

**U.S. Department of Energy**  
**Washington, D.C.**

**ADMIN CHANGE**

**DOE O 329.1A**

Chg 1 (Admin Chg): 12-22-2015

**SUBJECT:** ADMINISTRATIVE CHANGE TO DOE O 329.1A, *Excepted Service Authorities for EJ and EK Pay Plans*

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1. EXPLANATION OF CHANGES. The purpose of the administrative changes is to update the office title from the Office of Executive Resources (OER) to the Office of Corporate Executive Management (OCEM) as the result of a reorganization effective on October 4, 2015.

2. LOCATIONS OF CHANGES:

| Page                                | Paragraph | Changed                       | To                                       |
|-------------------------------------|-----------|-------------------------------|--|
| Change text throughout the document |           | Office of Executive Resources | Office of Corporate Executive Management |
|                                     |           | OER                           | OCEM                                     |

Approved: 12-7-2015  
Chg 1 (Admin Chg): 12-22-2015

**SUBJECT: EXCEPTED SERVICE AUTHORITIES FOR EJ AND EK PAY PLANS**

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1. PURPOSE. To establish requirements and responsibilities for the employment and compensation of individuals when using the following doe excepted service authorities:
  - a. Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d), hereafter referred to as pay plan EJ.
  - b. Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK.
2. CANCELLATION. DOE O 329.1, Excepted Service Authorities for EJ and EK Pay Plans, dated 3-30-2012. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.
3. APPLICABILITY.
  - a. Departmental Applicability. This Order applies to all Departmental Elements.

The Administrator of the National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106 65 to establish Administration specific policies, unless disapproved by the Secretary.

In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency through the joint Navy/DOE Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.
  - b. DOE Contractors. This Order does not apply to DOE Contractors.
  - c. Equivalencies/Exemptions for DOE O 329.1A. Requests for exemptions must be forwarded to the Senior Management Review Board (SMRB) as delegated by the Chair, Executive Resources Board (ERB) or designee. The request must be submitted to the Office of Corporate Executive Management (OCEM), and

include the basis for the exemption, identify the key requirement for which the exemption is sought, and request a timeframe, as applicable.

#### 4. REQUIREMENTS.

##### a. Covered Positions.

- (1) The EJ authority may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and professional administrative personnel. Appointments made under this authority may be made without regard to the civil service laws and are excepted from the provisions of Title V, United States Code.

The use of the EJ authority is limited to 200 scientific, engineering, professional and administrative positions and may be used for time-limited and indefinite appointments.

- (2) The EK authority and renewals may be used to enhance the Department's recruitment and retention of highly qualified scientific, engineering, and technical personnel whose duties will relate to safety at defense nuclear facilities of the Department. Appointments made under this authority may be made without regard to the civil service laws and are excepted from the provisions of Title V, United States Code.

The use of the EK authority is limited to 200 scientific, engineering, technical positions and may be used for time-limited and indefinite appointments.

The EK authority is time-limited by law and must be renewed; however, appointments may be time-limited or indefinite. Current EK employees are not affected; however, a freeze on hiring is implemented if the authority expires prior to extension.

- (3) The authorities shall be used in adherence to fair hiring practices without regard to non-merit factors such as race, color, religion, sex, age, national origin, disability, or genetic information.
- (4) These authorities may only be used for:

- (a) Filling positions expeditiously as a result of:

- 1 **Recruitment difficulties:** Potential recruitment difficulties have been or are expected to significantly delay the timely filling of positions when there is a demonstrated mission-driven need to fill a key position in a timely manner with a highly qualified candidate (e.g., position offer/acceptance rates, proportion of similar positions filled, length of time required to fill similar positions,

number of highly qualified candidates applying for vacancies, etc.).

2     **Urgent mission need:** An urgent, mission-driven need necessitates the quick hiring of a highly qualified candidate.

(b)     Retaining employees in mission-critical positions or occupations based upon scarce demand or unique combination of skills and experience required to help the Department meet its mission.

(5)     These authorities cannot be used to:

(a)     Make political appointments (temporary or permanent) or appointments to positions properly classified in the Senior Executive Service (SES), Senior- Level (SL), or Scientific or Professional (ST) pay plans. The Office of Personnel Management (OPM) regulations and authorities govern the establishment, appointment process, and other matters for SES, SL, ST and political positions.

