, Paragraph (b)

Question 231: What is the justification for not including those in Priority Placement Program?

Page 7593, 9901.807, Appellate procedures, Paragraph (a)

Question 232: What procedures do apply under the special national security provisions?

Question 233: How does an employee know which procedures apply to their case?

Question 234: What safeguards and checks and balances are in place to ensure that the designation of 'special national security provisions' is not used as a tool to abridge employee's rights to a fair and equitable hearing, as a tool to remove an employee or group of employees at whim, or as a way to circumvent due process, EEO and other laws, rules and regulations?

Page 7593, 9901.807, Appellate procedures, Paragraph (d)(1)

Again, the employee is considered guilty until proven innocent.

Question 235: What constitutes a preponderance of evidence for the DoD?

Question 236: What constitutes a preponderance of evidence for the accused employee?

Page 7593, 9901.807, Appellate procedures, Paragraph (d)(2)

Once again, a door left wide open for abuse of all sorts.

Question 237: What are the safeguards against such abuses?

Page 7593, 9901.807, Appellate procedures, Paragraph (h)(1)

As written, the AJ may or may not require payment of reasonable attorney fees by the DoD should they lose a case. This can easily lead to an abuse of the system, creating a witch hunt mentality where false charges are filed against an employee, group of employees or targeting a specific installation, in order to either bankrupt or remove them, even if they are found innocent of all charges.

To avoid such abuse and witch hunts, this section should be written to say the AJ will require payment of reasonable attorney fees by the DoD should they lose a case.

Page 7593, 9901.807, Appellate procedures, Paragraph (k)(2)

Again, an open door for abuse. If either side sees the other is clearly winning, they can file to remove the opposite side's representative in the hopes the other side will be forced to replace the representative with one of lesser quality, or will be unable to afford to replace the representative at all.

This should be removed. However, a provision should be made for either side to remove or replace their own representative at any time during the proceedings.

Page 7593/4, 9901.807, Appellate procedures, Paragraph (k)(6)

Implies the DoD's determination regarding a penalty imposed is more important than truth or justice. Leaves no room to consider mitigating factors but appears to be an all or nothing category that refuses to admit truth or justice into the determination. This is wide open for abusive witch hunts, coercion and establishing a culture of fear.

Should be removed and replaced with language that gives the AJ greater latitude to take truth, justice and mitigating factors into consideration.

Page 7593/4, 9901.807, Appellate procedures, Paragraph (k)(8)(ii)

Because an AJ decision is nonprecedential, it is possible for a penalty that has been deemed not justified to be attempted over and over again in the hopes of receiving a different judgment by a different AJ, thus opening the door to abuse. However, ANY decision issued by the DoD after reviewing an initial AJ decision is precedential unless certain mitigating factors apply. This implies the DoD may first overturn the AJ decision and then deem it precedential, thus becoming a dictatorship and undoing any concept of checks and balances.

This should be rewritten to remove this implication and add checks and balances to prevent abuses.

Page 7594, 9901.808, Appeals of mandatory removal actions, Paragraph (d)

Double jeopardy for an employee and an open door for abuse. If the employee is not guilty of a MRO, they are, in fact, not guilty. Unless, of course, the DoD plans to keep secret what the MRO's might be until they decide someone has committed one, which would be both immoral and illegal. Assuming this is not the case, this section should be rewritten to remove double jeopardy.

Page 7596, 9901.905, Impact on existing agreements.

Breaks negotiation contracts and shows bad faith, strips employees and unions of rights and due process. Rewrite.

Page 7596, 9901.907, National Security Labor Relations Board

If the Board is made up of three members, one member should be required to be a member of a Labor organization that covers civilian DoD workers. If of five members, two should be required to be of a Labor organization, if seven members, three, etc.

Under the current proposed provision, it is possible to have a board with no members with any knowledge of law in general and labor law in particular, leading to possible decisions that could not be supported by law and creating great embarrassment for the DoD and nation as a whole.

Rewrite to include the above stipulations.

