

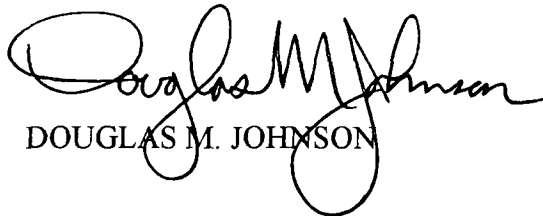
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February 24, 2005

Program Executive Office  
National Security Personnel System  
ATTN: Mr. Bradley B. Bunn  
1400 Key Boulevard, Suite B-200  
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**RE: Comments on Proposed NSPS Regulations – RIN 3206-AK76/0790-AH82**

I am submitting the attached comments for your consideration in developing the final NSPS Regulations. I can be contacted at 850-243-2165 or [johnsonhd@cox.net](mailto:johnsonhd@cox.net).

Sincerely,



Handwritten signature of Douglas M. Johnson in black ink, featuring a large, stylized 'D' and 'J'.

DOUGLAS M. JOHNSON

Attachment:  
Comments on Proposed NSPS Regulations

**Comments**  
**Federal Register, Part II, Monday, February 14, 2005**  
**Department of Defense**  
**Office of Personnel Management**  
**5 CFR Chapter XCIX and Part 9901**  
**National Security Personnel System; Proposed Rule**  
**RIN 3206-AK76/0790-AH82**

<i>Federal Register</i>	<b>Comments</b>
<p><i>Performance</i> means accomplishment of work assignments or responsibilities and contribution to achieving organizational goals, including an employee's behavior and professional demeanor (actions, attitude, and manner of performance), as demonstrated by his or her approach to completing work assignments.</p>	<p><b>Subpart A-General Provisions</b></p> <p><b>Section 9901.103 Definitions</b></p> <p><b><i>Performance.</i></b> Definition should be revised to read: "<i>Performance</i> means accomplishment of work assignments or responsibilities and contribution to achieving organizational goals.</p> <p><b><i>Rationale:</i></b> Notwithstanding the rationale provided in the supplementary information, performance should be defined as, and measured as just that: performance. Behavioral traits should be separated from performance and dealt with as a separate matter and dealt with under the procedures contained in Subpart G. Mixing behavioral traits in the definition of performance means those traits will factor into ratings of record. This may provide a better "handle" for management to deal with cantankerous employees, but will, at the same time, constrain robust input that may run contrary to the supervisors' whims, druthers or other non-merit factor. This will contribute to a "yes" mentality which will not always serve the Department's interests. It is no mystery that constrained discussion produces losers among all the participants. This is too high a price to pay in exchange for the new "handle" provided in the proposed definition. The cost far outweighs the "benefit."</p> <p><b><i>ADD: Behavior.</i></b> <i>Behavior</i> means an employee's verbal or nonverbal actions or</p>

	<p>reactions that produce either positive or negative effects on the mission or those with whom they interact. This includes an employee's professional demeanor (actions, attitude, and manner of performance).</p> <p><b>Rationale:</b> Behavior can destroy the morale, effectiveness and the productivity, just as it can be a motivator in the positive. When behavior contributes negatively, rehabilitative disciplinary action should be timely initiated. When behavior contributes positively, ample recognition opportunities exist under the proposed rules to reward the individual. Behavior should be evaluated on its own merits, and not mixed into the equation that will affect the employees' annual rating of record.</p>
<p><b>§ 9901.322 Setting and adjusting rate ranges.</b></p> <p>(a) Within its sole and exclusive discretion, DoD may, subject to § 9901.105(d)(2), set and adjust the rate ranges established under § 9901.321. In determining the rate ranges, DoD may consider mission requirements, labor market conditions, availability of funds, pay adjustments received by employees of other Federal agencies, and any other relevant factors.</p> <p>(b) DoD may determine the effective date of newly set or adjusted band rate ranges.</p> <p>(c) DoD may establish different rate ranges and provide different rate range adjustments for different pay bands.</p> <p>(d) DoD may adjust the minimum and maximum rates of a pay band by different percentages.</p>	<p><b>Subpart C-Pay and Pay Administration</b></p> <p><b>Section 9901.322(a).</b> Wording should be revised to read as follows:</p> <p>“(a) Within its sole and exclusive discretion, DoD may, subject to Section 9901.105(d) (2), set and adjust the rate ranges established under Section 9901.321. In determining the rate ranges, DoD may consider mission requirements, labor market conditions, availability of funds, pay adjustments by other Federal agencies, and any other relevant factors.<b>(ADDED)</b> Adjustments to rate ranges will uniformly apply across the occupational groups within the local market area.</p> <p><b>Rationale:</b> This provision, as proposed, has the potential to promote disparity within a given DoD installation or facility. Further, this provision will lead to a “have” and “have not” mentality within the respective units as employees begin to review the respective pay scales within occupational career groups. The long-term</p>

