

TALKING POINTS
Impact of Inslee Amendment on National Security Personnel System (NSPS)
July 25, 2006

BACKGROUND

- Congressmen Inslee (WA), Van Hollen (MD), and Jones (NC) introduced a floor amendment on June 20, 2006, to the DoD Appropriations bill prohibiting the use of funds appropriated by the Act from being used to waive or modify regulations promulgated under Chapter 43 – Performance Management; Chapter 71 – Labor Relations; Chapter 75 – Adverse Actions; and Chapter 77- Appeals of title 5 U.S. Code. It passed by voice vote.
- DoD has proceeded with implementation of the parts of the NSPS Human Resources system not impacted by the recent court injunction, including the performance management provisions. Waiver of Chapter 43 is necessary to implement performance management. Eleven thousand employees converted to NSPS on April 30, 2006. About 66,000 employees will start converting to NSPS in October 2006.

TALKING POINTS

- The amendment is unnecessary: DoD is complying with the court injunction on NSPS labor relations, adverse actions, and appeals provisions and not spending money on implementing the enjoined parts of NSPS. The amendment denies DoD the ability to begin implementation of those parts until FY 08, at the earliest, even if the Court of Appeals issues a favorable decision on the lawsuit during FY 07. Any delay in implementing the labor relations, adverse actions, and appeals provisions of NSPS after a favorable court decision would deny the Department use of needed flexibilities in managing the DoD civilian workforce.
- According to Member statements, the amendment impacts only those provisions that the Court enjoined; this is not true. The amendment overreached with regard to Chapter 43 of title 5. Waiver of this chapter was necessary to establish our performance management system – a key component of pay for performance. The District Court did not enjoin this part of the system
- The amendment would also deny DoD the ability to continue the design of NSPS for non-white collar positions under the NSPS human resources system.
- The inability to use funds to waive or modify regulations under the chapters listed will have implications beyond NSPS. For example, it prevents DoD from making changes to many alternative personnel systems and policies already implemented in the Department, including the laboratory and acquisition personnel demonstration projects.
- The amendment would deny DoD the ability to modify existing *non-NSPS* policies that implement personnel programs outside of NSPS, including:
 - Changes to existing internal performance management policies for the General Schedule, Federal Wage System and Senior Executive Service workforce for any reasons whatsoever. For example, if DoD wished to replace existing pass/fail performance appraisal systems to one requiring meaningful distinctions among levels of performance, we would be unable to as no money could be spent to make the changes.
 - Changes to existing disciplinary policies for any reason, including adjustments driven by changes in case law.
 - Changes to existing labor relations policies for any reason, including adjustments driven by new case law.