

Approved: 12-7-2015
Chg 1 (AdminChg): 12-22-2015
Chg 2 (LtdChg): 8-26-2020
Chg 3 (LtdChg): 12-3-2020

SUBJECT: EXCEPTED SERVICE AUTHORITIES FOR EJ AND EK PAY PLANS

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 329.1A Chg 2 (LtdChg), *Excepted Service Authorities for EJ and EK Pay Plans*, dated 8-26-2020. 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contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.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.
 - (1) 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.
 - (2) 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 approved by the Executive Resources Board (ERB). The request must be submitted to the Office of Corporate Executive Management (OCEM) and must 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 may be used for term and permanent 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. The EK authority is time-limited by law and must be renewed by Congress. 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 EK authority may be used for term and permanent appointments. Current EK employees are not affected if the authority expires prior to extension; however, a freeze on new appointments will be implemented.

- (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 delayed 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).

- 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 (term 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 General Schedule (GS) employees solely as a means of providing greater compensation.
- (c) Convert SES, SL or ST employees as a means to resolve conduct or performance issues.
- b. Duration of Appointments.
- (1) Appointments made under these authorities, unless otherwise stated, are permanent.
- (2) Term appointments under these authorities may be made for a period of up to 4 years.
- c. Classification.
- (1) OPM Classification Standards materials may be used as guidance in determining the proper occupational series and pay band for positions requested under this authority.
- (2) OPM prescribed titling for EJ and EK positions is not required. Individual occupational series may be titled at the Department's discretion. General OPM titling provisions should be adhered to, in that the title prescribed should be short, meaningful, and generally descriptive of the work performed and not be a title prescribed by OPM to another occupational series (e.g., Human Resources Specialist series 0201).
- (3) 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 at a level comparable to a GS-14 or GS-15.

- (4) 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 at a level comparable to a GS-14 or GS-15.
- (5) 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
 - (b) Pay Band II: Level of duties: equivalent to grade levels GS-9 through GS-11 of the General Schedule
 - (c) Pay Band III: Level of duties: equivalent to grade levels GS-12 through GS-13 of the General Schedule
 - (d) Pay Band IV: Level of duties: equivalent to the grade levels GS-14 and GS-15
 - (e) Pay Band V: Level of duties: above the GS-15 grade level of the General Schedule; however, it does not meet the classification level for an SES, SL or ST
- (6) The position descriptions established will be recorded at a minimum, using the following standard 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 and previously established EJ and EK positions require ERB approval prior to filling the position through competitive or non-competitive recruitment methods.
 - (b) The type of recruitment method must be indicated in the ERB package, if applicable.
- (2) Non-Competitive Recruitment Method.
 - (a) ERB 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). Requests for the allocation and non-competitive appointment can be done simultaneously.
 - (b) Prior to submitting for ERB approval, selections require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
 - (c) Prior to submitting for ERB approval, selections in the administrative field (i.e., GS-301-series equivalent) must have concurrence from the Office of General Counsel (GC), Assistant General Counsel for General Law, prior to going to the ERB for review.
 - (d) No formal vacancy announcement needs to be issued; veterans' preference does not apply.
 - (e) Candidates' qualifications (e.g., requisite knowledge, skills and experience) must be documented.
 - (f) An overview of the review and selection process (e.g. was a vacancy announcement posted, were interviews conducted) used by the Selecting Official must be provided.
 - (g) Reference checks must be conducted in accordance with the current ERB procedures and, if applicable, documented in writing.
- (3) Competitive Recruitment Methods.
 - (a) ERB approval is required for the selection of all proposed competitive candidates to EJ and EK positions.
 - (b) Prior to submitting for ERB approval, candidates selected through competitive recruitment methods require approval by the Head of

the Departmental Element with Under Secretary concurrence, if applicable and required.

- (c) For vacancy announcements whose area of consideration is “All Qualified” candidates, veterans’ 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.
- (d) For vacancy announcements whose area of consideration is “Federal employees only,” procedures similar to agency merit promotion procedures apply. Acceptance and evaluation of applications for the selection and appointment of candidates are done within a limited area of consideration (e.g., DOE Headquarters Federal employees, local commuting area or Government-wide Federal employees only).
- (e) The minimum length of the vacancy announcement period must be 5 business days.
- (f) Reference checks must be conducted in accordance with the current ERB procedures and, if applicable, 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) A detail to the competitive service requires OPM approval unless the employee has prior competitive service (e.g., career, career-conditional, interchange agreement).
- (c) ERB approval is required for EJ and EK details. This includes:
 - 1 Details of DOE employees to EJ or EK positions;
 - 2 Details of EJ or EK employees to other positions;
 - 3 Details of non-DOE employees to EJ or EK positions; and
 - 4 Details of EJ or EK employees to outside assignments.
- (d) Prior to ERB approval, all details require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.

