

Comments on NSPS Proposed Rules
NSPS-2005-001 / RIN 3206-AK76 or 0790-AH82
Federal Register Vol. 70 No. 29 pages 7552 – 7603 dated February 14, 2005

I. General Comments.

- a. Insufficient Details.** There are insufficient details in this Federal Register document to warrant truly meaningful and detailed comments. Previous demonstration projects and alternative personnel systems have been required to publish their proposed regulations in detail in the Federal Register so the public (employees and others) could understand the proposed personnel processes, assess their expected impact, and provide meaningful comments. In this document DoD states an intent to provide those details in “implementing issuances”. Will DoD be providing the public the opportunity to comment on those “implementing issuances” containing the details? I suspect not. All indications are that the details will be withheld until those “implementing issuances” are published. Then they will be implemented probably without any public scrutiny or comments. It seems to be a slick (nay slimy) way to get around allowing the public to comment. Important issues such as the classification structure, the method of assessing performance/contribution and level of work, and the nature of the link between pay, performance and contribution will be dealt with in the departmental issuances, protected from scrutiny by the public and the employees they cover until it is too late.
- b. Pay for Performance.** The phrase “pay for performance” has become a highly recognized buzz phrase, especially in the Federal human resources community. Legislators, executives, and others all seek to implement a pay-for-performance system within the Federal Government. Unfortunately, for many people the phrase is just a buzz phrase. They automatically assume that if someone describes a system as a pay-for-performance one, it must be great. It has to be better than the current systems under the General Schedule, right? Wrong! Just because someone characterizes a proposed system as a pay-for-performance one does not mean the system is automatically good.

History clearly demonstrated that with the Merit Pay System implemented government-wide in the early 1980’s. It was a dismal failure. A failure, I believe, for three main reasons. One, it relied too heavily on the assessment of performance quality, rather than contribution. High quality performance of supervision of personnel work, for example, is not of equal value as high quality performance of supervision of research work that finds a cure for cancer. Under the former Merit Pay System, they were treated as nearly equal. Second, it tried too hard to make objective, what is inherently a subjective process. The quality/value of an employee’s work is inherently a subjective assessment by the person making the assessment. It is the supervisor’s responsibility to assess the quality/value of the subordinate’s

work. Although objectivity might be a desirable quality to apply to the assessment process, ultimately the assessment comes down to one of subjective feelings on the part of the supervisor. There are abstract elements to a supervisor's opinion about a subordinate's performance. That subjective aspect must not be ignored for it completes the true picture of the worth of the employee's performance to the organization. Third, it focused on assigning a rating label of quality to the employee's performance, e.g., Outstanding, Above Fully Successful, etc. The highest rating label of quality (usually Outstanding) became the minimally acceptable label within the workplace. If an employee was given a rating label of less than Outstanding, it was viewed as tantamount to "unsatisfactory" because no one that was any good got less than outstanding. This phenomenon of the highest level rating becoming the minimal one acceptable, I call it "rating envy." All of these reasons led to the dismal failure of the government-wide Merit Pay System.

The pay-for-performance system proposed by DoD in this Federal Register is, I think like the Merit Pay System, doomed to be a dismal failure. One, it does not directly link level of work to the assessment of performance. Two, it relies too heavily on assessment of the quality of performance, not the contribution to the mission. Three, it places too much emphasis on the quality rating label. Though the DoD system proposes using numerical scores to label the quality, rather than traditional adjective labels, the effect is the same. Everyone will be expected to get a score of 90 – 100 if they are any good. (We see this same phenomenon in schools today.) The rating envy in this case might be called "score envy."

As an alternative to the share rating system proposed by DoD, I recommend that DoD adopt a contributions-based assessment system. Under a contributions-based assessment system, both the quality and value of the work are assessed together to assure that the assessment reflects the true contribution of the employee's work to the accomplishment of the organization's mission. Further, the employee is assigned a contribution score which reflects of the value of the work, rather than a rating score which reflects the quality of the work. A higher contribution score indicates that the employee is contributing at a higher level than another employee, not merely that the quality of the employee's work is better as the case with the rating score in the share system. Experience in the Naval Research Laboratory demonstration project, which uses a contributions-based system, shows that comparison of scores among employees and the contention that such comparison brings is greatly reduced with the contributions-based system.

An additional advantage of a contributions-based system is that the employee assessment is based on the level of contribution achieved during the rating cycle. If an employee contributes at the same level at which the employee is currently being paid, the employee's contribution may not warrant an increase in salary. This is very different from the share system, where an employee's

good performance of the same level of work at which already paid, warrants a further increase in salary. (This concept of increases being based on good performance of the same level of work stems from the entitlement mentality that existed with the within-grade increase feature of the General Schedule. If you do a good job, you'll get an increase in salary even if you are not doing higher-level work.) This failing in the share system is what leads to most employees migrating to the top salary level, the need for extraordinary pay funds to compensate the true stars, and the escalating costs of the system over time.

