



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

MAR 16 2005

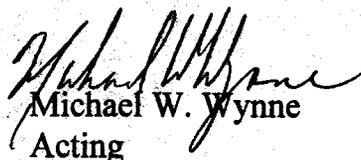
### MEMORANDUM FOR PROGRAM EXECUTIVE OFFICE, NATIONAL SECURITY PERSONNEL SYSTEM

**SUBJECT: National Security Personnel System Federal Register Comments**

I appreciate the opportunity to review and comment on the National Security Personnel System (NSPS) Federal Register Notice/Vol. 70, No. 29/Monday, February 14, 2005/Proposed Rules. I have attached a consolidated list of comments and recommendations gathered from DoD Civilian Acquisition Workforce Personnel Demonstration Project (AcqDemo) stakeholders.

I am confident that the proposed NSPS regulations provide for the flexibility required to meet the requirements of the Acquisition community, leaving the details of implementation to the Implementing Issuances. As such, I request that we be afforded the same opportunity to review the Implementing Issuances as we have been given with the Federal Register.

My point of contact is Ms. Lizanne Stewman. She may be reached at 703-681-3532 or via e-mail at [lizanne.stewman@dau.mil](mailto:lizanne.stewman@dau.mil).

  
Michael W. Wynne  
Acting

Attachment:  
As stated



## COMMENTS

On the February 14, 2005 Federal Register Notice (FRN):  
National Security Personnel System: Proposed Rule

### I. GENERAL

Comment: As the Federal Register Notice constitutes the "what" of the National Security Personnel System, the Implementing Issuances will be the "how." Recommend staffing the Implementing Issuances through the NSPS Component Program Managers. This would provide members of the workforce who have had experience in implementing pay-for-performance systems with the opportunity to provide critical feedback/comments on pertinent implementing details of the NSPS.

Comment: We strongly recommend that any technology system designed to aid in the calculation of the value of performance/contribution be kept as simple as possible, without a complicated algorithm process. One of the major Key Performance Parameters of NSPS is that it be Credible and Trusted – to assure openness, clarity and accountability. We do not need a complicated process where the supervisor provides an honest and equitable appraisal at the beginning, only to be surprised by the payout result. This only dilutes the premise of pay for performance. We want to be able to pay for performance, not depend on some unknown calculation. Suggest that some consideration be given to establishing a process whereby general rules on the administration of the pay pool process are established and adhered to and available payout funds are known at the beginning of the process. That would allow managers to actually manage to budget and reward their employees appropriately, without any surprises at the culmination of the process because another pay pool manager rated their employees much higher. Perhaps the technology system could be used as a tool only, to provide the initial determinations, but build in a system override to allow pay pool managers to make adjustments as needed.

\*\*\*\*\*

### II. CHANGES TO FEDERAL REGISTER

#### SUPPLEMENTARY INFORMATION:

1. **Page 7559** – For fiscal years 2004 through 2008, the aggregate amount allocated for compensation of DoD civilian employees under NSPS *will* not be less than if they had not been converted to the NSPS.

Comment: 9901.313(a) states *may*, 5 U.S.C. 9902(e)(4) states *shall*. Recommend consistency with 5 U.S.C.

2. **Page 7560** - An explanation of the expected methodology on Performance-Based Pay encompasses some specificity, even providing a Sample Rating Methodology. It states that DoD expects to use a methodology that includes at least three rating levels and identifies a range of performance **shares** that can be assigned for rating levels, with subsequent correlation to payout amounts. We suggest that unless the value of a share is identified, it is meaningless and will not be transparent to NSPS participants.

Comment: Recommend deletion of the information listed under *Rating Methodology*, to include Table 2. Recommend more definitive information be provided in Implementing Issuances. (Also listed in Section III.)

3. **Page 7560** – DoD to establish "control points" or other mechanisms within a band, beyond which basic pay increases may be granted only for meeting criteria established by DoD. Reference 9901.342(d)(3).

Comment: Recommend inclusion of explanation of intent.

**4. Page 7561 – Pay Administration/Temporary Promotion:** GS employees will be converted at current rate of basic pay, including locality payment, adjusted on a one-time, pro-rata basis for the time spent towards their next within-grade increase.

Comment: This is listed under Temporary Promotion. Recommend movement to *Initial Conversion*.

Comment: Recommend insertion of "and equivalent" after GS, to be consistent with Supplementary information on Page 7557.

**5. Page 7561 - Promotion pay increases generally will be a fixed percent of the rate of basic pay or amount necessary to reach minimum rate of next higher band, whichever is greater. Roughly equivalent to value of promotion in GS system, (which is addressed in 5334(b)).**

Comment: Recommend clarification; could be viewed as inconsistent with 9901.353.