	<p>effects of such a practice cannot be accurately predicted, but the benefit(s) of such flexibility is not thought to outweigh the costs in employee morale and dedication under such potential disparate treatment.</p> <hr/> <p><b>Section 9901.322(c).</b> Wording should be revised to read as follows: “(c) DoD may establish different rate ranges for different pay bands.”</p> <p><b>Rationale:</b> Same rationale as provided for the change to Section 9901.322(a) above.</p>
<p><b>§ 9901.332 Local market supplements.</b> (a) For each band rate range, DoD may establish local market supplements that apply in specified local market areas. Local market supplements apply to employees whose official duty station is located in the given area. DoD may provide different local market supplements for different career groups or for different occupations and/or pay bands within the same career group in the same local market area.</p>	<p><b>Section 9901.332(a).</b> Wording should be revised to read as follows: “(a) DoD may establish local market supplements that will apply equally across the respective rate ranges and career groups with the local market area.”</p> <p><b>Rationale:</b> Like Section 9901.322(a), this Section will promote a “have” and “have not” mentality within the respective units at a given installation or facility as employees begin to review the respective pay scales within occupational career groups. While this provision provides great latitude for management, the question that must be asked is, “Will the benefit of the result be worth the cost of achieving it?”</p>
<p><b>§ 9901.402 Coverage.</b> (a) This subpart applies to eligible DoD employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b)(2), except as provided in paragraph (c) of this section. (b) The following employees and positions in DoD organizational and functional units are eligible for coverage</p>	<p><b>Subpart D-Performance Management</b></p> <p><b>(ADDED) Section 9901.402(b)(4).</b> Union officials on 100 percent official time are covered by this Subpart upon implementation of this subpart and thereafter; however, subsequent to initial conversion to an NSPS occupational grouping and pay band, no annual rating of record nor performance pay adjustments will be made based upon performance of</p>

under this subpart:

(1) Employees and positions who would otherwise be covered by 5 U.S.C. chapter 43;

(2) Employees and positions who were excluded from chapter 43 by OPM under 5 CFR 430.202(d) prior to the date of coverage of this subpart; and

(3) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

(c) This subpart does not apply to employees who have not been, and are not expected to be, employed in an NSPS position for longer than a minimum period (as defined in § 9901.404) during a single 12-month period.

(b) Supervisors and managers will communicate performance expectations, including those that may affect an employee's retention in the job. Performance expectations will be communicated to the employee prior to holding the employee accountable for them. However, notwithstanding this requirement, employees are always accountable for demonstrating professionalism and standards of appropriate conduct and behavior, such as civility and respect for others.

union representational duties. Upon initial conversion, supervisors will communicate the expectations of the union official's official position just as for other employees. Pay increases will be in accordance with implementing instructions issued under Section 9901.322(c) [rate range adjustments] and Section 9901.331 [local market supplements]

**Rationale:** Union officials on 100 percent official time should not be rated on their union representational duties. This provision ensures this is understood and that no performance payouts will be accorded based upon duties and expectations not associated with their official position of record and respective performance expectations.

**Section 9901.406(b).** Wording should be revised to read as follows:

“(b) Supervisors and managers will communicate performance expectations in writing, including those that may affect an employee's retention on the job. Performance expectations will be communicated to the employee, and a mutual understanding of what is expected attained, prior to holding the employee accountable for them.

**Rationale:** A fundamental NSPS objective is to achieve mission objectives through desired performance. Field experience has shown that what a person says is not always what the listener hears. Assumptions that listeners understand often prove misguided. Conveying expectations in writing and obtaining signatures

	<p>attesting to their understanding of what is expected is a time-proven method to achieve the mission/performance objective. Now that understanding expectations serves as the underpinning of retention and basic pay received, it is not too much to expect that supervisors be required to clarify, first in their own minds, what is expected, and to convey those expectations in writing to their respective subordinates. This will preclude subsequent arguments and misunderstanding over what was stated as being expected from the employee.</p> <p>Good behavior is the expectation in the workplace. Failure to behave according to accepted conduct rules should be pursued under conduct rules, not performance. One can easily ask, "What constitutes civility and respect for others?" The answer lies within the eye of the beholder. This is far too subjective to have a bearing on retention and pay insofar as performance is concerned. The best performer may "appear" to some as being gruff and uncooperative; yet, can always be depended on to deliver the goods "on time and on cost." Is it more beneficial to the Department to have that person meet expectations, or to send them on their way because they did not appear "civil" or "respectful" to others (who may, themselves, have used their "sensitivity" to such matters as a weapon against fellow pay pool members competing for the same salary dollars)? Performance and discipline must remain mutually exclusive under the NSPS.</p>
<p>(b) If during the appraisal period a supervisor determines that an employee's performance is unacceptable, the supervisor will—</p> <p>(1) Consider the range of options available to address the performance deficiency, which include, but are not</p>	<p><b>Section 9901.408(b) (1).</b> Wording should be revised to read as follows:</p> <p>"(b) (1). Consider the range of options available to address the performance deficiency, which include, but are not limited to, remedial training, an</p>

<p>limited to, remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, or adverse action defined in subpart G of this part, including a reduction in rate of basic pay or pay band;</p>	<p>improvement period, a reassignment, or adverse action defined in subpart G of this part, including a reduction in rate of basic pay or pay band; and”</p> <p><b>Rationale:</b> Performance and discipline must remain mutually exclusive under the NSPS.</p>
<p><b>§ 9901.409 Rating and rewarding performance.</b>  (a) The NSPS performance management system will establish a multi-level rating system as described in the DoD implementing issuances.</p>	<p><b>Section 9901.409(a).</b> Wording should be revised to read as follows:  “(a) The NSPS performance management system will establish a multi-level rating system as described in the DoD implementing issuances. These issuances will require that ratings of record and resulting pay adjustments not conform to any predetermined distribution based on any nonmerit factor, but solely as prescribed in subsection (c) of this Section.</p> <p><b>Rationale:</b> Actual performance will drive pay and retention. The individual performance stakes are now higher than ever, and will require a high and accurate level of attention by both supervisors and employees to ensure the right NSPS results are achieved. If supervisors assure understanding of expectations, track individual accomplishments to compare to the stated expectations, and accomplish regular performance feedbacks, no employee should be surprised when they receive their rating of record and corresponding pay shares. Lapsing into “the way we have always done it” will be counterproductive to NSPS objectives and indefensible in a third party forum.</p>