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Program Executive Office
National Security Personnel System
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**Re: Department of Defense's (DOD) Proposed National Security Personnel System,
Docket Number: NSPS-2005-001 and/or Regulatory Information Number (RIN)
3206-AK76 or 0790-AH82**

Bradley B. Bunn:

I am compelled to make constructive comments for consideration and incorporation into the proposed National Security Personnel System (NSPS); however, first I want to state my opposition to the unwarranted changes to the personnel system. The existing personnel system works well and has adequate safeguards. It is unfortunate that supervisors, managers and management officials (management) do not possess the knowledge, skills and abilities to work effectively within the established personnel system. I am amazed that the management, who cannot apply existing and well-established rules, will be given broad discretion under the proposed NSPS. If after years of experience coupled with annual training (both personnel and labor relations) for managers associated with the existing system and management fails to make it work, then NSPS will be more challenging for the same management and no doubt a costly failure. I will cover costs later within the comments that follow.

Under the heading of **Process, Guiding Principles and Key Performance Parameters** on page 7555, it is stated " • Schedule: NSPS will be operational and demonstrate success prior to November 2009." **Comment:** No specific and well defined metrics for the measurement of NSPS's "success" are given within the Federal Register, Vol. 70, No. 29, Monday February 14, 2005, Proposed Rules. Clearly, well-defined metrics are needed in order to determine if NSPS is a success. Recommend establishing a baseline consisting of cost of the Federal Labor Relations Authority's (FLRA) services associated with Unfair Labor Practices (ULPs) coupled with the percentages of ULPs decided (decided to include any and all resolutions to ULP, including withdrawn by complainant, dismissed by the FLRA and adjudicated on the merits) in the management favor. Based on experience, I estimate management prevails on 90 to 98 % of all ULPs under FLRA's present statutory authority. In addition to the FLRA, the Merit Systems Protection Board (MSPB) must be included in this baseline. Presently, over 85% of the MSPB actions are in management's favor. In other words, management prevails because the MSPB usually decides against the employee and upholds management's adverse action. A minimal

amount of the FLRA and MSPB decisions go to the courts. Use the metric of what increase in the number of cases going to court as a result of NSPS. Also, use the metric of cost and compared the expenditures of operations for the FLRA and MSPB. DOD has admitted within this Federal Register that DOD's version of the FLRA will cost at least \$158 million over a 3-year period of time. No doubt DOD's portion of the FLRA's operating expense is already dwarfed by \$158 million. There is no estimate of the costs associated with the implementation of NSPS. One would expect the retraining of managers and employees alike driven by NSPS will be in the BILLIONS OF DOLLARS, assuming \$2 to 3,000.00 per employee per annum and given 750,000 employees. This translates to \$1.5 to \$2.25 billion every year under the NSPS initiative. Over 3 years, the dollar expenditure due to the NSPS change will exceed \$4.5 to \$6.75 billion. Again, not much of a success, if funding is considered.

Under the heading of **General Provisions-Subpart A**, *Continuing Collaboration* on page 7557, it is stated "The NSPS law requires that the implementation of a new HR system for DoD will be carried out with the participation of, and in collaboration with, employee representatives." **Comment:** No collaboration occurred, and DOD has unilaterally promulgated the NSPS rules without incorporation of employee representatives' inputs as required by the law. Cease and desist from the unilateral implementation of NSPS as published in the Federal Register. Comply with the Congressional collaboration requirement and get a joint product (i.e., a consensus of NSPS rules). Then publish the joint NSPS in the Federal Register, and get comments in accordance with the Administrative Procedures Act (APA). The current publication of NSPS is premature, and not consistent with the Congressional Law.

Under the heading of **Classification-Subpart B**, Table 1 – Sample Classification Structure on page 7559, generically addresses *Engineering and Scientific Professional Pay Schedule* (i.e., Entry/Development, Full Performance and Senior Expert) and *Engineering and Scientific Supervisory/Managerial Pay Schedule* (i.e., Pay Band 1, Pay Band 2 and Pay Band 3) with some sort of implied relationship between the aforementioned categories. However, like elsewhere within the proposed NSPS rules, pay amounts are not determined nor correlated to GS pay rates. **Comment:** Define the Pay Bands in terms of the GS pay for engineering and scientific career groups (include non-supervisory and supervisory employees alike). Set the Pay Band 1 equal to GS-5 through GS-9. Set Pay Band 2 equal to GS-11 through the middle of a GS-13. Set Pay Band 3 from the middle of a GS-13 to a GS14. Establish and set the Pay Band 4 equal to a GS-15 through and SES-1. Establish a pay differential for supervisors and managers such that they are paid \$3 to 5 thousand dollars higher than the highest paid employee supervised. Unlike the proposed NSPS, this comment clearly establishes a defined rate range in terms of GS (General Schedule pay rates) with minimums and maximums for the engineering and scientific career group and supervisory/managerial pay thereof too. If the pay bands are not set as described, then the pay scales will not be sufficiently competitive to attract, hire and retain professional scientific and engineering personnel. The low level of pay for scientists and engineers has been and remains a glaring problem for over 30 years (my "tenure" as a federal employee). Similar definition of pay bands

must be given to other career occupational groups too, as appropriate for their respective pay scales so that they are competitive as well.