**6. Page 7561 - Employee who moves within the band (not for unacceptable performance and/or conduct) will have pay set at existing rate; however, may have pay adjusted higher within limitations in IIs.**

Comment: Recommend clarification; could be viewed as inconsistent with 9901.352(a).

**7. Page 7562 - Performance expectations will be communicated to employee.**

Comment: See Comment #16.

**8. Page 7564 – As provided by current law, within each tenure group, the Department will list employees with a compensable service-connected disability of 30 percent or more ahead of all other preference eligibles, and list all other preference eligibles ahead of non-preference eligibles.**

Comment: Recommend legal reference to above cited current law be provided in the FRN, as 5 U.S.C. Chapter 35 is waived under 5 U.S.C. 9902.

**9. Page 7572 – Subpart I, Item 15. Collective Bargaining Above the Level of Recognition.**

Comment: Recommend inclusion of the definition of "above the level or recognition" in Subpart I, Item 2.

\*\*\*\*\*

## **CHAPTER XCIX – PART 9901**

### **SUBPART A – GENERAL PROVISIONS**

No comments

### **SUBPART B - CLASSIFICATION**

No comments

### **SUBPART C- PAY AND PAY ADMINISTRATION .**

**10. Page 7580 – 9901.304 – Definitions.**

Comment: Recommend a definition for "compensation" be added.

**11. Page 7581 – 9901.313(a) - " . . . the overall amount allocated for compensation of the DoD civilian employees who are included in the NSPS *may* not be less than the amount that would have been allocated . . . ."**

Comment: Recommend the word *shall* be substituted for the word *may*, to be in line with 5 U.S.C. 9902(e)(4). See Comment #1.

**12. Page 7582** - 9901.342 (b) (2) - DoD may determine a percentage of pay to be included in pay pools.

Comment: Recommend this be amended to read "DoD may determine a *minimum* percentage of pay . ." This would allow Components to supplement the pay pool funding if they so choose, thereby allowing flexibility to manage to budget. This minimum percentage could also serve as the funding floor, ensuring that parameters of 9901.313(a) and 5 U.S.C. 9902(e)(4) are met.

**13. Page 7584** - 9901.356 (d) - IIs may provide for special increase prior to conversion out to GS, as employee will not be eligible for a *promotion* increase under the GS system.

Comment: Recommend the word *salary* be substituted for the word promotion, for clarity.

**14. Page 7584** - 9901.371(a) - Conversion excludes employees who are reassigned or transferred from a non covered position to a position already covered by the NSPS pay system.

Comment: Assume this covers employees who are hired into the organization after the conversion to NSPS, who would be transferred in using the pay setting process under 9901.351, 9901.352, or 9901.353. Recommend this distinction be elaborated in the definition of Conversion.

**15. Page 7584** - 9901.373 (e) – SecDef has discretion to make one-time pay adjustment for GS and prevailing rate employees when they are converted to the NSPS pay system.

Comment: Recommend insertion of "and equivalent" after GS, to be consistent with Supplementary information on Page 7557.

#### SUBPART D – PERFORMANCE MANAGEMENT

**16. Page 7585** – 9901.405 (b)(5) and 9901.406 do not address *written* performance expectations.

Comment: Recommend FRN and IIs address the need for written performance expectations, as this will be the only documentation of the communication between a supervisor and employee. (Also listed in Section III)

**17. Page 7586** - 9901.409(g) - IIs will provide procedure to challenge rating of record. A payout determination will not be subject to reconsideration procedures.

Comment: Recommend clarification. Is it that a payout determination will never be reconsidered? Or does it mean that the reconsideration procedure cannot be used to challenge a payout determination (in which case, how would this be accomplished)? Also recommend IIs illustrate the procedures in the case of a successful challenge to a rating of record that results in an increase in payout amount. (Also listed in Section III)

#### SUBPART E – STAFFING AND EMPLOYMENT

**18. Page 7587** - 9901.511(b) - Additional appointing authorities – *including noncompetitive appointments*.

Comment: Recommend definition and examples of the pertinent noncompetitive appointments be added to 9901.504.

**19. Page 7588** - 9901.515(b) - DoD may establish procedures for examination for entry into *competitive and excepted* service positions under NSPS. Will adhere to merit system principles, and provide priority consideration for Veterans and Workman's Compensation cases.

Comment: FRN cites 5 U.S.C. 1302(c) Veterans' Preference in Excepted Service. Recommend addition of 5 U.S.C. 1302(b) – Veterans' Preference in Competitive Service.