- (e) An internal DOE detail requires the losing Departmental Element (supervisory level at a minimum) to concur on the detail prior to submitting the action to the ERB, regardless of the length.
 - (f) Interagency details are processed in accordance with current ERB procedures.
 - (g) As applicable, OCEM will route the package to the appropriate program offices (i.e., GC) for review.
- f. Performance Management. EJ and EK employees follow guidelines under DOE Order 331.1D, *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 331.1D, *Employee Performance Management and Recognition Program*. OCEM review is required for all non-performance-based awards prior to granting.

For EJ and EK employees assigned to NNSA, the Administrator's (NNSA) approval authority limitation is equivalent to the Heads of the Departmental Elements approval authority limitation. In addition, they are eligible for "conversion-like" bonuses unique to NNSA.

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 adjustments 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.

(1) Performance Appraisal Cycle.

- (a) The performance appraisal cycle is October 1st through September 30th of each year.
- (b) At least one progress review 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 adjustment 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, promotion, reinstatement, conversion, reassignment or transfer. Requests for exceptions require ERB approval.
 - (d) Discretionary performance-based pay adjustments require approval by the Head of the Departmental Element and OCEM review prior to granting. The OCEM review process also includes notifying GC of proposed pay increases 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.
 - (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 include: Special Act or Service Awards, On-the-Spot Monetary Awards, Time-Off Awards, Certificates of Appreciation, and Departmental Honorary Awards.
- (c) Monetary awards up to \$7,500 require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required, and OCEM review.
- (d) Awards in excess of \$7,500 and up to \$10,000 require approval by the ERB.
- (e) Time-off awards (performance and non-performance based), require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required, and OCEM review.
- (f) OCEM typically processes all non-performance-based awards.

g. Pay and Leave Administration.

(1) Pay Setting Upon Initial Appointment.

- (a) Compensation for an EJ or EK employee must reflect the salary paid in the labor market for comparable positions, commensurate with the individual's skills and professional and educational accomplishments, and the complexity of work the individual will be asked to perform.
- (b) Initial basic pay (base pay and locality) for an EJ or EK employee 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; and
 - 7 Organizational equity or pay considerations (comparable competitive or excepted service positions).

(c) A broad-banding pay system of five levels has been established and basic pay ranges for the five levels is provided in the table below. The Pay Band IV (Grandfathered/Supervisory) is reserved for:

- 1 Employees who were in Pay Band IV prior to March 30, 2012, through appointment, conversion, or hire, providing that they remain employed on a continuous basis in this band. If such an employee leaves Pay Band IV (Grandfathered/Supervisory), he/she will not be grandfathered at the higher pay range if he/she later returns to a Pay Band IV position that is not designated as supervisory.
- 2 Pay Band IV classified positions that have a supervisory code of 2 or 4. If a Pay Band IV employee leaves a classified position with a supervisory code of 2 or 4 for a classified non-supervisory position in Pay Band IV, he/she will not be eligible for the maximum pay in Pay Band IV (Grandfathered/Supervisory). However, he/she may maintain the higher pay if it can be matched in the non-grandfathered/supervisory pay band. Exceptions may apply if the employee is in a supervisory probationary period.

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/Supervisory)	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, awards, etc.) per calendar year may not exceed the annual rate payable for Executive Schedule (EX) Level I (EX-I).
- (b) The total basic pay compensation (base pay and locality) may not exceed EX- III.

(3) Locality Pay Increases. OPM locality rates will be used to determine the above basic pay bands with total compensation not to exceed EX- 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.
- (b) A promotion may result in a pay increase up to 6%, not to exceed the top of the new pay band. Pay increases more than 6% require justification (e.g., employee possessing unique knowledge, skill, or ability required to perform in the position). The Head of the Departmental Element has the option to offer less than 6% as applicable; however, the adjusted salary may not be less than the minimum salary established for the band to which the employee is promoted.
- (c) A promotion is considered a pay increase; therefore, an employee is ineligible for a discretionary performance-based pay adjustment if a promotion has been received in the past 12 months. Exceptions require ERB approval.
- (d) ERB approval is required for EJ and EK promotions and any pay increase requests.
- (e) Prior to ERB approval, promotions require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
- (f) Typically, positions under these authorities are established at the full performance level. A new classified position description must accompany the promotion request.
- (g) Typically, employees may not receive more than one promotion in a 12-month period.