(b)     Promote GS employees solely as a means of providing greater compensation.

(c)     Convert SES, SL or ST employees as a means to resolve a conduct or performance issues.

b.     Duration of Appointments.

(1)     Appointments made under these authorities, unless otherwise stated, are indefinite.

(2)     Time-limited appointments may be made for a period of up to 4 years.

c.     Classification.

(1)     Classification materials applicable to other comparable Federal positions, (e.g., classification standards and guides applicable to General Schedule position) shall be used as guidelines for application to positions requested under this authority.

(2)     Positions under the EJ authority shall be coded with the prefix "EJ" followed by the appropriate occupational series and corresponding difficulty level (e.g., EJ-510-IV) for positions which meet the series definition for the specific position at a level comparable to a GS-14 or GS-15.

- (3) Positions under the EK authority shall be coded with the prefix "EK" followed by the appropriate occupational series and corresponding difficulty level (e.g., EK-840-IV) for positions which meet the series definition for the specific position at a level comparable to a GS-14 or GS-15.
- (4) The grade-evaluation guidelines described below may be used as guidance to evaluate positions under these authorities and in determining the appropriate pay band:
  - (a) **Pay Band I:** Level of duties: equivalent to grade levels GS-5 through GS-7 of the General Schedule.
    - 1 Pay Range GS-5, step 1 through GS-9, step 5.
  - (b) **Pay Band II:** Level of duties: equivalent to grade levels GS-9 through GS-11 of the General Schedule.
    - 1 Pay Range GS-9, step 1 through GS-12, step 5.
  - (c) **Pay Band III:** Level of duties: equivalent to grade levels GS-12 through GS-13 of the General Schedule.
    - 1 Pay Range GS-12, step 1 through GS-14, step 5.
  - (d) **Pay Band IV:** Level of duties: equivalent to the grade levels GS-14 through GS-15 of the General Schedule.
    - 1 Pay Range GS-14, step 1 through 103 % of GS-15, step 10.
    - 2 Grandfathered 14, step 1 to 136% of 15, step 1.\*

\*Employees on Pay Band IV prior to March 30, 2012, through appointment, conversion or hire will continue to use the pay range that was previously in effect providing that they remain employed on a continuous basis at Pay Band IV. If an employee leaves Pay Band IV with the higher pay range, they will no longer be grandfathered at the higher pay range if they later return to Pay Band IV.
  - (e) **Pay Band V:** Level of duties: above the GS-15 grade level of the General Schedule.
    - 1 Pay Range EX-V through EX-III.
- (5) The position descriptions established will be recorded at a minimum, using the following format:

- (a) Introduction
  - (b) Major Duties and Responsibilities
  - (c) Technical Knowledge Required in the Position
  - (d) Supervision and Guidance Received
- d. Qualification Requirements. An individual appointed under these authorities must meet the OPM minimum qualification requirements established for the position. Time-in-band does not apply to these authorities.
- e. Recruitment Requirements. Positions under these authorities may be filled from sources within and outside the Department and federal government using competitive or non-competitive appointment procedures. All placement procedures must be consistent with merit system principles in accordance with 5 U.S.C. 2301 and result in excepted service appointments.
  - (1) Allocation Approval Process
    - (a) All new EJ and EK positions require SMRB approval prior to filling the position through competitive or non-competitive recruitment methods.
    - (b) Previously established EJ and EK positions that have been vacant 365 days or less (i.e., backfill requests) require approval by the Head of the Departmental Element, with Under Secretary concurrence, if applicable and required.
      - 1 SMRB approval of EJ and EK positions is required if vacancies extends beyond 365 days.
      - 2 The position is considered vacant even if it is encumbered by a detailee.
    - (c) The type of recruitment method must be indicated in the SMRB package with the applicable justification, if required.
  - (2) Non-competitive Recruitment Method
    - (a) SMRB approval is required for the appointment of all proposed non-competitive candidates to EJ and EK positions, regardless of the allocation type (i.e., newly established position or backfill request).
      - 1 If requesting a newly established limited-term EJ or EK position with a non-competitive appointment, the request

for the allocation and non-competitive appointment can be done simultaneously.

2 SMRB approval is required for the establishment of permanent EJ or EK positions prior to requesting approval for the proposed non-competitive candidate. After SMRB approval is received to establish the position, a subsequent package must be submitted for approval of the proposed non-competitive candidate.

