

General Comments about the Proposed Rule.

Public laws supporting Department of Defense efforts to establish the National Security Personnel System (NSPS) are largely permissive in nature; they do not require or demand a new system. Undoubtedly reflecting the concerns of the many stakeholders, the laws that speak to the NSPS are full of restrictions and caveats.

So it is inexplicable why there is so much changing being proposed. The present system, which has served the United States very well since its inception, has done a very good job of providing a workable and fair framework for federal employment and has been remarkably successful in avoiding all the pitfalls of the spoils system while still allowing plenty of freedom and flexibility for getting the job done, even as the jobs evolve.

And the one major failure of the present system – the Hatch provisions that curtail a federal employee's rights in participating in the electoral process, in effect making them second-class citizens – are not addressed and the situation not improved at all in the present process.

Instead, all the changes tend to be of the type that turn back the clock and allow the spoils system to be reinstated. There are too many ways for the new NSPS manager to circumvent the controls and reward friends and “yes-men” rather than those who truly deserve it.

All this is happening because right now managers don't exercise the rights they have to make changes to their workforce. They don't discipline properly, they don't hire the individual best qualified for the job (hiring vets and protected classes is easier), and they don't delegate and give out assignments properly. Rather than correct this easily correctable situation, the DoD is re-writing the rules. But this problem still won't be corrected.

Individuals are attracted to the federal service, not because of the pay, but because of the decidedly non-lucrative predictability of their job environment. The new rules do not promise more pay, so the same kinds of individuals will continue to be attracted to the workforce. The workforce will not become transformed; it will only be made more fearful.

Finally, the proposed rule, as published in the Federal Register, is woefully inadequate for making comments on the new system. For instance, a “possible rating methodology” is provided for illustrative purposes (p. 7560). It's impossible to evaluate something that is so vague. We need a rule that is much more specific so we can make substantive comments.

DoD will have the ability to leverage its new power to pay employees less, unfairly.

DoD will be able to take funds earmarked by Congress for employee pay raises (across-the-board pay increases) and use them elsewhere, as it sees fit, just as it already does with its awards money.

DoD will set local market supplements rather than have them established by a federal-wide entity. It may find that it can “get away with” a lower supplement (if, for instance, its employees are older and less likely to leave their job). Anyway, having DoD set locality pay is duplicative of the federal system and a waste of taxpayers' money.

Agencies and supervisors will be under pressure by DoD to limit employee high ratings, so that money can be recouped, saved, and returned to apply to other requirements. Supervisors will find themselves under significant pressure from employees when it becomes completely understood that unimportant jobs contribute less to the mission and therefore earn their incumbent a lower rating for pay purposes. Employees will only want high-visibility jobs.

Pay pools will be another way to subvert the role of the supervisor. The pay pool manager will be able to change the supervisor's determination of rating in order to bring a consistency to the pay pool distribution.

In the proposed rule, no mention is made of how the employee will learn of his/her standing in the greater scheme of things. In a performance-based pay system, it is crucial that employees know who the "winners" are and who the "losers" so they can pattern their behavior on the winners. Otherwise there is no rational basis and the result is chaos. The system is also flawed in that smart managers will quickly determine that employees can be paid one-time bonuses rather than pay raises (the compensation that keeps on giving), such that, over the years, the agency's total payroll costs can be kept relatively low (except of course perhaps for a lucky few in the in-crowd).

The work environment will become a less friendly place.

Employees will compete with one another for management's attention and approval in order to garner as large a share of the finite amount of available pay increase funds.

Teamwork will become harder to achieve.

Employees will become less likely to question management and its decisions, developing a yes-man culture in DoD offices.

Even conduct and behavior will come under management scrutiny, further eroding diversity of opinion and openness about the wisdom of management decisions (not to mention legalities, health and safety issues, and simple harassment).

Since DoD is controlled by Presidential appointees, criticism of the administration in power will ultimately be seen as a matter of conduct, behavior, and performance, and that will have a deadening effect on employees' exercise of First Amendment rights. This is not a significant problem under the present method of determining pay.

An agency will be able to hire off the street in a noncompetitive fashion and these hires may be converted to an appointment in the competitive service, de facto allowing patronage to return to the federal workforce.

Involuntary assignments (deployments) to other parts of the world, including war zones, are no possible with little or no notice to the employee. Employees are not in the military and should not be subject to such actions.

Seniority, a prime indicator of loyalty, will no longer determine order of RIF.

The performance rating or record will replace seniority as one of the prime deciders of "bump" and "retreat" actions during a Reduction-in-Force. But seniority may be the better deal, since it indicates loyalty to the job.

Also, RIFs may happen for a larger number of reasons than presently (which is mainly for lack of work or lack of funds).