Comments on Proposed NSPS Regulations NPS-2005-001, RIN 3206-AK76/0790-AH82

Supplementary Information Comments: Page 7552: The Case for Action

In this section, Secretary of Defense Donald Rumsfield is quoted as follows: "All the high tech weapons in the world will not transform the U. S. Armed Forces unless we transform the way we think, the way we train, the way we exercise and the way we fight." This statement and the stated desire to "maintain our Nation's defense capability" are apparently the basis for putting forth a personnel system designed to facilitate war fighting but applicable to civilian employees without duties directly associated with National Security. This is political exploitation of the tragedy of September 11 to force into law a regressive personnel system under the assumption that federal civilian employees will fail to understand our critical mission if not placed under stern control. When have DoD civilian employees EVER compromised national security to necessitate this kind of personnel system?! What a tragedy that our patriotic service and our oath to defend "the Constitution of the United States against all enemies, foreign and domestic" is so little valued and so cheapened by this proposed regulation.

General Comment Applicable to 9901.101-9901.928

This proposed rule gives a sense of what is to come (i.e. the curtailment of employee rights), but the crafting of the document is largely unfinished and contains none of the detail that would enable an employee to compare how he stands now with what his position will be under the new system. In fact, the statement that something "may "be true is used repeatedly rather than clearly expressing what "will" be true. The word "may" is used over 300 times in this document, and leads one to believe that management-by-flip-of-coin will prevail. All of the real application guidance is yet to be crafted, and will be set forth in "implementing issuances" at a future date. In plain language, this proposed rule has been set out for comment with the actual implementation details missing, and most of the actual rule will be written after the promulgation process is complete. This is a complete perversion of the promulgation process.

Comments on Subpart A:

9901.101: Purpose

This section provides that the non-uniformed workforce "can be easily sized, shaped, and deployed to meet changing mission requirements". Deployment to any place on the globe will be standard practice although this is not a condition under which civilian employees accepted their jobs. The Secretary of Defense and OPM have, in effect, declared themselves supreme managers over those who have directed the civilian missions so far, but with lack of real knowledge of what these missions are, lack of qualifications to determine what talents are needed to accomplish them, and what resources are necessary to execute the missions. This is overconfidence at its most absurd level, and is a preamble to mission failure.

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9901.102: Eligibility and Coverage

Eligibility for NSPS is for all DoD employees regardless of organization, and the system is to be uniformly applicable to all. The supposition that uniform personnel regulations are desirable because the Army is like the Navy is like the Air Force is amazing. Morphing all of these organizations into a single Secretary-of Defense-controlled personnel system is costly and its one-size-fits-all assumption is a gross oversimplification. When one size fits all, it usually doesn't fit anyone.

9901.108: Program Evaluation

The DoD plans to carry out evaluations via procedures as yet undefined. Instead of this massive phase-in of the whole DoD, it would make sense to try one spiral and then evaluate the outcome with an After Action Review (AAR) before implementing the program further. The proposed wholesale change without regard for impacts of a test case invites potential chaos within all branches of the DoD. With all branches of the DoD in chaos, one can fear that the national security vulnerability will increase.

Comments on Subpart B

9901.211-212 Career Groups, Pay Schedules and Pay Bands

The DoD is given authority to replace the GS and WG pay systems with a new system, as yet completely undefined. It "may" involve pay systems that apply to subgroups of related occupations, but how this might be administered is not even suggested. Table 1 on page 7559 purports to partially define the system, but the drawing has less detail than would be expected from a Middle School report. The intelligence of the rule writers who have prepared this document is likely high, thus one tends to conclude that the incomplete job of setting it forth is not due to lack of ability. Likely intent is to gradually introduce punitive "implementing issuances" so that the patriotic workforce subjected to their provisions are blindsided and more helpless than as if the details were spelled out now in the Federal Register.

9901.221 Classification Requirements

Specific classification standards and position descriptions are now replaced with a "streamlined method of classifying positions". In actuality, the present detailed position descriptions enable managers to evaluate employees on the basis of performance against actual job requirements instead of against broad general statements. Both classification requirements and the proposed pay bands are not defined in this rule, but the move to less specificity (absent any details) lends itself to paying the employee what you want to pay him (a) based on funds available versus money actually earned for good performance and (b) whether you like the employee or support his political views. All DoD employees took an oath, upon hiring, to take our obligation to support the Constitution freely and to faithfully discharge all duties well and faithfully. To cheapen our service in this manner is unconscionable.