Under the heading of **Pay and Pay Administration – Subpart C, Performance-Based Pay** on page 7560, uses the term, “pay pool,” which is overly vague and unclear, because it fails to set some sort of budget requirement (i.e., a percentage of the pay roll, a percentage of the agency's operating budget, etc.) for pay pools. **Comment:** A percentage of an agency's operation budget is needed absolutely, because federal agencies fail to budget for awards presently. The current lack of awards budgets will be manifested in the proposed approach for NSPS under the proposed rules. The required pay pool budget must be adequate such that performance appraisals are not contrived in order to meet meager budgets for pay pools. The pay pool must account for monetary awards, step increases and cost of living allowances (COLA, if COLA is to be a part of the pay pool instead of a separate entity) for all employees at an agency. Although NSPS is suppose to be more private sector like, when will the government be able to offer stock options or something similar just like the private sector. If the government either cannot or will not approximate the benefits of the private sector to offset the newly established liabilities and consequences of being an at-will-employee, then the government will have a high turn over in new personnel under NSPS.

Under the heading of **Pay and Pay Administration – Subpart C, Pay Administration, Promotion, Reassignment and Reduction in Band** on page 7561, a maximum of 10% reduction in pay can occur due to unacceptable performance and/or conduct, unless a larger reduction is needed to place an employee at the maximum rate of a lower band. **Comment:** It is interesting to note NSPS has overly vague (i.e., not define salaries amounts associated with each pay band) pay bands; however, NSPS has no difficulty clearly identifying pay reductions in percentage amounts of 10% or more if an employee is placed in a lower pay band. If performance and/or conduct can reduce an employee's pay so drastically, then clear and objective performance standards as well as standards of conduct will be needed immediately. Furthermore, the application of these standards must be uniform and consistent throughout the government, and especially throughout an agency. If the standards are too vague with wide latitudes of interpretation via supervisors' newly found discretionary powers, then disparate treatment shall occur in a more prevalent manner than it currently occurs. Presently, there is too much nepotism and unacceptable conduct (both contrary to existing standards of conduct and ethics rules) exhibited by select supervisors and subordinate personnel. The end result is too many employees enjoy a benefit due to unacceptable relationships with supervisors, while the majority of employees suffer disparate treatment and hostile work environments. If these deplorable situations are not abated, then litigation (law suits) will ensue. The Federal Government's Standards of Conduct and Ethics Rules must be clarified to a level of ZERO tolerance for nepotism and unacceptable conduct by supervisors and employees alike. ZERO tolerance mandates termination of a supervisor engaged in nepotism or unacceptable conduct, and termination of the benefiting employee. The definition of nepotism must be expanded to include individuals living together (similar to spouses) where the household income benefits from the relationship.

Under the heading of **Performance Management – Subpart D, *Performance and Behavior Accountability*** on page 7562, states, “DoD has determined that conduct and behavior affecting performance outcomes (actions, attitude, manner of completion, and/or conduct or professional demeanor) should be a tracked and measured aspect of an employee’s performance.” **Comment:** Conduct, behavior or demeanors are too subjective to measure and assess without definitive standards. All too often employees are awarded based upon unacceptable relationships with the supervisors performing the assessments and giving the awards. Although the most harmful situations that exist are the nepotism and unacceptable conduct mentioned in the immediate comment just above, friendships are too close and result in significant skewing of performance assessments as well as tolerance of bad and unacceptable conduct. Again, offending supervisors and employees may need termination depending on the degree and influence of the friendships, presuming the relationship is not nepotism or unacceptable conduct (in the latter two, termination is essential). To reiterate more specifically, the Standards of Ethical Conduct for Employees in the Executive Branch and the DoD Joint Ethics Regulations as well as any behavioral expectation specifically related to the local organization are grossly insufficient, because the of the previously described nepotism, unacceptable relationships and too close a friendships adversely impacting the work environment and related performance. These two documents (e.g., Standards of Ethical Conduct for Employees in the Executive Branch and the DoD Joint Ethics Regulations) must be made clearer such that termination results for supervisors and employees engaged in the aforementioned relationships.