- (b) All non-competitive selections in the administrative field (e.g. GS-301-series equivalent) must have prior concurrence of the Office of General Counsel (GC), Assistant General Counsel for General Law.
- (c) No formal vacancy announcement is issued; veteran's preference does not apply.
- (d) Candidate's qualifications (e.g., requisite knowledge, skills and experience) must be documented.
- (e) Overview of the review and selection process used by the Selecting Official must be provided.
- (f) Reference checks are required if candidate is outside of the Departmental Element; must be documented in writing.

(3) Competitive Recruitment Methods

- (a) External Recruitment Process (Area of Consideration in USAJobs: Open to "All Qualified" candidates)
  - 1 Candidates selected through competitive recruitment methods do not require SMRB approval of the selection for appointment.
  - 2 The Head of the Departmental Element with Under Secretary concurrence, if applicable and required, approves the selection for appointment.
  - 3 OCEM review of the selection package is required prior to effecting the action.
  - 4 Veteran's preference applies. DOE applies Category Rating to rate and rank applicants.

Acceptance and evaluation of applications for the selection and appointment of candidates for positions covered by

these authorities shall be in accordance with the policies and procedures outlined in 5 CFR, Part 302, and 5 U.S.C. 2108.

5 The minimum length of the vacancy announcement period must be 5 business days.

6 Reference checks are required if candidate is outside of the Departmental Element; must be documented in writing.

(b) External Recruitment Process (Area of consideration in USAJobs: federal employees only)

1 Candidates selected through competitive recruitment methods do not require SMRB approval of the selection for appointment.

2 The Head of the Departmental Element with Under Secretary concurrence, if applicable and required, approves the selection for appointment.

3 OCEM review of the selection package is required prior to effecting the action.

4 Acceptance and evaluation of applications for the selection and appointment of candidates is done within a limited area of consideration (e.g., DOE-Headquarters federal employees, local commuting area or Government-wide federal employees only). Agency merit promotion procedures apply.

5 The minimum length of the vacancy announcement period must be 5 business days.

6 Reference checks are required if candidate is outside of the Departmental Element; must be documented in writing.

(4) Details

(a) Details of excepted service employees under these authorities are permissible and are subject to the provisions governing comparable GS positions at Pay Bands I through IV.

(b) All details of DOE employees to EJ or EK positions require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.



- 1 If applicable, the losing Departmental Element (supervisory level at a minimum) must concur on the detail prior to effecting the action, regardless of the length.
    - 2 OCEM review of the detail package is required prior to effecting the action.
  - (c) All details of EJ/EK employees to other positions require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
    - 1 If applicable, the losing Departmental Element (supervisory level at a minimum) must concur on the detail prior to effecting the action, regardless of the length.
    - 2 OCEM review of the detail package is required prior to effecting the action.
  - (d) All details of non-DOE employees to EJ or EK positions require approval by the Director, Office of Human Capital Management prior to effecting the action, regardless of the length, and are routed through OCEM and the appropriate program offices (i.e., GC, etc.) for review.
  - (e) All details of EJ/EK employees to outside assignments require approval by the Director, Office of Human Capital Management prior to effecting the action, regardless of length, and are routed through OCEM and the appropriate program offices (i.e., GC, etc.) for review.
- f. Performance Management. EJ and EK employees follow guidelines under DOE Order 331.1C, Employee Performance Management and Recognition Program. These authorities are ineligible for Quality Increases (QI).

All non-performance-based awards (e.g., Special Act) and other awards for EJ and EK employees may be approved by the Head of the Departmental Element, with Under Secretary concurrence, if applicable and required, in accordance with award limitations as outlined in DOE Order 331.1C, Employee Performance Management and Recognition Program. For EJ and EK employees, the NNSA Administrator approval authority limitation is equivalent to the Heads of the Departmental Elements approval authority limitation. OCEM review is required for all non-performance based awards prior to granting.

All performance-based awards may be approved by the Head of the Departmental Element.

All performance-based pay adjustments may be approved by the Head of the Departmental Element with OCEM review. Performance-based pay increases are

typically in alignment with the maximum pay increase that is being authorized for SES members unless DOE is restricted in providing such pay adjustments. The OCEM review process also includes notifying the Office of General Counsel (GC) of proposed pay increases review to determine if there will be a potential impact as it relates to additional post-employment restrictions. EJ or EK employees whose rate of base pay is at or above 86.5% of the rate of EX-II are considered “senior” employees and have additional post-employment restrictions.