Adoption of a contributions-based system does not have to be exclusive. If DoD wants to allow for both share systems and true contributions-based systems, such a dual provision would be quite acceptable. Providing for both systems would allow the DoD activities to adopt either the share system or a true contributions-based system, whichever best suits the activity's needs. Such a choice truly achieves the objectives of the alternative personnel system proposal – to implement a system that maximizes the management of human resources within DoD activities.

II. Comments on Supplemental Information.

- a. General Provisions – Subpart A (pg. 7556); Paragraph 1, Line 15:**
“Subpart A also allows DoD to prescribe internal Departmental issuances that further define the design characteristics of the new HR system.” The ability to supplement the regulations with internal operating instructions is an acknowledged requirement for the Department. However, there are far too many places in the regulations where the details are left to “Departmental issuances”. There is very little detailed commenting that can be done when there are no details on which to comment.
- b. Classification – Subpart B (page 7558); Paragraph 10, Line 1:** “Career groups, pay schedules, and pay bands provide clearly defined career paths for occupations.” There is nothing “clearly defined” about the classification structure. There are no career groups, pay schedules, or pay bands defined. It is impossible for anyone to comment on something that is not defined. It is true that career groups, etc. can provide clearly defined career paths. However, as evidenced previously in the Best Practices regulations, not all career groups, etc, that can be defined make sense in terms of career paths. Under Best Practices it was proposed that students be in their own career group. The idea of putting students in a career group was a contradiction in terms since DoD should not want students to make a career out of being a student.
- c. Classification – Subpart B (page 7559); Table 1:** “Engineering and Scientific Supervisory /Managerial Pay Schedule”. Under what circumstances would an employee progress through the pay bands of this schedule? Supervisory/managerial positions do not typically have career progression, as such. The figure showing three pay bands implies that a supervisor who starts

out in Pay Band 1 can progress up to the top of Pay Band 3. Supervisory/managerial positions are more appropriately compensated with a differential on top of the level of work they supervise or manage, without the expanse of growth potential provided by three pay bands. There is not enough detail in this document to understand how the pay schedule is going to work. Therefore, no detailed comments are possible.

- d. **Pay and Pay Administration – Subpart C (page 7560); Paragraph 5, Line 5:** “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.” In accordance with the recommendations contained in paragraph 1b, above, this section should be amended to allow activities to use either a share system or a contributions-based system. The following wording should be adopted, “...expects to use either a methodology that includes...performance shares...assigned for rating levels, or a contributions-based methodology.

III. Comments on Regulatory Provisions.

- a. **Subpart B – Classification; Section 9901.211, Line 9:** “DoD will document in implementing issuances the criteria and rationale for grouping occupations or positions into career groups.” Previous demonstration projects and alternative personnel systems have been required to publish in their Federal Register regulations their classification structures in detail so they could be commented on by the public. In this document DoD states an intent to provide those details in “implementing issuances”. Will DoD be providing those “implementing issuances” with the details for public comment before implementation? I suspect not. All indications are that the details will be withheld until those “implementing issuances” are published. Then they will be issued probably without any public scrutiny or comments. It seems to be a slick (nay slimy) way to get around allowing the public to comment. Important issues such as what current GS grade levels will be banded together, what career groups will be established, and what occupations will be in the career groups will be dealt with in the departmental issuances, protected from scrutiny by the public and the employees they cover until it is too late.
- b. **Subpart C – Pay and Pay Administration; Section 9901.342(a)(1), Line 12:** “The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned to individual employees.” The reference to “shares” is unnecessarily restrictive. It would be better to reword the sentence to read “...performance pay pool and the level of performance or contribution of the individual employees.”
- c. **Subpart C – Pay and Pay Administration; Section 9901.342(a)(2), Line 1:** “The rating of record used as the basis for a performance pay increase is the one assigned for the most recently completed appraisal period, except that if an appropriate rating official determines that an employee’s current performance is inconsistent with that rating, that rating official may prepare a

more current rating of record...” This provision sounds like if a rating official thinks an employee might be entitled to more of a performance pay out than the rating official desires, the rating official can “fix” the rating to level he/she desires. If this is not what is intended, the circumstances under which this provision would apply should be spelled out in detail to prevent abuse.

