

March 15, 2005

Program Executive Office
National Security Personnel System
Attn: Bradley B. Bunn
1400 Key Boulevard
Suite B-200
Arlington, VA 22209-5144

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

Dear Mr. Bunn,

Contained herein are my comments.

Supplemental pg.7552

The long delay in providing the proposed NSPS (herein also referred to as “proposal”), the short time frame allowed for its review and the lack of detail provided therein allows this review to be limited to primarily addressing the philosophy apparent and making comments based on the presumption of what is proposed or will actually be implemented. The proposal’s text contains so many references to “may” and “implementing issuances” that it is hard to ascertain what is proposed. The “mays” allow for anything to be possible without any bounds being set. Realizing the significant implications of this proposal there is insufficient detail to restrain executive power and allow for proper legislative oversight. A time extension of 30 days is requested to address “what ifs” because there will be no further public review and comment period and given the timeframe all the possibilities / “flexibilities” could not be addressed.

Supplemental pg.7553

There is comment that the current civil service system does not meet the needs of the “21st century national security environment”. After review of the proposed regulation, it is apparent that the proposal has nothing to do with national security. It is readily apparent that the proposal negates decades of advancements in management science and what it takes to lead people. This negates common understanding of the benefits of using leadership to develop highly motivated individuals and teams and instead suggests old management styles of authoritarian control. Further, it suggests a management style of self-reliance making some resources unavailable, such as the unions, which in some cases provide the only input management gets from its workers in the trenches. What of “Synergy”? Also, instead of seeking partnership with employees this proposal seeks division.

The proposal suggests civilians should “take more risk”. Does this mean that there will be a reward in it or that there will be more risk if doing your job turns out to offend your boss, or if your new ideas to improve processes offends someone, or if your reporting of waste, fraud and abuse isn’t considered part of the teamwork management envisioned? Since the settlement of differences procedures in the proposed regulations are either not allowed, restricted or controlled solely by management, since appeal rights are reduced and since allowance for union representation is significantly restricted I agree the employees will be taking more risk- risk of losing their jobs.

The proposal suggests managers can’t use “civilian employees effectively” and refers to the use of contractors or military. Contractors can be bound to perform through contractual agreement and the military can be ordered. Let’s consider Iraq. You have contractors almost across the board making more than civilian DOD workers (while their companies profit) and you have the military probably making less than contractors and civilians but upholding the defense of this country as they signed on to do. So to use the civilians more effectively you could deny them some rights such that they take orders as the military and no effective objection can be lodged. This requires you to empower managers with greater rights; reduce appeal rights of the workers and mitigate opposition from unions. If done effectively by NSPS you can order civilians around like the military and pay them less than the contractors. That kind of empowerment and denial of rights as proposed in this regulation is contrary to human rights.

The proposal talks of providing “greater opportunities for career growth and mobility within the Department”. This appears true since management under this proposal will be able to dictate your career growth and mobility. The career an employee ends up in under the proposed less rigid classification and position description and the ultimate work site the employee ends up at utilizing the proposed flexibility might just have been arrived at with little input from the employee.

Supplemental pg.7555

There is no mistaking what “workforce can be easily sized, shaped, and deployed to meet changing mission requirements.” means. This is about telling civilians that you go where we tell you to go or forfeit your job. This is wrong and amounts to an illegal draft and/or bypassing of legitimate reduction in force regulations.

Supplemental pg.7557-7558

The NSPS legislation provides that not only initial but also subsequent implementing regulations/issuances are to be ‘jointly’ issued. DoD is proposing violating terms of the NSPS legislation at 9902(a). Here ant throughout the proposal deference is given to the DoD to dictate not collaborate with either the OPM or employee representatives. This so-called collaborative process is in violation of the requirements of Title XI, Subtitle A, Chapter 99, Subchapter 9902(a).

What is apparent is that DoD and OPM collaborated to issue sufficiently vague regulations to assure limited review. This as OPM Director James recommended in her 9

March 2004 correspondence with Secretary Rumsfeld after a firestorm of opposition regarding concepts DOD presented in February of 2004. The intentions established by the DoD February 2004 concept paper and these proposed regulations are the same. There is nothing to indicate after having focus groups, working groups and union collaboration that DoD did other than listen and then go back to the original plan. Nothing here explains how concerns were addressed.

On page 7557 of the supplemental under the heading "Continuing Collaboration," the continuing collaboration has the effect of eliminating impact and implementation bargaining over procedures, appropriate arrangements and reasonable accommodations for affected employees. This is in direct opposition to 5 USC Chapter 9902, which ensures collective bargaining rights. National Consultation exists in present law under 5 USC Chapter 71 and does not attempt to take the place of bargaining at the level of recognition, where impacts are felt and best understood. The elimination of impact and implementation bargaining leaves employees without an orderly and accountable process to participate in the shaping of good workplace procedures. It leaves no means to enforce even the protected provisions contained in Chapters 2301, 2302 and other remaining applicable government-wide laws and regulations. These laws were meant to protect employees from certain personal prejudices, arbitrary and capricious decisions that, when inflicted upon employees, work against rather than advance mission requirements.

Supplemental pg.7558

DOD intends to use "broad occupational career groups" to serve as the basis for classification and pay. Who will determine that criteria and how will it be fairly and consistently administered, to avoid the obvious potential for selection favoritism and rampant abuse by biased supervisors and managers? The proposal will water down the specific qualifications and worth of many employees and allow for under or over payment based on more subjective criteria. DoD must not compromise the merit system principle of equal pay for work of equal value (5 U.S.C. 2301(3)) which in this proposal is compromised.