(1) Performance Appraisal Cycle

- (a) The performance appraisal cycle is October 1st through September 30th of each year.
- (b) At least two progress reviews must be completed during the appraisal period.

(2) Performance-Based Pay Adjustments

- (a) A discretionary performance-based pay adjustment may result in a pay increase not to exceed the maximum pay increase that is being authorized for the SES unless DOE is restricted in providing such adjustments. Pay cannot exceed the top of the assigned pay band.
- (b) An EJ or EK employee may be considered for one performance-based pay adjustment annually based on clearly documented performance achievements reflected in the performance appraisal and written justification. Eligibility is applicable during the end of the performance appraisal cycle only. If authorized, the pay increase would typically be effective the first full pay period in January.
- (c) To be eligible for a discretionary performance-based pay adjustment, EJ and EK employees cannot have received a pay increase in the past 12 months (on or after the anticipated effective date of the performance-based pay increase) based upon initial appointment, reinstatement, conversion, reassignment or transfer.
- (d) Discretionary performance-based pay adjustments require approval by the Head of the Departmental Element and OCEM review prior to granting.
- (e) OCEM typically processes all performance-based pay adjustments.

(3) Performance-Based Awards

- (a) Based on their annual performance achievements, EJ or EK employees may receive lump sum cash awards.

- (b) Time Off Awards comparable to other pay systems in recognition of annual performance may also be granted.
  - (c) Eligibility is applicable during the performance cycle only if based upon the annual performance.
  - (d) Discretionary performance-based awards up to \$10,000 require approval by the Head of Departmental Element prior to granting.
  - (e) OCEM typically processes all performance-based awards.
- (4) Other Awards
- (a) Employees appointed under these authorities are eligible to receive Departmental awards intended to motivate and reward or recognize excellence.
  - (b) Non-performance based awards for consideration includes: Special Act or Service, On-the-Spot Monetary Award, Time Off Awards, Certificate of Appreciation, Equal Employment Opportunity Award, and Departmental Honorary Awards.
  - (c) A non-performance based award cannot be a duplication of an accomplishment documented in the performance plan.
  - (d) Monetary awards up to \$7,500 require approval by the Head of the Departmental Element and OCEM review.
  - (e) Awards in excess of \$7,500 and up to \$10,000 require approval by the SMRB.
  - (f) Time-off awards require approval by the Head of the Departmental Element and OCEM review not to exceed 80 hours in a 12-month period.
  - (g) OCEM typically processes all non-performance based awards.

g. Pay and Leave Administration.

- (1) Pay Setting Upon Initial Appointment (See Appendix I for pay setting examples)
  - (a) Compensation for an EJ or EK must reflect the salary paid in the labor market for comparable positions, commensurate with the individual's skills, professional and educational accomplishments and the complexity of work being asked to perform.

- (b) Initial basic pay (base pay and locality) for an EJ or EK may be set at any point in the applicable pay band based on consideration of such factors as:
- 1 Labor market conditions
  - 2 Personal qualifications and unique skills
  - 3 Education
  - 4 Experience
  - 5 Salary history
  - 6 Mission impact
  - 7 Organizational equity or pay considerations (comparable competitive or excepted service positions)
- (c) A broad-banding pay system of 5 levels has been established and basic pay ranges for the 5 levels are as follows:

| Pay Band           | Level of Duties | Pay Ranges                  |
|--------------------|-----------------|-----------------------------|
| I                  | GS-5 - 7        | GS-5/1 – GS-9/5             |
| II                 | GS-9 - 11       | GS-9/1 – GS-12/5            |
| III                | GS-12 - 13      | GS-12/1 – GS-14/5           |
| IV                 | GS-14 - 15      | GS-14/1 to 103% of GS-15/10 |
| IV (Grandfathered) | GS-14 - 15      | GS-14/1 to 136% of GS-15/1  |
| V                  | Above GS-15     | EX-V – EX-III               |

(2) Total Annual Compensation

- (a) An EJ or EK employee's aggregate compensation (basic pay, incentives, differentials, and awards, etc.) per calendar year may not exceed the annual rate payable for Executive Level I.
- (b) The total basic pay (base pay and locality) compensation may not exceed Executive Level III.