Comments on Subpart C

9901.311-322

This collection of paragraphs now removes the setting of employees' wages from Congress and places it under the DoD in the hands of the Secretary of Defense. In this way, the checks and balances that have always been a part of our Republic will be totally cast aside, and salary administration will be vulnerable to extensive abuse. Hopefully, any given Secretary of Defense will be an expert at national defense, but to accept that he is qualified for wage administration is folly.

9901.343 Pay Reduction Based on Unacceptable Performance and/or Conduct

This provision allows a supervisor to reduce an employee's pay for unacceptable performance or conduct with no detail as to what accountability the supervisor has or how the employee can defend himself. Since classification of employees is now to be "streamlined", and performance/conduct will be rated against some broad, less specific guidelines, this suggests a swift system that is likely to lead to abuses. Experience in the private sector comes to mind, where the employee who paid for his manager's ski pass but did little work was judged to have good conduct, and the one who simply did his job well was judged to have conducted himself poorly with a resulting cut in pay.

Comments on Subpart D

9901.409(g) Purpose

There are no details for procedures for an employee to challenge a rating, just a statement that this will be forthcoming in an "implementing issuance". As this provision stands now, it is extremely vulnerable to abuse from anyone who wants to lower the rate of a less favored employee to reward a personal friend. And any supervisor who wishes to earn kudos for budgetary control can adjust his budget by creative employee rating.

Comments on Subpart E

9901.512 Probationary Periods

According to this section, anyone who accepts a developmental assignment may be (again, potential for subjective abuse) placed on a probation of any length. Probationary periods always have the potential of culminating in termination. Developmental assignments have usually been given to high performers as cross training for potential promotion. This provision of the rule asks a high performer to learn cross-skills (which benefit the organization as well as the employee) at the potential peril of his job. This provision shows how little the Secretary of Defense places on his patriotic "human capital".

Comments on Subpart F

9901.607-608 (Sections Relating to Reductions in Force)

These sections are more confusing than informative. Based on the loose definition of "competitive group" it is difficult to understand what will happen on an individual basis under a RIF. Current procedures are straightforward and fair. This appears to allow a situation where a long term, high performer with skills in multiple areas is RIFed because he is assigned to a single competitive group of those for which he is qualified, while a less senior person in another competitive group (with lesser depth of experience) is retained.

Comments on Subpart G

9901.712 Mandatory Removal Offenses

The Secretary of Defense has "sole, exclusive and unreviewable discretion" to issue and change a list of offenses that impact national security and these can change at will. As it says, the offenses are unreviewable. This language is more applicable to a police state than a Democracy. Federal employees are being viewed as potential "enemy combatants". This is shameful.

9901.715 Opportunity to Reply

Employees will only get 15 days notice if they are the objects of an adverse action, with 10 days to submit a proposal letter. Most DoD employees are law-abiding citizens who don't even know a defense lawyer. While a drawn-out process is in no one's best interest, the time constraint set forth in this rule essentially assures that the accused employee cannot defend himself.

Comments on Section H

9901.801-810

These paragraphs need to be specified in much more detail, and frankly need to be reviewed by some non-partisan attorneys in order to sort out all the implications. As a non-legal professional, what I tend to glean from the text is that appeal decisions will be made without any sort of hearing. It appears that any MSPB judge can issue his decision essentially in secret, without regard for democratic process and without affording the accused the right to have his case re-examined in a United States Court. Again, the dedicated federal civilian employee is considered a criminal without right to due process. History documents something like this in the late 1930s, although not in the United States. It's frightening to see history repeat itself, but here this time.

Comments on Section I

The entire section I is an absolute assault on collective bargaining and should never have even been included in this rule. For the purveyors of this travesty to have proudly published this in a legal document in the United States of America shows how far from democracy we have stumbled. The majority of changes here categorize most all

issues as "management rights" without input from the people who will be affected by the decisions. There will be no advance notice of the changes and no input at all from the employees. As federal employees, we have been hearing a great deal about synergy, i.e. the melding of managerial and employee thought to produce a result greater than the sum of its parts. It is a subject included in almost every Town Hall Meeting by every visiting General. It is the subject included in almost all leadership-training programs. This rule has just destroyed synergy, to replace it with autocracy.

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