Under the heading of **Workforce Shaping – Subpart F** on page 7564 states “. . . the Department may establish a minimum RIF competitive area on the basis of one or more of the following factors: geographical location(s), line(s) of business, product line(s), organizational unit(s) and funding line(s). **Comment:** Although it is true additional flexibility is a prospect by targeting reduction in force (RIF) actions to only positions directly impacted by a decision to realign the work of these positions to another facility, it establishes a mechanism to obfuscate the real needs for cuts and allows properly functioning units to bear the brunt of a RIF needed elsewhere. In other words, this broad discretionary power is abusive, and must be avoided. Restrain the RIFs only to geographic areas by UICs (Unit Identification Code). This restraint will avoid abuse of passing RIF impacts along where it is not needed. Also, employee tenure groups must take into account length of service, otherwise valuable experience will be lost. The loss of irreplaceable experience will further damage DOD organizations. In addition, performance of newly hired employees (i.e., employees with less than 5 to 7 years with a DOD organization) must not be treated preferentially over length of service associated with the experienced workers. This, too, will damage the organization’s ability to produce work, especially in highly skilled and high tech areas. Simply put, newer workers will not possess the requisite knowledge, skills and abilities to perform.

Under the heading of **Adverse Actions – Subpart G, 2. *Mandatory Removal Offenses*** on pages 7564 and 7565, states “. . . proposed mandatory removal offenses (MRO) would be identified in advance and made known to all employees.” **Comment:** Based upon the excessive period of time DOD management and OPM have worked on this NSPS system,

it is unacceptable not to publish MROs in this FR. Openly, publish in this FR the MROs so that proper consideration and comments can be made prior to MROs implementation and subsequent execution of employees. Under 3. *Adverse Action Procedures* on page 7565, applies shorter advance notice periods (15 and 5 days) and a minimum amount of days (10 days) to reply, which run concurrently. **Comment:** Depending on the magnitude of the adverse action, a 15-day advance notice is way too short, especially when management has had an indefinite period of time to “investigate” and concoct charges associated with an adverse action. In addition, a 10-day reply time is ridiculous, especially since it runs concurrent with the advance notice instead of running sequentially. Change the advance notice requirement to 21-days with an extension of the reply time to 14-days, and an option to extend the reply time as appropriate with concurrence of the management proposing the adverse action. Under 4. *Single Process and Standard for Action for Unacceptable Performance and Misconduct* on page 7565, eliminates the requirement for a formal, set period for an employee to improve performance before management may take an adverse action. **Comment:** Although management selects employees for their positions because they are well qualified, and management must explain to them what is expected of them when it comes to their performance, a PIP (Performance Improvement Period) is essential and must not be eliminated for a variety of reasons. Supervisors do not or fail to inform employees of their performance expectations. Most of the time, due to the use of team leaders coupled with self-starting employees, supervisors are unaware of their employees' performances. A PIP is not only essential for the employee, but also for the employee's supervisor so the supervisor can understand the employee is performing and what those tasks/duties are. Most managers cannot even set marginal standards for a PIP, because they do not understand the elements of the jobs. The supervisors get with human resource labor relations specialist, when setting standards for PIPS, because most supervisors do not understand performance appraisals or how to do an appraisal, much less do a PIP. Clearly, both management and employee need to have PIPs remain.

Under the heading of **Appeals – Subpart H** on page 7565 states “Section 9902 of title 5, U.S. Code requires that these appeal regulations provide DoD employees fair treatment, and are afforded the protections of due process.” **Comment:** Under 1. *Appeals to MSPB*, DOD circumvents the appeal process by proposing new substantive standards, which will effectively change the appeal rights of employees undergoing adverse actions, not to mention the case precedence. These changes are unnecessary when considering the management prevails in 85% of the MSPB decisions currently. In other words, the employees lose 85% of their appeals, and the remaining 15% are not out right wins for the employees. Under 2. *Department Review of Initial MSPB Administrative Judge Decisions*, on page 7566, states “This subpart authorizes the Department to review initial decisions of administrative judges (AJ).” This subpart indicates DoD may affirm, remand or modify an AJ's decision. **Comment:** This approach eliminates the third party review by the MSPB, and AJ's ability to follow established case precedents. In reality, due process is eliminated because DOD retains authority to ignore AJ's decisions. To further demonstrate the lack of due process, a “request for review (RFR) must be filed concurrently with the Department and the full MSPB no later than 30 days after issuance of an initial MSPB AJ decision.” Although either party can request a RFR, the proposed

rules do not require the plaintiff/complainant to receive a copy of what DOD files; however, the plaintiff/complainant must file a copy with DOD and MSPB. This is unacceptable. Maintain the current due process afforded under the MSPB system with the established case precedents, rather than shifting to the proposed kangaroo court proposed by DOD.