(3) Locality Pay Increases

OPM locality rates will be applied to the above basic pay bands with total compensation not to exceed Executive Schedule III.

(4) Comparability Increases

Employees appointed to positions under these authorities will receive comparability increases applicable to other federal employees.

## (5) Promotion

- (a) A promotion is defined as movement from a position in one pay band to another position in a higher pay band. A promotion may result in a pay increase up to six percent (6%) not to exceed the top of the new pay band. The Head of the Departmental Element has the option to offer less than six percent (6%) as applicable; however, the adjusted salary may not be less than the minimum salary established for the band to which the individual is promoted.
- (b) Promotions require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
- (c) OCEM review of the promotion package is required prior to effecting the action.
- (d) Typically, positions under these authorities are established at the full performance level. A revised or new position description must accompany the promotion request.
- (e) Employees will not receive more than one promotion in a 12-month period except as provided under a career development program.

## (6) Reassignment

- (a) A reassignment is defined as movement from one position to another position in the same pay band. A reassignment to a position in an equivalent pay band with substantially greater responsibility may result in an increase up to six percent (6%) not to exceed the top of the pay band.
- (b) A pay increase generally applies to an employee being reassigned from a nonsupervisory position to a supervisory position. An employee cannot be placed in a supervisory position without competition unless the employee currently occupies a supervisory position or previously held a supervisory position in the federal civil service.
- (c) Reassignments require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
- (d) OCEM review of the promotion package is required prior to effecting the action.

(7) Movement into the EJ/EK Pay Band

When moving to a position of greater responsibility and scope, an employee may receive a pay increase up to six (6%), not to exceed the top of the applicable pay band, when transitioning from another pay system into the EJ/EK pay band (e.g., GS to EJ). This applies even if the GS position is equivalent to the EJ or EK pay band (e.g. GS-14 or 15 to Pay Band IV). The pay must be set at least at the minimum of the applicable EJ/EK pay band.

(8) Movement from the EJ/EK Pay Band to a Different Pay Plan

Employees moving out of the excepted service pay band into the General Schedule (GS) or other pay plan are only entitled to highest previous rate and not the GS two-step promotion rule.

(9) Movement within the EJ/EK Pay Band with a Change in Duty Station

Employees, whose official worksite is changed to a new duty location upon a pay setting action (e.g. promotion, reassignment, etc.), must be converted to the applicable pay schedule, the rate of base pay, and appropriate locality rate set for the new official worksite prior to processing the new pay-setting action.

(10) Recruitment/Relocation/Retention Incentives

- (a) Employees under these authorities are eligible for recruitment, relocation, or retention incentives.
- (b) These incentives are not entitlements and must be used judiciously.
- (c) Incentives may be approved by the Head of Departmental Element approval with Under Secretary concurrence, if applicable and required.
- (d) OCEM review of the incentive package is required prior to effecting the action.
- (e) OCEM typically processes all incentives.

(11) Leave Administration

- (a) EJ and EK employees in Pay Band V have been approved by OPM to receive 8 hours of annual leave upon entrance on duty or conversion regardless of the years of federal service. The maximum annual leave carry-over is 240 hours.

- (b) EJ and EK employees in Pay Band I through IV will receive the annual leave accrual that is applicable to other federal employees based upon creditable federal service.

(12) Credit Hours/Compensatory Time

Employees under these authorities may earn credit hours and compensatory time if available in accordance with DOE O 322.1C, Pay and Leave Administration and Hours of Duty.

h. Miscellaneous.

(1) Reinstatement Eligibility/Fallback Rights

- (a) Employees (DOE or non-DOE) who voluntarily convert from the competitive service, SES, or other pay systems to a non-time limited appointment under these authorities are not afforded “fallback rights” to the pay system previously assigned prior to the conversion.
- (b) Employees who are placed in a time-limited EJ or EK appointment but were serving on one of the types of appointments listed below in DOE, immediately prior to receiving the time-limited appointment, must be placed in their former position or a position of like status, tenure and grade up termination of the time-limited appointment. The termination of the time-limited appointment must have been for reasons other than misconduct, neglect of duty, malfeasance or performance. The types of appointments are:
  - 1 An appointment without time limitation in the excepted service;
  - 2 A career or career-conditional appointment in the competitive service;
  - 3 A career SES/SL/ST appointment; or
  - 4 An appointment of equivalent tenure.

