

§ 9901.101

9901.504 Definitions.

EXTERNAL RECRUITMENT AND INTERNAL PLACEMENT

9901.511 Appointing authorities.
9901.512 Probationary periods.
9901.513 [Reserved]
9901.514 Non-citizen hiring.
9901.515 Competitive examining procedures.
9901.516 Internal placement.

AUTHORITY: 5 U.S.C. 9902; sec. 1106(b), Pub. L. 110-181, 122 Stat. 3.

SOURCE: 73 FR 56389, Sept. 26, 2008, unless otherwise noted.

Subpart A—General Provisions

§ 9901.101 Purpose.

(a) This part contains regulations governing the National Security Personnel System (NSPS) within the Department of Defense (DoD), as authorized by 5 U.S.C. 9902. Consistent with 5 U.S.C. 9902, as amended by section 1106 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), these regulations waive or modify various statutory provisions that would otherwise be applicable to affected DoD employees. These regulations are prescribed jointly by the Secretary of Defense and the Director of the Office of Personnel Management (OPM). The Secretary may establish implementing issuances to supplement any matter covered by these regulations.

(b)(1) This part is designed to meet a number of essential requirements for the implementation of a new human resources management system for DoD. The guiding principles for establishing these requirements are to put mission first; respect the individual; protect rights guaranteed by law; support the statutory merit system principles in 5 U.S.C. 2301; value talent, performance, leadership, and commitment to public service; be flexible, understandable, credible, responsive, and executable; ensure accountability at all levels; balance human resources system interoperability with unique mission requirements; and be competitive and cost effective.

(2) The key operational characteristics and requirements of NSPS, which these regulations are designed to facilitate, are as follows: *High-Performing Workforce and Management*—employees

5 CFR Ch. XCIX (1-1-10 Edition)

and supervisors are compensated and retained based on their performance and contribution to mission; *Agile and Responsive Workforce and Management*—workforce can be easily sized, shaped, and deployed to meet changing mission requirements; *Credible and Trusted*—system assures openness, clarity, accountability, and adherence to the public employment principles of merit and fitness; *Fiscally Sound*—aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance; *Supporting Infrastructure*—information technology support, and training and change management plans are available and funded; and *Schedule*—NSPS will be operational and demonstrate success prior to November 2009.

§ 9901.102 Eligibility and coverage.

(a) Pursuant to the provisions of 5 U.S.C. 9902, civilian employees of DoD are eligible for coverage under one or more of subparts B through D of this part, except to the extent specifically prohibited by law.

(b) At his or her sole and exclusive discretion, the Secretary may decide to apply subparts B through D to a specific category or categories of eligible civilian employees in organizations and functional units of the Department at any time in accordance with the provisions of 5 U.S.C. 9902, except that no more than 100,000 employees per year may be moved into NSPS. However, no category of employees may be covered by subparts B or C of this part unless that category is also covered by subpart D of this part. DoD will advise OPM in advance regarding the extension of NSPS coverage to specific categories of DoD employees under this paragraph. The Secretary will notify affected employees and labor organizations in accordance with the requirements of 5 U.S.C. chapter 71 regarding a decision to extend NSPS coverage to any bargaining unit employees.

(c) Until the Secretary makes a determination under paragraph (b) of this section to apply the provisions of one or more subparts of this part to a particular category or categories of eligible employees in organizations and functional units, those employees will

continue to be covered by the applicable Federal laws and regulations that would apply to them in the absence of this part. All personnel actions affecting DoD employees will be based on the Federal laws and regulations applicable to them on the effective date of the action.

(d) Any new NSPS classification, pay, and performance management system covering Senior Executive Service (SES) members will be consistent with the policies and procedures established by the Governmentwide SES pay-for-performance framework authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable OPM regulations. If the Secretary determines that SES members employed by DoD should be covered by classification, pay, and performance management provisions that differ substantially from the Governmentwide SES pay-for-performance framework, the Secretary and the Director will issue joint regulations consistent with all of the requirements of 5 U.S.C. 9902.

(e) At his or her sole and exclusive discretion, the Secretary may decide to rescind the application of one or more subparts of this part to a particular category of employees or an organization or functional unit, subject to § 9901.372 and any related implementing issuances. The Secretary will notify affected employees and labor organizations in advance of a decision to rescind the application of one or more subparts of this part to them.

(f)(1) Notwithstanding any other provision of this part, but subject to paragraphs (f)(2) and (3) of this section, the Secretary may, at his or her sole and exclusive discretion, decide to apply one or more subparts of this part as of a specified effective date to a category of employees in organizational and functional units not currently eligible for coverage because of coverage under a system established by a provision of law outside the waivable or modifiable chapters of title 5, U.S. Code.

(2) Paragraph (f)(1) of this section applies only if the provision of law outside those waivable or modifiable title 5 chapters provides discretionary authority to cover employees under a given waivable or modifiable title 5 chapter or to cover them under a sepa-

rate system established by the Secretary.

(3) In applying paragraph (f)(1) of this section with respect to coverage under subparts B and C of this part, the affected employees will be converted directly to the NSPS pay system from their current pay system. The conversion of such employees into NSPS will be governed by the rules in §§ 9901.231 and 9901.371 and applicable implementing issuances prescribed by the Secretary under §§ 9901.231(b) and 9901.371(b).

§ 9901.103 Definitions.

In this part:

Appraisal period means the period of time for reviewing employee performance (as described in § 9901.411).

Band means *pay band*.

Basic pay means an employee's pay before any deductions and exclusive of additional pay of any kind, except as expressly provided by applicable law or regulation. For the specific purposes prescribed in § 9901.331(d) only, basic pay includes any local market supplement. In subpart C, when basic pay is exclusive of any additional pay, the term "base salary" is used, and when basic pay includes a local market supplement, the term "adjusted salary" is used.

Career group means a grouping of one or more associated or related occupations. A career group may include one or more pay schedules.

Comparable pay band or *comparable level of work* means pay bands with the equivalent level of work, based on the NSPS classification structure, within and across varying pay schedules and career groups, regardless of the specific earning potential of the bands. When moving from a non-NSPS position to NSPS, the band of the NSPS position is determined to be at a comparable level of work to the grade or level of the non-NSPS position based on application of the NSPS classification structure, as described in implementing issuances.

Competencies means the measurable or observable knowledge, skills, abilities, behaviors, and other characteristics that an individual needs to perform a particular job or job function successfully.