(6) Reassignment.

- (a) A reassignment is defined as movement from one position to another position in the same pay band.
- (b) A reassignment to a position with substantially greater responsibility may result in an increase up to 6%, not to exceed the top of the pay band. Pay increases of more than 6% require additional justification.
- (c) A reassignment that results in a salary increase, regardless of the percentage, is considered a pay increase; therefore, an employee is ineligible for a discretionary performance-based pay adjustment if a salary increase has been received in the past 12 months. Exceptions require ERB approval.

- (d) ERB approval is required for EJ and EK reassignments and any pay increase requests.
 - (e) Prior to ERB approval, reassignments and any pay increase requests require approval by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
- (7) Movement into the EJ/EK Pay Band. When moving to a position of greater responsibility and scope and converting from another pay system into the EJ/EK pay band (e.g., GS to EJ), an employee may receive a pay increase up to 6%, not to exceed the top of the applicable pay band. 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 cannot be set lower than 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 GS system 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), must be converted to the applicable pay schedule, the rate of base pay, and the appropriate locality rate set for the new official worksite prior to processing the new pay-setting action. This also applies to an employee's initial eligibility for pay retention if a change in duty station occurs simultaneously. If the employee is on pay retention at the time of the change in duty station, an eligibility determination to stop or continue is made in accordance with pay rules (e.g., if the retained pay can be matched in the pay band under the new duty station).
- (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) ERB approval is required for these incentives.
 - (d) Prior to ERB approval, incentives must be approved by the Head of the Departmental Element with Under Secretary concurrence, if applicable and required.
 - (e) OCEM typically processes all incentives.

(11) Leave Administration.

- (a) EJ and EK employees in Pay Band V will 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 remains at 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*.

(13) Overtime. Employees under these authorities may earn overtime 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 permanent EJ or EK appointment under these authorities are not afforded “fallback rights” to the pay system previously assigned prior to the conversion. If applicable, the employee may be eligible for reinstatement to another appointment; however, it is not an entitlement.
- (b) Employees who are converted to a term EJ or EK appointment but were serving on one of the types of appointments listed below in DOE immediately prior to receiving the term appointment, must be placed in their former position or a position of like status, tenure, and grade upon termination of the term appointment. The termination of the term 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, excluding Schedule C;
 - 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. However, the Secretary of Energy has the authority to set pay notwithstanding Chapter 71 of Title 5 of the United States Code.
- (3) Employee Status.
- (a) An EJ or EK appointment does not confer career-conditional or career tenure status (competitive status).
- (b) An employee appointed under the EJ or EK authority must compete with other applicants in open competition (e.g., All Qualified) to meet the requirements for a Federal civil service competitive position, unless they meet the requirements for reinstatement.
- (4) Employee Benefits. Employees appointed under these authorities are entitled to the same basic benefits (e.g., health benefits, life insurance, retirement) as applicable to other employees of the Department based upon eligibility requirements.
- (5) Trial Period.
- (a) A trial period of up to 2 years 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. Non preference eligible appointees are subject to a 2-year trial period. Preference eligible appointees are subject to a 1-year trial period. The trial period will be served unless the individual meets the definition of an "employee" in 5 USC 7511(a)(1)(B) or (C).
- (b) Separations during the trial period are covered by section (8) below.
- (6) 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 band chart on page 10.

(7) Supervisory Probation Period.

- (a) All employees selected for an initial supervisory position must complete a 1-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.
- (b) If an EJ or EK is demoted (e.g. from a Pay V to a supervisory Pay Band IV) and does not complete his or her probationary period, the employee is entitled to a position of same pay and grade as the probationary period position.
- (c) An employee serves a trial period and supervisory probationary concurrently, if applicable.

(8) Involuntary Separations.

- (a) Appointees separated within their trial periods will be provided the same rights as competitive service appointees who are involuntarily separated during a probationary period in accordance with their employment status, as defined in 5 U.S.C. 7511(a)(1)(B) or (C).
- (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 limitations who have completed a trial period.

(9) Term Appointments.

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

(10) 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.