(2) Collective Bargaining Agreements

When provisions of a local collective bargaining agreement with the employees’ exclusive representative are in conflict with the provisions of this policy with regard to bargaining unit positions, the provisions of the local agreement will govern.

(3) Employee Status

- (a) EJ and EK appointment authorities do not confer career-conditional or career tenure status.
- (b) An employee must compete with other applicants in open competition to meet requirements for a federal competitive position, unless they meet the requirements for reinstatement.

(4) Supervisory Role and Supervisory Reporting Relationships

- (a) An EJ or EK Pay Band V position may include some supervisory and related managerial duties provided that those duties occupy less than 25% of the incumbent's time. Positions in which supervisory and managerial work constitute more than 25% cannot be classified as an EJ or EK Pay Band V.
- (b) An EJ or EK Pay Band V position must report to an equivalent Pay Band V or SES/SL/ST position.
- (c) An EJ or EK Pay Band IV and below position can report to an equivalent or higher grade level, as illustrated in the pay ranges on pay.

(5) Trial Period/Supervisory Probationary Period

- (a) A trial period of one year for the purpose of assessing the ability of an individual to adequately perform in his or her assigned position will be established for appointments under these authorities unless the employee has already completed a trial period under a different excepted service authority or a probationary period under a career or career-conditional appointment.
- (b) Employees separated within their trial periods will be provided the same rights as competitive service employees who are involuntarily separated during the probationary period.
- (c) All employees selected for an initial supervisory position must complete a one year probationary period. A supervisor who does not complete his or her probationary period shall be returned to either the former position or a position of no lower grade and pay than the position from which transferred, assigned or promoted.

(6) Employee Benefits

Employees appointed under these authorities are entitled to the same basic benefits (e.g., health benefits, life insurance, retirement, and leave accrual)



as applicable to other employees of the Department based upon eligibility requirements.

(7) Public Financial Disclosure Report

Employees under these authorities may be required to complete a confidential or public financial disclosure statement and receive conflict of interest clearance from the Office of General Counsel (GC) prior to initial appointment. Confidential financial disclosure reports are due annually on February 15. Employees required to complete the public financial disclosure report must do so annually on May 15 of every year, and upon termination of a position that requires an employee to file. Public financial disclosure report filers also have to file periodic transaction reports as necessary.

(8) Post-Employment Restrictions

- (a) All Federal employees are subject to the post-employment restrictions set forth in 18 U.S.C. section 207. 18 U.S.C. section 207 is the primary source of post-employment restrictions for Federal employees. In general, this statute prohibits a former employee from knowingly making, with the intent to influence, any communication to or appearance before an employee of the United States on behalf of any other person (except the United States) in connection with a particular matter involving a specific party in which the employee was personally and substantially involved or that was pending under the employee's official responsibility, and in which the United States is a party or has a direct and substantial interest.
- (b) There are additional post-employment restrictions placed on employees who are considered "senior." A "senior" employee is someone paid at or above 86.5 percent of the rate of basic pay for Level II of the Executive Schedule. For a period of one year after leaving a "senior" position, an individual may not make, with intent to influence, any communication or appearance in connection with any official action before any officer or employee of the agency (or agencies) in which he or she served within the year immediately prior to termination of service as a "senior" employee. This bar ordinarily does not prohibit appearances before or communications with Members of Congress or their staffs.
- (c) The Procurement Integrity Act places additional post-employment restrictions on employees who work in specialized positions on a contract over \$10 million.

(9) Involuntary Separations

- (a) Employees separated within their trial periods will be provided the same rights as competitive service employees who are involuntarily separated during a probationary period.
- (b) The procedures and appeal rights contained in 5 U.S.C. Chapters 43 and 75 are applicable to employees serving on appointments without time limitation who have completed a trial period.

(10) Time-Limited Appointments

- (a) Termination of a time-limited appointment at the expiration of the appointment is not grievable or appealable.
- (b) Termination of a time-limited appointment under this authority prior to the expiration of the appointment is subject to limited appeal rights.

(11) Reduction-In-Force

Procedures governing reduction-in-force applicable to excepted service employees contained in 5 CFR Part 351 are applicable to appointments made under these authorities.