Under 4. *Appellate Procedure Improvements* on page 7567, it states “. . . can seek to limit discovery being sought because it is privileged; not relevant; unreasonably cumulative or duplicative; or can be secured from some other source that is more convenient, less burdensome or less expensive.” **Comment:** These restrictions do not improve discovery. These restrictions compound the lack of due process by limiting discovery. Remove the restrictions on discovery, and apply the Federal Rules of Civil Procedure in their entirety when performing discovery. Under 7. *Penalty Review* on page 7567, it states “Only the Secretary may mitigate the penalty under these regulations.” **Comment:** This, too, adds to the destruction of due process, because the Secretary or any delegated DOD representative is not a third party neutral in the hearing process. Remove this authority from the Secretary and place it upon the MSPB or the Federal Courts for proper adjudication in order to avoid DOD bias. Continuing under 7. *Penalty Review* on page 7568, it states “This authority is significantly more limited than MSPB’s current mitigation authority under the standard first enunciated in *Douglas v. Veteran Administration* (5 M.S.P.R. 280 (1981)).” **Comment:** Keep the *Douglas* factors, because considerable latitude is needed to modify agency’s egregious penalties. The *Douglas* factors are not overly technical, and insure fairness in adjudicated decisions.

Under **Labor-Management Relations – Subpart I** on page 7568 2. *Definitions* are too vague and overly broad. **Comment:** This subpart needs rework such that they are consistent with governing laws, rules and regulations. For example, management official makes policy decisions and does not simply have the authority to recommend actions. Grievance is too narrowly defined. Based upon the definition given, an employee could conclude only a union vice an employee could file a grievance. This definition must be clarified such that employees understand the employee(s) to seek remedies for work related issues could file a grievance(s). Under 6. *National Security Labor Relations Board* on page 7569 states “While the Department may issue interim rules for the NSLRB, the NSLRB will ultimately prescribe its own rules and publish them the Federal Register.” **Comment:** Again, the Department’s self-proclaimed power to make rules, even interim rules, abridges due process achieved by an independent Board/Authority (like the FLRA: Federal Labor Relations Authority) today. DOD must refrain from violating due process, and must not make any interim rules. If there must be duplication of the FLRA, then DOD must appoint its 3 or more NSLRB members and permit the members to formulate NSLRB policy and rules consistent with applicable laws and case precedents while tempering with the guidelines of this set of rules. Therefore, in the interim, DOD must continue to use the FLRA rules and services until the NSLRB is stood up and operational. Then the NSLRB can formulate their rules independently from DOD’s undue influence. At least this approach will give some credence to an apparent independence needed for approximating a real due process. If an individual with labor-management experience and background in law would be helpful in laying the foundation

of NSLRB, then let me know if I can be of assistance.. Regarding ULPs (Unfair Labor Practices, recommend either establishing internal capability (within NSLRB), similar to the FLRA's structure, or hire/contract out for investigative services, similar to using OCI (Office of Complaint Investigation) services for investigating EEO complaints. Under *11. Representation Rights and Duties* on page 7571, formal discussions have needlessly been reduced or completely removed from the FLRA statute and case precedents.

Comment: Restore the FLRA's formal discussion status. Otherwise, subsequent changes in working conditions will create more controversy, and be more difficult to reach an understanding and agreement. Misconduct of an employee, while performing as a worker is one thing; however, conduct of an employee performing union representational duties is a different beast. In other words, employee misconduct may not be misconduct when the employee is performing union representational duties. Any change in FLRA's "flagrant misconduct" standard would produce a chilling effect on unions' representational duties. **Comment:** Keep the FLRA's "flagrant misconduct" standard. The FLRA's right to information by a union performing its duties is necessary to establish the proper amount of tension between management and union so that both parties are on a more level playing field. **Comment:** Keep the FLRA's statutory and case precedents relative to the agency/DOD providing requested information. Under *13. Duty to Bargain and Consult* on page 7572, the duty to bargain is removed. Also, no bargaining over changes in employment unless the change is foreseeable, substantial and significant in terms of both impact and duration on the bargaining unit, or on those employees in that part of the bargaining unit affected by the change. **Comment:** Both of the two approaches remove management's obligation to negotiate. Retain the obligation to negotiate, because accomplishment of work is easier when adequate provisions are reached through negotiation.

