

12 March 2005

To: United States of America Department of Defense (DoD) and Office of Personnel Management (OPM) regarding Public Comment on implementation of a proposed new set of 5 CFR Chapter XCIX Regulations called the "National Security Personnel System" (NSPS)

Subject: Review and comment on the Proposed NSPS regulations

I have read the proposed regulations, and these are my comments and recommendations, submitted at your request.


Background

I am a 20+ year DoD FERS employee, GS-13 with 1,800 hours of sick leave on the books, and a good track record on a typical career path at Puget Sound Naval Shipyard (PSNS) Bremerton WA. I started as a nuclear engineer, then worked as a 1st line engineering supervisor, and for the last 11 years have worked as a production manager on various aircraft carrier overhauls. My current job classification is GS-13-1152 supervisory production controller.

The proposed regulations are misguided in many respects and will not lead to the intended performance results. Before getting into the specifics, I want to refute some of the rhetoric in the regulation front matter regarding 9-11 and the alleged need to transform the DoD's civilians into an agile group for the 21st century. To maintain perspective, let us not forget, this group as organized was good enough for the Cold War. Moving forward a few years, on 9-11 I was on my way to work along with 7,000 other PSNS employees. The little group I work in was setting up to perform several jobs in San Diego. One co-worker was on his way to Sea-Tac airport, and called me on his cell phone and decided that since the airport was shut down, he would DRIVE his car to San Diego instead, and he did. He drove straight through in 19 hours. Those of us who made it through the security checks were told we could go home that day, but few did. We were told we did not need to report to work the next day, and most of us did anyway. Regarding being ready to fight: The Navy was ready to fight. DoD civilians have been maintaining a high degree of readiness for many years under what is described as an outdated system according to the NSPS public relations blitz. There is no readiness or flexibility problem under the current H.R. system. Responding to emergencies, including travel and work in dangerous foreign countries on short notice, working around the clock, loosing annual leave most years (because there is no time to use it) is a routine part of our work, and the vast majority the people at PSNS are proud and motivated to do it.

The NSPS front matter describes the current system as "An outdated one-size fits all system." Upon reading the proposed regulations it is readily apparent that the current system with "15 sizes" GS-1 through GS-15 is to be replaced with a "3 sizes" system. Pay bands 1, 2, and 3. In fact NSPS takes a 15-size system and replaces it with a "3 sizes fit all" system.

Errors and Deficiencies by CFR Section

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Thanks 

1. 5 CFR XCIX SECTION 9901.103: *Mandatory Removal Offense* (MRO) is not defined at all. Mandatory Removal Offenses should be clearly defined now, in order to comply with *E.O. 12988 Civil Justice Reform*. The proposed definition does not meet the requirement to clearly describe the effect on other regulation or federal law when it provides a placeholder for a definition of Mandatory Removal Offense, but not the definition itself. Does Federal Law provide for due process for removal from a job with reduced arbitration rights? If so, Mandatory Removal Offenses should be defined in this implementing regulation. Saying “we will tell you later” is not a definition.

2. 5 CFR XCIX SECTION 9901.103: *Rating of Record* is not adequately defined to assure a Rating of Record is fair, and the employee has a chance to perform favorably under the rating factors for the assigned work. The proposed regulation allows for an expedient employee rating: “*As needed to reflect a substantial and sustained change in the employees performance since the last rating of record as provided in DoD implementing issuances.*”

Under this definition there is no requirement to identify an employee’s weaknesses and give them a chance to improve performance. This is in direct conflict with language throughout the regulation assuring all ratings will be fair, and rating standards will be objective, and supervisors and employees will collaborate on performance goals. With the proposed definition of Rating of Record, DoD can issue an unsatisfactory rating of record on an employee at any time and begin termination. This section should be revised to describe in detail what the “Implementing Issuances” are so the public can decide if the “Implementing Issuances” serve the national interest. Throughout NSPS regulations the latest Rating of Record carries much more weight than before. It is crucial to define how Rating of Record procedure will remain fair and objective. Regulations should be tested to determine both their potential positive effect when administered wisely, and the potential negative effect when administered carelessly or with a nonprofessional motive