Page 7596/7, 9901.908, Powers and duties of the Board, Paragraph (a)(4)

Question 238: What are exceptions to arbitration awards? Please clarify

Page 7597, 9901.909, Powers and duties of the Federal Labor Relations Authority, Paragraph (b)

This section appears to strip the Federal Labor Relations Authority of its rights. Instead of a 'level playing field', where justice may be served, it appears the field has been tilted in favor of 'the responding party' who may remove a case from the Federal Labor Relations Authority on the

mere 'belief' it should be heard by the National Security Labor Relations Board. This seems to be written specifically as a way to give DoD a much better chance to win any case brought before the Federal Labor Relations Authority, thus removing the 'level playing field' and abridging employee and Labor Relation Authority's rights, as well as opening the door for employee abuse and coercion, as well as giving the impression and/or the reality that an employee can not get a fair hearing, creating a culture of fear.

Question 239: What safeguards and checks and balances are in place to ensure that this is not being used as a way to control/punish an employee, a group of employees, a supervisor or manager or group of supervisors or managers, or an installation, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Page 7597, 9901.910, Management rights, Paragraph (a)(3)

Question 240: What level of management are we talking? A direct supervisor? The Chief of an internal Section or Division? The commander(s) of an installation? All of these? Please be specific as to what rights each group would have.

Question 241: What safeguards and checks and balances are in place to ensure that no member of management is using these rights to control/punish an employee, a group of employees, a supervisor or manager or group of supervisors or managers, as a tool of coercion, cronyism, to circumvent EEO, or to create a culture of fear?

Page 7597, 9901.910, Management rights, Paragraph (e)(2)(ii)(B)

Question 242: If an employee made an honest attempt to perform a duty, which took many hours, or days, but due to any number of circumstances this duty was unable to be brought to fruition, would this be considered work 'not actually performed'?

Question 243: Please clarify the phrase 'pay or credit for work not actually performed'. What, exactly, does 'not actually performed' mean?

Page 7598, 9901.910, Management rights, Paragraph (I)

Leaves employees with few if any rights, and is open for abuses of all sorts, including health and safety, EEO, safe work environment, and coercion and/or punishment.

Page 7598, 9901.913, National consultants, Paragraph (a)

...will terminate when the labor organization no longer meets the criteria prescribed by the Board. This seems to imply Union busting. All of 9901.913 should be specifically vetted by the Federal Labor Relations Authority and rewritten to their specifications, in order to not impinge on rights, authorities, laws, rules and regulations.

Page 7599, 9901.914, Representation rights and duties, Paragraph (c)(4)

Question 244: Who determines if these disclosures would compromise the Department's mission, security or employee safety?

Question 245: What safe guards are in place to keep a management official from making frivolous determinations on what can be disclosed?

Question 246: What safe guards are in place to keep a management official from using these determinations specifically to keep from releasing documentation that would show the Department was the party at fault?

Question 247: Could a management official use the excuse that any case brought would infringing on the Department's mission, security or employee safety for the sole reason of being brought?

Question 248: If so, explain what legal recourse employees would have against such a course of action?

Page 7599, 9901.914, Representation rights and duties, Paragraph (d)(5)

Question 249: Who is the 'authorized official'?

As all provisions in current authorized collective bargaining agreements have already been vetted in just this way, an 'authorized official' should be able to find no such faults. Therefore, this section seems to imply Union busting and removal of employee and Labor relation's rights.

All of 9901.914 should be specifically vetted by the Federal Labor Relations Authority and rewritten to their specifications, in order to not impinge on rights, authorities, laws, rules and regulations.

Page 7601, 9901.918, Multi-unit bargaining, Paragraph (d)

Once again seems to imply Union busting and removal of employee and Labor relations rights, requiring this section to be specifically vetted by the Federal Labor Relations Authority and rewritten to their specifications, in order to not impinge on rights, authorities, laws, rules and regulations.

Page 7601, 9901.919, Collective bargaining above the level of recognition, Paragraph (a)

Question 250: Why, specifically?

Page 7601, 9901.919, Collective bargaining above the level of recognition, Paragraph (b)(5)

Question 251: Why, specifically?

Page 7601, 9901.923, Exceptions to arbitration awards, Paragraph (d)

Question 252: Explain how and under what circumstances the Board could determine its own jurisdiction.

Question 253: What specific impact does this ability have on arbitration awards to employees?