Under **E.O. 12866, Regulatory Review** on page 7574 DoD estimates their new HR system and NSLRB will cost \$158 million through FY 2008, with less than \$100 million spent in any 12-month period. **Comment:** It is believed that the cost estimate is excessively low, and the benefits of the new personnel system (NSPS) and NSLRB are greatly overstated. By the time DOD stands up its new HR and NSLRB with staff, office spaces, ancillary equipment (e.g., computers, furniture, telephones, supplies, etc.) the expenditures will surpass the estimated cost. It is important to note, this is the only cost figure given in the NSPS proposed rules. No doubt this omission is by design, because the real costs to retrain managers and employees alike in order to comply with NSPS will be excessive in a time when DOD must conserve its appropriated funds. A simple assumption of \$4,000.00 per employee (a conservative figure for training) multiplied by 750,000 DOD employees results in \$3 BILLION in expenses, which does not account for intangible expenses and loss of good will. Clearly, several BILLION DOLLARS more will be lost too. The changes driven by NSPS do not reflect a good return on investment, when one considers the expenses coupled with the fact that some form of the FLRA and MSPB will be maintained. Both the FLRA and MSPB require appropriate funds to function, so there is no savings realized by NSPS because both the FLRA and MSPB remain going concerns.

Under § 9901.108 **Program Evaluation** on page 7578, it claims DoD will establish procedures for evaluating the regulations in this part and their implementation.

Comment: This is too vague. It is critical to establish and publish evaluation procedures for NSPS during the Federal Register publication phase. Immediately publish procedures for evaluation coupled with applicable benchmarks for measuring NSPS's success or failure prior to implementation of NSPS. Benchmarks must include all cost of NSPS, employee satisfaction with NSPS, supervisors, satisfaction with NSPS, duration of employment of new employees compared to duration of employment under the old system, number of all complaints filed under NSPS compared to complaints under old system, any increase in litigation in federal courts under NSPS vice old system, increase in legal staffs after NSPS, and any other metrics applicable to evaluate NSPS. Congress will need good insight if they must take an affirmative action to extend NSPS in 2009 instead of letting the sun set provision run.

Under § 9901.212 **Pay Schedules and pay bands** on page 7579 it states that DoD may develop different pay schedules with possibly two or more pay bands, and will designate qualification standards and requirements for each career group, occupational series, pay schedule, and/or pay band. **Comment:** This is too vague. It is critical to establish and publish pay schedules and pay bands up front and publish them in the Federal Register prior to implementing NSPS. For Engineers, Scientists and Professional Staff 3 pay bands are envisioned. Pay band 1 covers GS-5 to the middle of a GS-13. Pay band 2 covers from the upper mid point of a GS-13 to a GS-14. Pay band 3 is a GS-15.

Under § 9901.231 **Conversion of positions and employees to the NSPS classification system** on pages 7579 through 7580 in (b) thereof, DoD will issue . . . policies and procedures for converting DoD employees to pay band upon initial implementation of the NSPS classification system. **Comment:** This is too vague. It is critical to establish and publish these policies and procedures prior to the implementation of NSPS, because this is an integral part of NSPS. It is unacceptable to parcel out NSPS in this manner. Publish these policies and procedures in the Federal Register as an integral part of NSPS.

Under § 9901.304 **Definitions** on page 7580, DOD defines *Pay pool* as the dollar value of funds set aside for performance payouts for employees covered by a pay pool.

Comment: This is too vague. It is critical to establish and publish requirements for the dollar value that must be maintained in a pay pool. Use a percentage basis to define the dollars for a pay pool by tying it to the payroll or better to the percentage to a percentage of an agency's total operational funding levels and expenditures for each fiscal year. For example, if an agency had total budget of \$300 million, then set aside 10 to 15% of the \$300 million for the pay pool (e.g., \$30 to 45 million). Historically, budgets/funds for awards, training, etc. are very low, essentially nonexistent. Without an established floor for the pay pool funds, there will be little to no funds available for awards.

Under § 9901.313 **National security compensation comparability** on page 7581 DOD states in (a) "To the maximum extent practicable, for fiscal years 2004 through 2008, the overall amount allocated for compensation of the DOD civilian employees who are included in NSPS may not be less than the amount that would have been allocated for

compensation of such employees for such fiscal years if they had not been converted to NSPS, based on a minimum---“ **Comment:** This is too vague. Change the word may above to shall, because during the NSPS transition period it is essential to maintain rates of promotions, step increases, awards such as quality step increases, etc. Over and above the aforementioned requirements DOD shall make provisions that annual cost of living increases mandated by Congress are applied annually to all employees' pay.

Under § 9901.321 **Structure** on page 7581 DOD states in (a) . . . may establish ranges of basic pay for pay bands . . .” **Comment:** This is too vague. Establish pay bands in accordance with the comment and guidance previously provided in § 9901.212 **Pay Schedules and pay bands** (see above).

