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United States Government Accountability Office
Washington, DC 20548

B-317769

February 10, 2009

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan Collins
Ranking Minority Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Edolphus Towns
Chairman
The Honorable Darrell Issa
Ranking Minority Member
Committee on Oversight and Government Reform
House of Representatives

Subject: *Department of Defense and Office of Personnel Management: National Security Personnel System*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Defense and Office of Personnel Management (the agencies), entitled “National Security Personnel System” (RIN: 3206-AL75). We received the rule on January 29, 2009. It was published in the *Federal Register* as a final rule on January 16, 2009. 74 Fed. Reg. 2757.

This final rule adds subpart E, entitled Staffing and Employment, to the National Security Personnel System (NSPS). NSPS is a human resources management system for the Department of Defense. This rule governs staffing and employment under NSPS. The agencies state that subpart E as established by this rule preserves merit principles and veterans’ preference requirements, while streamlining hiring and placement processes and providing the Department of Defense with flexible hiring tools to respond effectively to continuing mission changes and evolving labor markets.

The Senate received this rule on January 16, 2009. 155 Cong. Rec. S719 (Jan. 21, 2009) (Executive and Other Communications). The House of Representatives received this rule on January 21, 2009. 155 Cong. Rec. H524 (Jan. 26, 2009) (Executive Communications, etc.). The final rule has a stated effective date of March 17, 2009. The Congressional Review Act requires major rules to have a 60-day

delay in their effective date following their publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). References throughout section 801 refer to receipt by each House of Congress. 5 U.S.C. § 801(a)(3)(A). Receipt by each House of Congress was not effected until January 21, 2009. Therefore, this final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the agencies complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Michael W. Hager
Acting Director
Office of Personnel Management

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF DEFENSE AND
OFFICE OF PERSONNEL MANAGEMENT
ENTITLED
"NATIONAL SECURITY PERSONNEL SYSTEM"
(RIN: 3206-AL75)

(i) Cost-benefit analysis

The Department of Defense and Office of Personnel Management (the agencies) stated that they analyzed the costs and benefits of this final rule. The agencies state that the primary benefit to the public of NSPS resides in the human resources flexibilities that will enable the Department of Defense to attract, build, and retain a high-performing workforce focused on effective and efficient mission accomplishment. According to the agencies, staffing and employment regulations that streamline hiring processes provide additional hiring flexibilities that will result in a more qualified and proficient workforce and will generate a greater return on investment in terms of productivity and effectiveness.

The agencies discussed the costs of implementing NSPS in a prior published rule. 73 Fed. Reg. 56,334 (Sept. 26, 2008). The agencies stated that the implementation costs of NSPS will include NSPS training, outreach to employees and other parties, and improving automated systems associated with NSPS. *Id.* at 56,389. The Department of Defense estimated in September 2008 that the overall costs associated with the continued implementation of NSPS would be approximately \$143 million for fiscal years 2009 through 2011. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The agencies concluded that this final rule will not have a significant economic impact on a substantial number of small entities because the agencies determined that the rule will apply only to federal agencies and employees.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The agencies determined that this final will not result in the expenditure by state, local, or tribal governments of more than \$100 million (\$130 adjusted for inflation) annually.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The agencies published a notice of proposed rulemaking on December 3, 2008. 73 Fed. Reg. 73,606. The agencies received 42 submissions that included a total of 94 comments; 60 of those comments pertained to the proposed rule. The remaining comments concerned other subparts of the NSPS or do not relate to staffing and employment. The agencies respond to comments pertaining to subpart E in the final rule. 74 Fed. Reg. 2757–2764.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The agencies determined that this final rule will not impose any additional reporting or recordkeeping requirements under the Act.

Statutory authorization for the rule

The agencies stated that they promulgated this final rule under the authority of section 9902 of title 5, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

The agencies determined that this final rule is a significant regulatory action within the meaning of the Order because there is a significant public interest in the NSPS. As described above, the agencies analyzed the expected costs and benefits of the revised system. The Office of Management and Budget reviewed this rule.

Executive Order No. 12,988 (Civil Justice Reform)

The agencies determined that this final rule clearly specifies the effects on existing federal law and regulation, provides clear legal standards, has no retroactive effects, specifies procedures for administrative and court actions, defines key terms, and is clearly drafted.

Executive Order No. 13,132 (Federalism)

The agencies determined that this final rule will not have financial or other effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government.