3. 5 CFR XCIX SECTION 9901.356 PAY ADMINISTRATION MISCELLANEOUS: This section is another empty place holder allowing no meaningful public review of changes to overtime, comp-time, premium pay, criminal investigator hazardous duty pay, hazard premium, and holiday pay with the explanation that the rules will come later, after the public comment period has closed in the form of “Implementing Issuances.” It is hard to believe the Implementing Issuances are not already planned. What are the “Implementing Issuances?” Public opinion will consider this a sham public disclosure without seeing the “Implementing Issuances.” Why not call them “The Rules” instead of “Implementing Issuances.” It is inconceivable DoD would propose voiding current regulations and agreements in these areas if DoD did not have something new in mind. What are the proposed “Implementing Issuances” and when will they be revealed?

4. 5 CFR XCIX SECTION C 9901.341-9901.343 PERFORMANCE BASED PAY: **The regulations will fail their promise of setting precise goals and measuring/rewarding performance against them:** Our work is about 50% planned and 50% emergency. There is a lack of uniformity to assignment such as the duration allowed, the difficulty, the willingness of the ships officers to assist and be disrupted for work, the available budget, the overtime constraints, the people assigned to crews, the availability of materials, the existence of hidden damage. All these factors change with every job a manager, foreman, trades person, or engineer

faces. No matter what a person's job is, they are likely to have 10 to 20 distinct assignments a year. Of these assignments a person will report to a number of different supervisors. At the top of the PSNS management, most department heads are naval officers who rotate about every 2-3 years, and don't know us very well for most of their tour of duty. These factors guarantee that there is **no practical way to set and measure goals**, and even if we did, it would detract from our ability to respond to emergencies. Instead of running and rounding up drawings, bolts, gaskets, pipe, weld-rod, plane tickets, people, we will have to put that aside and set goals for everyone on the team, document these goals and measure performance against them. If we do this necessary step to be fair under NSPS we lose precisely the agility NSPS proposes to bring to the DoD workforce.

From personal experience, 1 out of 4 annual evaluation I have received in 20 years was actually done by the person I worked for the majority of the rating period. Rating factors were rarely accurate, and the position description was rarely accurate, and many years I had no rating. My experience is typical. The point is we have failed to achieve the discipline to keep the current rating system accurate. It is highly unlikely we will keep a much more labor-intensive system accurate. DoD should assume the new system will not be kept accurate. One may say that accuracy proved to be unimportant under the old system, so why would it be a factor under NSPS? The difference is the old system treated most people fairly on autopilot, and people knew what to expect from it even when it was neglected. Under NSPS people who get a bad performance rating will demand to have very prescriptive and documented duties before doing any work. With the combined failure of management to maintain NSPS, and with the opposing views of employees and management on performance the system is likely to result in a skyrocketing number of disputes, and skyrocketing bad feelings between co-workers and between employee-supervisor. Our effectiveness relies on Team Work. Under NSPS it is every man and woman for themselves. We will care about our own batting average, not on how well the team does. How has DoD planned for this shift to individual measurement, and how does DoD plan to implement a much more cumbersome performance measurement system when the current simple system is not properly maintained?

The regulations incorrectly assume government organizations tend toward a meritocracy, drawing a parallel with the private sector. It is a bad assumption to suppose that at most levels in DoD there is anything like a profit motive or a bottom line to measure individual performance. I read in today's newspaper that the federal government ran up a \$120 billion deficit for the month of February 2005. Most of this is in DoD. Were DoD a real business the chairman, and board would be removed from office (a MRO?), or all the corporations' assets would be in hock, and we would be issuing bonds at 20% with a steep face value discount. But we all know DoD is not a business, it is the United States Government doing what it needs to do while keeping cost as low as possible. This is also true at the micro level. 20 people working a ship repair will always be judged primarily on schedule and quality/safety, with cost an important 3rd rating factor.