Under § 9901.322 **Setting and adjusting rate ranges** on page 7581 states in (a) “Within it sole discretion DoD may, subject to . . . set and adjust the rate ranges established under § 9901.321. In determining the rate ranges, DoD may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.” **Comment:** This is too vague, and provides too much discretion and latitude to DOD, which would have foreseeable adverse consequences on employees' pay. It is necessary to narrow the degrees of discretionary freedom here to safeguard against pretexts and abuses of pay setting by using national comparisons; comparable metropolitan communities; developed indices where costs of housing, utilities, taxes, food, medical etc, are factored in.

Under § 9901.342 **Performance payouts** on page 7582 in (b) *Performance pay pools* it states “DoD will issue implementing issuances for the establishment and management of pay pools for performance payouts.” **Comment:** This is too vague. Establish pay pools in accordance with the comment and guidance previously provided in § 9901.304 (above). Publish the requirements for the pay pools concurrent with NSPS in the Federal Register. In other words, establish criteria for pay pools prior to implementing any of NSPS. Also, eliminate the uncertainties associated with (c) through (g) of § 9901.342, because these are vague as well.

Under § 9901.343 **Pay reduction based on unacceptable performance and/or conduct** on page 7583, DOD intends to reduce pay of up to 10%, unless it is a higher percentage through a pay band reduction. **Comment:** This is too harsh given the fact performance appraisals are undefined and exceedingly difficult to perform in an objective and fair manner. Also, the factoring in of demeanor, behavior and conduct into a performance appraisal makes the appraisal even more qualitative and subjective. Conduct and behavior must be addressed as a separate issue via disciplinary actions vice a performance appraisal. Any pay reduction based on performance must not be greater than 2 to 3%, even if it involves a lower pay band.

Under § 9901.352 **Setting pay upon reassignment** on page 7583 DOD states in (a) it “ . . . may be set anywhere within the assigned pay band when an employee is reassigned, either voluntarily or involuntarily, to a position in a comparable pay band.” **Comment:**

This is too vague. DOD must insure that pay is preserved rather than lost when an employee is reassigned, whether voluntarily or involuntarily, to a different pay band.

Under § 9901.372 **Creating initial pay ranges** on page 7584 "... will set ..."

Comment: This is too vague and indefinite. Establish pay bands in accordance with the comment and guidance previously provided in § 9901.212 **Pay Schedules and pay bands** (see above). Publish pay bands in the Federal Register for comments. Do not implement NSPS without publishing the pay bands.

Under § 9901.401 **Purpose** on page 7584 through 7585 DOD states in (5) "Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system:" **Comment:** Establish dates for the training and specific training needed. Also, publish the total costs associated with training all employees (supervisors, managers, employees, etc.). Within this pay for performance system, establish a means for 360 degree evaluation of managers and supervisors such that if a supervisor or manager does not get above a satisfactory on this element of the performance, she or he cannot be any better than satisfactory on her or his performance appraisal. Definition of 360-degree evaluation is where the supervisor and/manager's subordinate employees rate their bosses.

Under § 9901.406 **Setting and communicating performance expectations.**

Comment: Emphasis must be added such that employees mutually establish performance standards in conjunction with their respective supervisors or managers. This will insure a fair performance appraisals, insure buy in from employees and supervisors alike and supervisors will be able to understand the work performed by their subordinate personnel.

Under § 9901.409 **Rating and rewarding performance** on page 7586 DOD states in (a) "The NSPS performance management system will establish a multi-level rating system as described in the DoD implementing issuances." **Comment:** This is too vague. Establish performance management system and publish it in the Federal Register prior to implementing NSPS.

Under § 9901.514 **Non-citizen hiring** on page 7587 expresses the desire to hire non-citizens. **Comment:** Do not make provisions to hire non-citizens, because it is contrary to the basis for NSPS, National Security Personnel System. There are inherent security risks associated with foreign nationals, and DOD must recognize the drawback to hiring a foreign national. A non-citizen/foreign national cannot and should not hold any security clearance.

Under § 9901.605 **Competitive area** on page 7589 DOD states in (a) "The Department may establish a competitive area on the basis of one or more of the following considerations: (1) Geographical location(s); (2) Line(s) of business; (3) Product line(s); (4) Organizational unit(s); and (5) Funding line(s)." **Comment:** This is too vague and too broad, and is subject to abuse. The limitation(s) must be confined to specific business units identified by UIC (Unit Identification Code) and a reasonable geographic area such as within 100 miles or adjacent states not to exceed 150 mile.