- (11) 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.
- (12) Grievance Rights. Employees under these authorities will be covered by either negotiated grievance rights in the local Collective Bargaining Agreement or administrative procedures in DOE O 342.1, *Agency Administrative Grievance Policy and Procedures*, current version.
- (13) 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.
- (14) ERB Review. EJ and EK delegated approval authorities and actions may be referred to the ERB as necessary by the Director, OCEM. The affected Head of the Departmental Element will be provided prior notification before sending an action to the ERB.
- (15) Public Financial Disclosure Reports. Employees under these authorities may be required to complete either a Confidential Financial Disclosure Report (OGE Form 450) or a Public Financial Disclosure Report (OGE Form 278e) and receive conflict-of-interest clearance from GC prior to initial appointment. Confidential Financial Disclosure Reports are generally due annually on February 15. Employees required to complete the Public Financial Disclosure Report must do so annually, generally 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.
- (16) Post-Employment Restrictions.
- (a) All Federal employees are subject to the post-employment restrictions set forth in 18 U.S.C. section 207, which 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% of the rate of basic pay for Level II of the Executive Schedule. For a period of 1 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 certain designated positions on a contract over \$10 million.

5. RESPONSIBILITIES. ERB.

- (1) Approve all actions for EJ and EK positions throughout the Department, including NNSA, as identified in the ERB Charter, unless delegated or otherwise specified in communications to the Heads of Departmental Elements.
- (2) Approve proposals to grant non-performance-based awards in excess of \$7,500 and up to \$10,000.
- (3) Approve requests from the Heads 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 5 years
- (4) Approve exemptions to the policy, as applicable.

b. Heads of Departmental Elements or Equivalent.

- (1) Approve all requests prior to submission to the ERB.
- (2) Approve any actions for EJ and EK positions as delegated by the ERB Chair.
- (3) Approve performance-based pay adjustments and awards.
- (4) Approve non-performance-based awards up to \$7,500 and Time-Off Awards up to the maximum allowed in a 12-month period.

- (5) Obtain Under Secretary concurrence, if applicable and required, and OCEM review as required.
- c. Selecting Officials.
- (1) Comply with approved guidance.
 - (2) Certify merit system principles were followed.
 - (3) Certify misuse of his/her position did not occur.
 - (4) Collaborate with OCEM in relation to requests for establishing EJ or EK positions, pay, recruitment, hiring, etc.
- d. 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).
 - (2) Collaborate with OCEM in relation to requests for establishing EJ or EK positions, pay, recruitment, hiring, etc.
- e. 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 (the final authority is the 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 for consideration.
 - (5) Develop Departmental instructions and guidance.
- f. Office of General Counsel.
- (1) Provide legal support for EJ and EK authorities, as applicable.
 - (2) Review performance-based pay increases.
 - (3) Concur in the use of selection without competition of personnel classified under GS-301-series equivalent utilizing the EJ authority.
 - (4) Perform conflict-of-interest reviews for EJ and EK employees.

(5) Review and concur on applicable EJ or EK intra-agency details.

6. REFERENCES.

- a. Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d)
- b. Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (Pub.L. 103-337, October 5, 1994)
- c. 5 U.S.C. Chapter 43, Performance Appraisal
- d. 5 U.S.C. Chapter 45, Incentive Awards
- e. 5 U.S.C. Chapter 75, Adverse Actions
- f. 5 CFR Part 302, Employment in the Excepted Service
- g. 5 CFR Part 351, Reduction in Force
- h. 5 CFR Part 430, Performance Management
- i. 5 CFR Part 451, Awards
- j. 5 CFR Part 575, Recruitment and Relocation Bonuses, Retention Allowances
- k. 5 U.S.C. Section 2108, Veteran; disabled veteran; preference eligible
- l. 5 U.S.C. Section 2301, Merit Systems Principles
- m. *Office of Personnel Management Handbook of Occupational Groups and Families*
- n. *Office of Personnel Management Introduction to the Position Classification Standards*
- o. *Office of Personnel Management the Classifier's Handbook*
- p. DOE O 322.1, Pay and Leave Administration and Hours of Duty, or current version.
- q. DOE O 331.1, Employee Performance Management and Recognition Program, or current version
- r. DOE O 342.1, Agency Administrative Grievance Policy and Procedures, or current version
- s. DOE M 321.1-1, Intergovernmental Personnel Act Assignments, or current version

- t. Executive Resources Board Charter, dated 10-09-18 or current version
 - u. DOE Handbook on Recruitment and Retention Incentives, dated April 2012 or current version
7. CONTACT. Questions concerning this Order should be directed to the Office of Corporate Executive Management at 202-586-8395.

BY ORDER OF THE SECRETARY OF ENERGY:

MARK W. MENEZES
Deputy Secretary