One would suppose that on this basis, employees who delivered ships on time, with high quality work, working the people hard while treating them well, and who kept expenses low would be rewarded with advancement so they could reinforce these goals. This is not always the case... Other non-merit supervisor preferences, even personal biases tend to have significant weight in

advancement and annual ratings. However, under the current regulations, these factors have little effect on within-grade promotions. The proposed regulations do not and cannot establish a fundamental bottom line profit motive to anchor a performance-based system within DoD. Under NSPS merit is replaced with management prerogative under the false assumption there is a bottom line the managers are accountable to. The proposed regulations will make regular “getting better at one’s job” pay increases (step increases) subject to the kind of favoritism which exists today in selection for promotion. It is a mistake for DoD to assume employees will accept with good attitude the transformation of Step Increases to a system ripe for favoritism.

5. 5 CFR SUBPART F 9901.601- 9901.609 WORKFORCE SHAPING: DoD will lose its attractiveness to retain a skilled workforce. DoD does not offer stock options, does not pay high salaries for white collar or blue collar or managerial employees, and DoD does not offer a means for “High Performers” to reach board rooms and generous retirement packages compared to the private sector. So what has DoD offered that has made it a successful organization for the last 50 years? It is predictable employment, which rewards employee loyalty, and the prospect of some kind of retirement pay. Under this implicit contract, the 10-year employee keeps working hard applying his/her experience and, DoD’s end of the bargain is to continue that employment unless a massive layoff was required. Under NSPS the new ‘non disruptive’ RIF rules erase the stability and predictability which is the primary attraction for government employment in the first place. Under NSPS what is the motivation for a person to stay in DoD after putting in 3-5 years and getting some experience that can be marketed in the for-profit world? Once the pay-bands are published it will be readily apparent there is none. Under the current system DoD successfully recruits college graduates at less pay than the private sector offers, because DoD offers stable employment. If DoD nullifies the stable employment features it will need to pay more to hire and retain a skilled workforce. What does DoD expect it will need to pay in increased salaries and incentives to retain a skilled workforce in the absence of the employment stability protections of the current H.R. system?

I need to dwell on a couple insensitive and incorrect principals supposed in the NSPS regulations: (1) That length of service is not a significant ‘merit factor.’ Working faithfully for 10, 15, 20, 25 years has “merit”. It means you have experience, and you are reliable enough to stick around. (2) To publish a RIF policy that removes people’s retreat rights in the name of avoiding “disruption” is beyond one sided. A family man 45 years old with 25 years of service getting RIF’d because he has no retreat rights experiences more “disruption” (like a potential mortgage foreclosure) than DoD would under the current system, which provides for retreat rights. A 3-year employee experiences less “disruption” than a 25-year employee, and the RIF payout to DoD for the 3-year employee is less.

The new provisions for RIFs suggest a program aimed at RIFing employees prior to reaching retirement age for financial reasons. Young people are likely to perceive this new power as an axe always hanging over their heads, and make career choices with that in mind, and leave DoD as soon as a better job comes along. Add to this much of DoD’s work is highly specialized, and not marketable in the private sector. Staying in DoD in a narrow profession under the threat of a targeted RIF pool will inspire people to leave DoD before they get stuck. With respect to this part of the regulation I would like an answer to this question: What statistical research on retention of employees, especially “High Performing Employees” has DoD done that supports

the conclusion that there is a problem retaining or recruiting “High Performing Individuals?”
How does DoD employee retention compare to comparable private sector employment?

6. 5 CFR XCIX SUBPART F 9901.101- 108 GENERAL PROVISIONS: What is the basis for excluding DoD employees in the Senior Executive Service (SES) from regulations designed to encourage “High Performance” in other employees? What is it about rank and file General Schedule and Wage Grade employee performance and SES employee performance that shows that the top leadership positions need no H.R. changes? What statistics have DoD used to support excluding SES employees? If there was no such analysis, how was the decision to exclude SES employees arrived at?