#### SUBPART F – WORKFORCE SHAPING

**20. Page 7588** - 9901.603 lists the retention factors; 9901.607(a) lists them in order.

Comment: Recommend listing retention factors in descending order in both instances.

Comment: Recommend Rating of Record be placed ahead of Veterans' Preference in the descending order, as NSPS is a pay for performance system. This would fulfill the first Key Performance Parameter of "High Performing: Employees/supervisors are compensated/retained based on performance/contribution to mission," while still conforming to the Guiding Principle of "Respect the individual – protect rights guaranteed by law." See also Comment #8.

**21. Page 7588** - 9901.603 - Definition of retention factors includes "and such other factors as the Secretary considers necessary".

Comment: Recommend inclusion of these other factors in the descending order outlined in 9901.607(a). Also recommend examples of such other factors be included in this definition.

**22. Page 7588** – 9901.603 – Definition of retention list states "While all positions in the competitive group are listed, only competing employees have retention standing."

Comment: Recommend clarification of this statement in the FRN and IIs. (Also listed in Section III)

**23. Page 7588** - 9901.604(a)(1) & (2) – Coverage under Workforce Shaping. Employees/positions otherwise covered by 5 U.S.C. Chapter 35 (excluding SES and employees excluded by other statute) and "such others designated by the Secretary under 5 U.S.C. 9902"

Comment: Recommend inclusion of explanation in the Supplementary Information on the reason for the differentiation. 5 U.S.C. 9902 includes "any organizational or functional unit."

**24. Page 7589** - 9901.606(b) – Further definition of competitive groups.

Comment: There is no separate consideration for Supervisors. Recommend addition of a separate supervisor category, unless that separation will take place under 9901.606 (b)(1) – Career Group.

#### SUBPART G – ADVERSE ACTIONS

**25. Page 7590** - 9901.703 - Adverse Actions – for this subpart, pay does not include locality-based comparability payments, or local market supplements.

Comment: Recommend revision of the definition of "Pay" to reflect that shown in 9901.103.

Comment: Recommend clarification – If pay under this subpart does not include locality pay or market-based pay, does suspension of pay only apply to basic pay? Therefore, employee would continue to receive locality pay or market-based pay?

**26. Page 7592** – Missing Sections 9901.718 through 9901.720.

Comment: If content of those sections is not required, recommend renumbering.

#### SUBPART H - APPEALS

No comments.

#### SUBPART I – LABOR MANAGEMENT RELATIONS

No comments.

\*\*\*\*\*

### **III. RECOMMENDATIONS FOR THE IMPLEMENTING ISSUANCES (IIs)**

**27. Page 7560** - An explanation of the expected methodology on Performance-Based Pay encompasses some specificity, even providing a Sample Rating Methodology. It states that DoD expects to use a methodology that includes at least three rating levels and identifies a range of performance shares that can be assigned for rating levels, with subsequent correlation to payout amounts. We

suggest that unless the value of a share is identified, it is meaningless and will not be transparent to NSPS participants.

Comment: Recommend deletion of the information listed under *Rating Methodology*, to include Table 2. Recommend more definitive information be provided in Implementing Issuances.

**28. Page 7563** - Public notice of all vacancies and acceptance of applications from all sources continues; however, applicants from local area and other targeted sources may be considered first.  
Comment: Recommend IIs address the applicability of the DoD Priority Placement Program.

**29. Page 7585** - 9901.405(a) – DoD will issue implementing issuances that establish a performance management system for DoD employees. 9901.405(b)(5) – The NSPS performance system will specify procedures for . . . . .developing, rating and rewarding performance.  
Comment: Recommend IIs illustrate the design for rating methodology and payout distributions, and that this design provide flexibility for organizations/pay pool managers to apply a method that most effectively advances mission performance in their business environment. This will enable organizations/pay pool managers to apply design options that work best for their organization’s mission, business environment, population, etc, over time.

**30. Page 7585** – 9901.405 (b)(5) and 9901.406 do not address *written* performance expectations.  
Comment: Recommend FRN and IIs address the need for written performance expectations, as this will be the only documentation of the communication between a supervisor and employee.

**31. Page 7586** - 9901.409(g) - IIs will provide procedure to challenge rating of record. A payout determination will not be subject to reconsideration procedures.  
Comment: Recommend clarification. Is it that a payout determination will never be reconsidered? Or does it mean that the reconsideration procedure cannot be used to challenge a payout determination (in which case, how would this be accomplished)? Recommend IIs illustrate the procedures in the case of a successful challenge to a rating of record that results in an increase in payout amount.

**32. Page 7588** – 9901.603 – Definition of retention list states “While all positions in the competitive group are listed, only competing employees have retention standing.”  
Comment: Recommend clarification of this statement in the FRN and IIs.