(12) Appeal Rights – Adverse Action

- (a) Departmental procedures for taking adverse action (e.g. suspension for more than 14 days) applicable to competitive service employees will apply to employees under these authorities.
- (b) Employees also have appeal rights in these cases to the Merit Systems Protection Board and will be advised of these rights in accordance with 5 U.S.C. 75.

(13) Grievance Rights

Employees under these authorities will be covered by the locally applicable Administrative or Negotiated Grievance Procedures in DOE O 342.1.

(14) Applicability of Other Departmental Policies

Unless otherwise described above or in supplemental policy guidance, Departmental policies and procedures will apply to appointments and positions under these authorities.

## (15) SMRB and ERB Review

EJ and EK delegated approval authorities and actions may be referred to the SMRB and/or the ERB as deemed necessary by the Director, OCEM and/or SMRB. The affected Head of the Departmental Element will be provided prior notification before sending an action to the ERB and/or SMRB.

5. RESPONSIBILITIES. SMRB as delegated by the ERB

- (1) Manage and assign all EJ and EK allocations throughout the Department, including NNSA, to include requests to transfer positions and reorganizations;
- (2) Approve establishments of new positions and previously established positions if vacant for more than 365 days;
- (3) Approve non-competitive selections into EJ and EK positions;
- (4) Approve phased retirement requests;
- (5) Approve proposals to grant non-performance based awards in excess of \$7,500 and up to \$10,000;
- (6) Approve priority consideration for surplus employees affected by a Reduction-in-Force (RIF); and
- (7) Approve exemptions to the policy, as applicable.

b. Director, Office of Human Capital Management

- (1) Approve assignments (detail, transfer to International Organizations, etc.) of any EJ or EK employee outside of the Department;
- (2) Approve details of non-DOE employees to EJ and EK positions;
- (3) Approve all Intergovernmental Personnel Act assignments;
- (4) Approve all dual waiver compensation waivers in accordance with Section 1122 of the National Defense authorization Act for Fiscal Year 2010, Public Law 111-84 (Pub.L.111-84) and renewals; and
- (5) Approve requests from Head of Departmental Elements (and other field organizations with personnel authority) to request national interest determinations from the Secretary of State when details and transfers to public international organizations will last more than five years.

c. Heads of Departmental Elements or Equivalent

- (1) Approve all new EJ/EK allocation requests prior to submission to the SMRB;
- (2) Approve EJ or EK backfill requests for those positions that are vacant for less than 365 days;
- (3) Approve competitive selections for appointment;
- (4) Approve reassignment and promotion requests;
- (5) Approve details of DOE employees into EJ and EK positions;
- (6) Approve details of EJ/EK employees into other DOE positions;
- (7) Approve recruitment/relocation/retention incentives;
- (8) Approve performance-based pay adjustments and awards;
- (9) Approve non-performance based awards up to \$7,500 and Time-Off awards up to 80 hours (maximum allowed in a 12-month period);
- (10) Obtain Under Secretary concurrence, if applicable and required; and
- (11) OCEM review as required.

d. Selecting Officials

- (1) Comply with approved guidance;
- (2) Certify merit system principles were followed;
- (3) Certify misuse of his/her position did not occur; and
- (4) Collaborate with OCEM in relation to requests for establishing EJ or EK positions, pay, recruitment, hiring, etc.

e. Human Resources Managers/Business Partners

- (1) Ensure EJ/EK actions are submitted and authorized in accordance with approved guidance (e.g. DOE Order 329.1, ERB Charter, etc.); and
- (2) Collaborate with OCEM in relation to requests for establishing EJ or EK positions, pay, recruitment, hiring, etc.

f. OCEM

- (1) Provide technical support to organizations;

- (2) Monitor use of EJ and EK authorities;
- (3) Review applicable personnel actions to ensure compliance with law, regulation and DOE policy prior to effecting the personnel action (final authority Director, OCEM);
- (4) Provide advice and technical assistance to Departmental Elements prior to final approval of all personnel actions that are forwarded to the ERB and/or SMRB for consideration; and
- (5) Develop Departmental Instructions and guidance.

g. Office of General Counsel

- (1) Provide legal support to extend EK authority, as applicable;
- (2) Review performance-based pay increases; and
- (3) Concur in use of selection without competition of personnel classified under GS-301-series equivalent utilizing the EJ authority.