7. 5 CFR XCIX Subpart I 9901.901 through 9901.908: LABOR MANAGEMENT RELATIONS:

Unions are not all bad, and Management is not always right. Government unions only have a little power as things are today. What they can do is nag about the little things, and they can take some issues to court. We find they turn out to be right in the eyes of the court in many cases. A few managers out there would admit the very union rep they were arguing with had a point. I’ve had tunnel vision on an individual, or group’s performance, which I thought was lagging. Usually in retrospect, I find I have exaggerated the problem, and I have found the union to be a good buffer to help me keep my cool and remain objective. I have never found their influence to be negative or a hindrance. On the other hand, I have worked for a boss who was a severe alcoholic with impaired judgment, who inflicted vindictive treatment on good people, had questionable personal time keeping practices, and promoted special treatment for buddies like fishing trips during working hours. This is an unusual example but it makes the case for keeping an empowered voice to challenge management. Union and rank-and-file workers are as patriotic as management. DoD can assume that enhanced managerial powers will be abused as or more often than they will be used to reward the deserving.

8. 5 CFR XCIX SUBPART C

No matter where you draw the pay bands you will upset the current power structure. If DoD equates a GS-14 and a GS-15, who is the boss? If a 1st line supervisor GS-13 is equated with an employee GS-12 his/her standing as a supervisor is diminished. What is the NSPS plan to assure that 1st line supervisors who will be equated to the same pay band as their subordinates retain authority?

I have known people who were great technical experts or great craftsmen who were not interested in or inclined toward management positions. But these people take management jobs to secure higher pay or recognition. If NSPS can provide a means to reward a few exceptional performers, this is something DoD employees would accept and it would be better overall for DoD. A means to move an exceptional technical expert to the same pay grade as his/her supervisor would provide for this.

9. 5 CFR XCIX Subpart F 9901.601-611 WORKFORCE SHAPING: There is no consideration in NSPS for security risks that will be inherent in a reduced employer commitment to the employees. NSPS regulations are slanted toward giving DoD greater power to change the workforce including RIF and reduction in pay. These changes have not taken into account the

possible effect on reducing employee loyalty to DoD. Employees who will be absorbed into NSPS and pay banded are more easily RIF'd, and denied other benefits. The current H.R. system pays a higher premium on long-term loyalty to DoD than does the NSPS system. How has DoD evaluated and what conclusions has DoD drawn with respect to increased probability of RIF'd DoD employees experiencing financial hardship, which is considered a security risk?

10. 5 CFR XCIX Subpart G and H 9901.701-717 and 9901.801-810 ADVERSE ACTIONS and APPEALS under NSPS. These sections strengthen DoD's ability to take adverse action on employees, and reduce employee's rights for appeals and increase the burden of proof on the employee before a hearing at MSPB will be allowed. These regulation changes seem unnecessary. Why are the motivational enhancements of "pay banding" and "merit-based pay" and other 21st century features of NSPS not enough to assure a better DoD workforce without granting additional punitive powers? Why not try positive motivation enhancements (the Carrot) first, and leave The Stick enhancements alone, at least for a few years? If the authors of these rules believe their own arguments about the power of positive reinforcement enhancements, great improvements can be achieved with those changes alone.

RECOMMENDATIONS:

- (1) Go forward with making annual performance bonuses meaningful in size, and based on a more accurate H.R. tracking of actual performance, even if regular step increases need to be reduced to produce the money for it.
- (2) Change what are now time driven step increases to a system of 'you get a step when you have earned it', and do not limit this to a once a year event.
- (3) Go forward with regulations that allow exceptional technical experts to be paid on the next higher GS scale.
- (4) Do not adopt any other proposed new NSPS regulations.

I would appreciate feedback on these comments & recommendations.

Sincerely,



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