Supplemental pg.7559

DoD's proposal to a large extent mirrors the DHS's Final Human Resource regulations only DoD's proposals are more restrictive of employee and union rights. What is proposed leads to a duplication of the functions of the U.S. Office of Personnel Management's classification function among others, the Federal Labor Relations Authority and other Federal departments that determine pay comparability and locality pay. The cost to train and maintain a new classification cadre while leaving others in place is a redundancy and a waste of taxpayer dollars.

Supplemental pg 7559-7561

The fact that overall departmental pay will remain the same in the aggregate will still hurt individuals and it is indicative that the pay for performance concept isn't wholly

supported. If everyone becomes a top-notch employee everyone gets the same but the pay pool to draw from doesn't grow and an employee would be without the current promotion prestige etc. Further, the amounts available in a pay pool are dependent upon what is left after the level above has received its shares (The question is will it be its fair shares?) establishing a trickling down effect.

Under the current system, there has been use of a distribution or quota regarding ratings and in defense of that it said that all employees can't be that good. There is nothing in this regulation preventing quotas and thus denying merit principles. For reasons of pay, the relative value placed on performance ratings is in shares assigned. The example given shows an overlap in shares where a lesser performer can actually receive equal shares thus equal pay. This is contrary to merit principles.

When labor market indexes determine that there is no money available to be applied to a given performance pay pool, this will translate to little or no pay increases to all employees, separate and apart from how well or how poorly they perform. How is that considered an incentive or motivation to perform? Again, how and why should DoD make such a determination since those already skilled in and responsible for these determinations are in other parts of government? Is this a means to under fund a certain labor pool thus reduce retention rates and ultimately lead to a base/facility closure?

Supplemental pg 7560

Being in the right place at the right time or being favored in what you are assigned versus someone else comes to mind with "Other individual pay adjustments may be granted by DoD". DoD has not defined what constitutes "special skills payments, special assignment payments, and service agreements and in doing so leaves this open as means to skirt limits on others means of pay for highly favored employees. Further, what will be the source of fund for these? Will it diminish the pay pools?

Supplemental pg 7561

What is the problem with civilians in DoD getting premium pay for holidays, overtime, Sundays much like rest of the government? Is DoD seeking to provide additional compensation to its employees working hours above and beyond? No, this appears purely economic to let the DoD deny appropriate compensation for overtime, shift pay, night differential, Sunday work, holidays and other hardships. Throughout this proposal, DoD is not advocating additional funds to motivate employees but only redistribution. However, DoD should be advocating an increase in such premium pay especially hazardous duty and this proposal should contain the conditions to do so.

Supplemental pg 7561-7562

DoD's assumption that the current performance management system is burdensome and not based on performance is completely false. The 'written elements and standards' currently are used to take the guesswork out of what is wanted or desired regarding

performance. If supervisors are not able to operate within the existing system because of 'perceived inflexibility,' it is hard to believe that those same supervisors will be able to manage better using some newly applied system which is more complicated and relies on unwritten and subjective behavioral criteria. If anything is wrong with the current system is that not enough time is spent addressing performance. Managers don't have time to do midterm evaluations but this proposal suggests even feedback sessions. If this feedback does happen now what is the carrot to make it happen under this proposal? What is seen as happening is that the blame is going to be put on the employee and with limited employee appeal rights we know who will be found in error.

The supplemental information stating that the present system is one of pay for longevity rather than performance is false and misleading. Employees do not receive "step" pay increases for unacceptable performance, no matter what their seniority.

Supplemental pg 7562

DoD's proposal regarding performance and behavior is a double jeopardy option. Managers upon issuance of corrective actions should have taken into account the impact upon the mission and acted accordingly. In fact, elsewhere DoD's proposal makes most recommended corrective actions not subject to mitigation assuring us that managers acted appropriately. Now sometime after initial corrective action a manager can further penalize an employee or it never done with and over.

Section 9901.106

Collaboration with another party is a fine thing when you determine the who, what, where and how of how it will be done at your sole discretion. This will be DOD "I heard you now it is time to move on." There is no provision for a response to comments.

Section 9901.108

Repeat comment 9901.106

Section 9901.201

DoD suggests that it is going to conform to law and give "appropriate consideration of both national and local rates paid". A long-standing law covering all Federal employees has never been complied and given this appropriate consideration to private sector pay. Why? This country has been in either a war/skirmish or economic slump for 20 years and thus been able to waive the requirement of appropriate consideration. DoD doesn't now support pay parity for civilians and the military. Its hard to believe that DoD will support appropriate consideration with a release clause or wavier for national security reasons. Isn't this proposal all about the unique needs of DoD regarding national security that will probably necessitate lesser pay and lesser rights for employees and their unions in order to be accomplished?

Section 9901.222

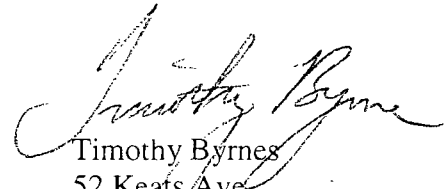
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Retroactive changes only if reduced in band? This seems to mean that if an employee was classified in error, may be resulting in a lesser pay, nothing will be done but a correction in classification when someone gets around to it. Is this to avoid back pay?

I had insufficient time to fully comment in detail, where details did in fact exist.

This proposal, as written, indicates little to do with national security and much to do about denial of human rights. DoD mentions preservation of merit system principles, of the appeal process and of the unions. However, what are left from this NSPS proposal is hollow statements where words have replaced the true intent to diminish, diminish, diminish all opposition to managerial control and the overpowering discretionary authority given to a government official namely the Secretary of Defense. This is wrong in that many have fought and died for these rights. DoD you need to stop and retool. This citizen questions whether US citizens need this proposal as it is, that we as a nation need to curtail these rights of federal civilians to uphold our national security. DoD lead not enslave your workforce.

Sincerely,



Timothy Byrnes
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