Under § **9901.607 Retention standing** on page 7589 **Comment:** Reverse in (a)(3) and (a)(4), and make the rating of record contribution add to an employees length of service to the federal government.

Under § **9901.609 Reduction in force notices** on page 7589. **Comment:** Instead of a 60-day notice period before a RIF becomes effective use 120-day notice.

Under § **9901.610 Voluntary separation** on page 7589 through 7590. **Comment:** DOD shall make maximum use of voluntary separations prior to taking any RIF actions. Also, voluntary separations must provide economic incentive such as severance pay or \$25 to 50 thousand, whichever dollar figure is greater shall be used for the separation incentive.

Under § **9901.712 Mandatory removal offenses** on page 7591. **Comment:** This is too vague, DOD must identify all mandatory removal offense s, and publish them in the Federal Register prior to implementation of NSPS.

Under § **9901.714 Proposal notice** on page 7591. The notice is too short, both the 15 days and 5 days. **Comment:** Extend the notice period to 21 days and 15 days respectively.

Under § **9901.715 Opportunity to reply** on page 7591. The reply times of 10 and 5 days are too short. **Comment:** Extend the reply times to 15 and 10 days respectively, which may be extended by local management upon receipt of a request with good cause for the extension. Also, make the reply period run sequentially vice concurrently with the notice period. In other words, the reply period's clock would not start until the notice(s) period ends.

Under § **9901.802 Applicable legal standards and precedents** on page 7592 intends to apply the abridging standards imposed by NSPS. **Comment:** Continue to apply MSPB legal standards and case precedents, including the Douglas factors. These standards are needed for a real due process insured by an independent third party review.

Under § **9901.805 Coverage** on page 7592 DOD states in (c) appeals of suspensions of 14 days or less and other lesser disciplinary measures are not covered under this subpart . . . and may be grieved. **Comment:** Reduce the 14-day suspension to 5 days for coverage. In other words, force a 5-day suspension to the grievance procedure. Define lesser disciplinary offenses that are excluded. For example, letter of caution, letter of direction, etc. would be excluded; however, more severe discipline must no be excluded.

Under § **9901.806 Alternative dispute resolution** on page 7592. **Comment:** Make it a mandatory requirement for each agency (UIC level) to have an ombudsman. This will result in resolution of complaints at the agency level rather that seeking outside third party intervention and/or litigation in the courts.

Under § **9901.907 National Security Labor Relations Board** on page 7596, in particular sub§§ (a)(1) through (f)(2), pertain to the Secretary authority and his/her ability to appoint members to the Board. "The Board will establish procedures for the . . . of cases." "Decisions of the Board are final and binding." The Authority reviews Board decisions if requested within 15 days by a party. **Comment:** When one examines the totality of the circumstances, contained within this Federal Register publication of NSPS, it is clear that due process is eliminated because the Board is established by the Secretary, the Board establishes its own rules and regulations, and the Authority has very limited review of Board decisions. The FLRA and the National unions must have the power to appoint the recognized labor-management experts to the Board vice the Secretary. Decisions of the Board must not be final and binding, but subject to Judicial review upon appeal of a party. To have the Authority (FLRA) review Board decisions is a farce due to the limited authority and lack of Authority's power over the Board. In other words, establishing the Board and binding and gagging the Authority as currently proposed eliminate all due process. Furthermore, the Board must not and cannot go into effect until it [Board] like any other Federal Administrative Agency has put its rule and regulations into a written form and published via the Federal Register for public comments. Subsequently, the Board must establish a work force either via the use of contracted personnel or by hiring civil servants to handle ULPs (Unfair Labor Practices). This will include administrative law judges, attorneys, labor-management personnel, etc. Until the Board, its rules and regulations are published for public comments, and its complete support structure (i.e., all personnel) is in place, the Board must not operate. In the absence of a fully functional Board, the present Labor-Management Statute must remain in full force and effect. In other words, the FLRA must continue to perform its full statutory duties in accordance with existing laws, rules and regulations.

Under § **9901.908 Powers and duties of the Board** on page 7596 through 7597, in particular (a) through (c), are interesting. **Comment:** These apparent Board powers and duties must be held in abeyance, until the Board is fully functional. The comments above in § 9901.907 are germane here too, and must be completed fully before this proposed Board can function.

Under § **9901.910 Management rights** on page 7597 through 7598, in particular (a) through (i), violates too much of the existing Statutory authority afforded to the FLRA and established case law, both administrative and judicial case law. **Comment:** Maintain FLRA's existing laws, rules and regulations in order to continue some form of due process and to eliminate the high costs associated with the significant abridged changes proposed in this Federal Register for the proposed NSPS.