6. REFERENCES.

- a. Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d), hereafter referred to as pay plan EJ
- b. Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Pub.L. 103-337, October 5, 1994) and renewals, hereafter referred to as pay plan EK
- c. Executive Resources Board Charter dated 3-31-11, or most current
- d. DOE O 320.1 Chg. 1, *Acquiring and Positioning Human Resources*, dated 9-6-02, or most current
- e. DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, dated 8-24-00, or most current
- f. DOE O 322.1C, Pay and Leave Administration and Hours of Duty and Admin Chg. to DOE Pay and Leave Administration and Hours of Duty, dated 1-19-11, or most current
- g. DOE O 331.1C, *Employee Performance Management and Recognition Program*, dated 10-15-10, or most current
- h. DOE O 342.1, *Grievance Policy and Procedures*, dated April 2012 or most current

- i. DOE Handbook on Recruitment and Retention Incentives dated March 2010 or most current
  - j. 5 U.S.C. Chapter 43, Performance Appraisal
  - k. 5 U.S.C. Chapter 45, Incentive Awards
  - l. 5 U.S.C. Chapter 75, Adverse Actions
  - m. 5 CFR Part 302, Employment in the Excepted Service
  - n. 5 CFR Part 351, Reduction in Force
  - o. 5 CFR Part 430, Performance Management
  - p. 5 CFR Part 451, Awards
  - q. 5 CFR Part 575, Recruitment and Relocation Bonuses, Retention Allowances
  - r. 5 U.S.C. Section 2108 Veteran; disabled veteran; preference eligible
  - s. 5 U.S.C. Section 2301, Merit Systems Principles
  - t. Office of Personnel Management Handbook of Occupational Groups and Families
  - u. Office of Personnel Management Introduction to the Position Classification Standards
  - v. Office of Personnel Management the Classifier's Handbook
7. CONTACT. Questions concerning the Order should be directed to the Office of Corporate Executive Management at 202-586-9558.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL  
Deputy Secretary



## SETTING PAY

Initial base pay may be set at any point in the pay bands as described in Section 4.g. (1). Once the SMRB approves the recommended total salary, the base pay and locality adjustment are calculated as follows:

1. Determine locality rate for the position
2. Convert locality percent to a decimal
3. Divide total salary by locality decimal to determine base pay
4. Subtract base pay from Step 3 from the total salary to determine the locality pay

**Example A:** An employee is selected for an EJ/EK position in Washington, DC and the total approved salary for the EJ/EK position is \$123,758 annually.

1. Determine locality rate for the position
  - Washington, DC has a locality rate of 24.22% (locality rate for 2014)
2. Convert locality percent to a decimal
  - 1.2422
3. Divide total salary by locality decimal
  - $(\$123,758) / (1.2422) = \$99,628$  per annum
4. Subtract base pay from Step 3 from the total salary to determine the locality pay
  - $(\$123,758) - (\$99,628) = \$24,130$  per annum

## Movement of Current EJ/EK Employees

When changes in duty stations occur when moving positions within the EJ/EK pay bands as described in Section 4.g.(9), the new base pay and locality adjustment are calculated as follows:

1. Determine locality rate for the current position
2. Convert the current locality percent to a decimal
3. Divide total salary by current locality decimal to determine base pay
4. Multiply base pay from Step 3 by any approved pay increase (e.g., 6% for a promotion), if applicable, to determine new base pay
5. Determine locality rate for the new position



6. Multiply it by the new base pay determined in Step 4 to determine new total salary

**Example B:** An employee is selected for an EJ/EK position in Aiken, South Carolina and is promoted to an EJ/EK position in Washington, DC. The employee's current salary in South Carolina is \$123,758.

1. Determine locality rate for the current position
  - Aiken, South Carolina has a locality rate of 14.16% (locality rate for 2014)
2. Convert the current locality percent to a decimal
  - 1.1416
3. Divide total salary by current locality decimal to determine base pay
  - $(\$123,758) / (1.1416) = \$108,407$  per annum
4. Multiply base pay from Step 3 by any approved pay increase (e.g., 6% for a promotion), if applicable, to determine new base pay
  - $(\$108,407) * (1.06) = \$114,911$  per annum
5. Determine locality rate for the new position
  - Washington, DC has a locality rate of 24.22% (locality rate for 2014)
6. Multiply it by the new base pay determined in Step 4 to determine new total salary
  - $(\$114,911) * (1.2422) = \$142,742$  per annum