- d. **Subpart C – Pay and Pay Administration; Section 9901.342(c)(1), Line 1:** “DoD will issue implementing issuances regarding the assignment of a number or range of shares for each rating of record level...” Again, without the details that are to be contained in the “implementing issuances” it is impossible to comment of them. Nonetheless, the provision should be amended to read “...assignment of a contribution level or number...”
- e. **Subpart C – Pay and Pay Administration; Section 9901.342(c)(1), Line 6:** “Performance shares will be used to determine performance pay increases and/or bonuses.” The provision should be amended to read “Performance shares or contribution level will be used...”
- f. **Subpart C – Pay and Pay Administration; Section 9901.342(d)(1), Line 1:** “DoD will establish a methodology that authorized officials will use to determine the value of a performance share.” The concept of using shares for the payout has been proven to be more costly than some other methods. In the share concept the entire pay pool fund must be divided among all of the eligible employees even if the level of performance/ contribution does not warrant dispersing all funds that year. For example, suppose that the members of the pay pool all did outstanding work at or nearly at the level they are currently paid. Under the share concept all of the pay pool funds would be divided among those outstanding workers, even though the level of work they did was only what was expected of them to earn the pay that they were already getting. The entire pay pool fund would have to be dispersed in shares, likely thousands and thousands of dollars, to reward workers for doing the work outstandingly for which they were originally paid to do, hopefully well. In 2004, the Office of Personnel Management published an evaluation report of demonstration projects using pay for performance systems. In that report they noted that the share-type systems were even more costly than the General Schedule system. The least costly pay for performance systems were proven to be those based on contribution assessment, rather than performance quality shares. The main reason for the cost disparity is likely due to share-type systems requiring full pay pool fund payout, even when the level of work does not warrant such payout. Contribution-type systems generally do not have a requirement to pay out the full pay pool fund. This provision should be revised to read, “...establish methodologies...to determine the value of performance and/or contribution.”
- g. **Subpart D – Performance Management; Section 9901.405(b)(2), Line 1:** “Provide for the periodic appraisal of performance of each employee, generally once a year, based on performance expectations.” This provision should be changed to read, “...based on performance/contribution expectations.”

- h. Subpart D – Performance Management; Section 9901.407(b), Line 1:** “Provide ongoing (i.e., regular and timely) feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period.” The requirement to have “one or more interim performance reviews” is wasteful. Although dialogue between supervisors and employees is valuable, mandatory interim reviews are often wasteful. It is more appropriate to make it mandatory for the supervisor to conduct the interim review if requested by the employee. Under such a provision, the interim review is required if the employee desires it but is not required if the employee and supervisor both feel that the continual dialogue during the year has been adequate. Such a change will eliminate the wasted time of both the supervisor and employee conducting a mandatory interim review that neither feels is necessary. This provision should be revised to read, “...with respect to their performance/contribution expectations, including, one or more interim performance reviews, if requested by the employee, during...”
- i. Subpart D – Performance Management; Section 9901.409(a), Line 1:** “The NSPS performance management system will establish a multi-level rating system...” As noted in the paragraph Ib, above, the multi-level rating system leads to rating envy. All employees become obsessed with getting the highest rating. Eventually the pressure mounts and supervisors begin to rate more and more employees at the top. In just a few years, the vast majority of employees will be assessed at the highest level. At that point supervisors must seek new ways to differentiate between the really extraordinary employees and the others. The personnel demonstration projects of the Department of the Army laboratories which tested multi-level share systems found it necessary to establish an extraordinary pay fund, above and beyond the regular pay pool fund, in order to reward the most outstanding of the burgeoning numbers of “outstanding” employees. The need for such extraordinary measures as establishing special funds for the most outstanding employees demonstrates the weakness of the multi-level rating system. Rating envy leads to runaway costs. Rating envy can be avoided, however, by adopting a contributions-based system. In a contributions-based system, the assessment score that an employee receives reflect a level of work, rather than a level of quality. A score of 90 does not mean that that employee is doing better work than one with a score of 50, only that the employee is contributing at a higher level. Therefore, employees are less likely to compare score levels with others and feel rating envy. The contributions-based approach is a superior one. This provision should be revised to read, “...establish multi-level or contributions-based system...” to allow those activities which desire to use a contributions-based system the opportunity to do so.
- j. Subpart D – Performance Management; Section 9901.409(b), Line 4:** “An additional rating of record may be issued...” As noted in paragraph IIIc, above, it is not clear under what circumstances an additional rating of record might be warranted. As it is worded, it is conceivable that if an employee had a change in supervisors a new supervisor could change the rating of record on

a whim. This provision needs to be reworded to make clear under what circumstances a new rating of record might be warranted. Unfortunately, there are insufficient details in this document to allow for detailed comment. This provision could be severely abused without detailed descriptions of its appropriate use.

- k. Subpart D – Performance Management; Section 9901.409(d), Line 1:** “An appropriate rating official will communicate the rating of record and number of shares to the employee prior to payout.” This provision should be changed to read, “...communicate the rating of record and number of shares or contribution score to the employee...” This change will allow an activity that wants to use a contributions-based system to do so.