Under § **9901.914 Representation rights and duties** on pages 7598 through 7599, (a)(1) through (d)(5), formal discussion is severely constrained. **Comment:** Retain the present recognition of what constitutes a formal discussion. In other words, do not deviate from the FLRA's established criteria for a formal discussion and the Authority's case precedents.

Under § **9901.916 Unfair labor practices** on page 7600, NSPS proposal makes too significant a changes to ULPs. **Comment:** Retain the present recognition of what constitutes an Unfair Labor Practice . In other words, do not deviate from the FLRA's established criteria for an Unfair Labor Practice and the Authority's case precedents. The proposed NSPS changes eliminate due process, and reduce both management and labor unions' effectiveness.

Under § **9901.917 Duty to bargain and consult** on pages 7600 through 7601, (a) through (e), are too restrictive. **Comment:** Retain the present recognition of what is "bargain able" or negotiable and when it is appropriate to consult. In other words, do not deviate from the FLRA's established criteria for negotiation and consultation and the Authority's case precedents. The proposed NSPS changes eliminate due process, and reduce both management and labor unions' effectiveness.

Under § **9901.920 Negotiation impasses** on page 7601, (a) through (d), are inconsistent with real due process and too restrictive. **Comment:** Retain the present approach to handling impasses, retain an independent impasse panel to resolve negotiation issues. In other words, do not deviate from the FLRA's established criteria for an impasse panel and its appropriate functionality. The proposed NSPS changes eliminate due process, and reduce both management and labor unions' effectiveness. Furthermore, the proposed NSPS approach will lead to more litigation due to the extreme partiality exhibited.

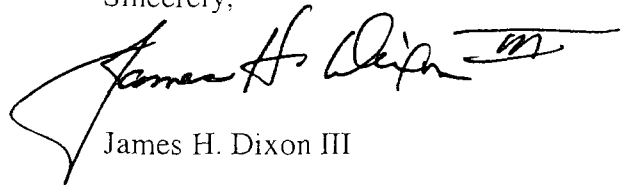
Under § **9901.924 Official time** on page 7603, (a) through (e), attempts to severely limit official time, which has a chilling effect on both due process and union representational duties. **Comment:** Retain the present and past practice for official time and keep union officials in a duty status for representational duties. Do not place artificial limits on the number of management representatives or union representatives, because it is not conducive to effective resolutions.

Under § **9901.926 Regulations of the board** on page 7603, DOD proposes to issue initial interim rules for operation of the Board. **Comment:** DOD must refrain from more denial of due process by attempting to issue rules, even interim, for the Board. The Board must perform this function, and propose its rules independently from DOD's undue influence. Until the Board publishes its rules for public comment in the Federal Register and gotten and addressed all comments, the Board cannot and must not function. The interim must be covered by the existing FLRA and its body of Labor-Management relation's authority as defined by the Statute and the Authority's published laws, rules and regulations. Once the Board has completed all prerequisites, including hiring personnel, then it can perform its duties as appropriate and defined by applicable laws, rules and regulations.

In closing, I reiterate (just like I told Mr. David Chu in Jacksonville, Florida prior to the birth and publication of NSPS – the existing personnel system is not broken), there are sufficient and effective tools that management can use to hire, assign work, discipline employees, terminate employees, promote employees, negotiate, etc. without creating a new personnel system. The natural tensions that exist between management and the labor unions are essential for the proper operation of federal agencies, who employee personnel

to get the tasks accomplished. These relations insure the required due process exists. I cannot believe that Congress was duped into authorizing NSPS, and that DOD has taken such extreme steps to destroy the federal workers' job dedication and patriotism. No doubt DOD's proposed changes will **cost Billions of tax payers' dollars** over 2 to 3 years, at a time when DOD can ill afford to abuse and/or waste its financial resources. Furthermore, these extreme NSPS changes will cost the government thousands of current and well-trained employees (non-supervisory, supervisory, and managerial employees alike). The illusion of attracting new and well qualified employees along by rewarding and paying for performance will not materialize as pitched by senior DOD personnel such as Mr. Chu. To the contrary, it is believed that newly hired employees will work for DOD for brief periods of time (2 to 4 years), immediately after graduating from college, until they get some work experience and can work for the private sector. In the private sector, employees get stock options and pay for performance, and this remuneration makes the risks and consequences of being an at-will-employee somewhat more tolerable. However, within the federal sector, there is no such compensation to offset the risks and consequences of being an at-will-employee. As a matter of fact, there can be no stock options in the federal sector. I hope my comments and constructive inputs will receive serious consideration and be fully incorporated into the NSPS. I look forward to a written response addressing the actions taken regarding my comments and inputs.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Dixon III", with a stylized flourish at the end.

James H. Dixon III

~~cc~~