

Approved: 3-30-2012

**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 (P. L.) 103-337, Oct. 5, 1994) and renewals, hereafter referred to as pay plan EK.
2. CANCELLATION. None.
3. APPLICABILITY.
  - a. Departmental Applicability. Except for exemptions provided for in paragraph 3.c., this directive applies to all Departmental elements.

The Administrator of National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their respective responsibilities under this directive. Nothing in this Order will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of 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 Naval 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 directive does not apply to DOE contractors.

Equivalencies and Exemptions to DOE O 329.1. Requests for exemption to this Order must be submitted to the Executive Resources Board (ERB) through the Office of the Chief Human Capital Officer. The request must include the basis for the exemption, identify the requirement for which the exemption is sought, and request a timeframe, as applicable.

4. REQUIREMENTS.a. General.

- (1) All provisions of Title 5 U.S.C. and Title 5 Code of Federal Regulations (CFR) regarding the competitive and excepted service apply unless otherwise stated herein.
- (2) The EJ and EK authorities are to be used for
  - (a) filling positions expeditiously because of
    - 1 an urgent mission requirement;
    - 2 a significant shortage of external candidates for a critical occupation or position; or
    - 3 the need to use a time-limited appointment; or
  - (b) retaining employees in a critical occupation or position.
- (3) These authorities are not to be used to
  - (a) make political appointments or appointments to positions properly classified in the Senior Executive Service (SES);
  - (b) promote GS employees solely as a means of providing greater compensation; or
  - (c) convert SES, Senior Level (SL), or Senior Scientific or Professional (ST) employees as a means to resolve a conduct or performance issue.
- (4) EJ and EK pay band V positions are not supervisory/managerial positions.

a. EJ Authority.

- (1) Use of this authority is limited to 200 scientific, engineering, professional, and administrative positions.
- (2) Use of this authority is for time-limited and indefinite appointments.

c. EK Authority.

- (1) Use of this authority is limited to 200 scientific, engineering, and technical positions.

- (2) Use of this authority is time-limited by legislation and must be renewed through periodic legislative action.
- (3) Time-limited and indefinite appointments made before the termination date specified in the legislation will continue until the expiration of the appointment or the employee leaves the position.

d. Internal Controls.

- (1) Use of these authorities is subject to the approval of the Department's Executive Resources Board (ERB); this authority may be redelegated in accordance with the ERB Charter.
- (2) All noncompetitive selections in an administrative field; e.g., 301 series, are subject to concurrence by, or for NNSA coordination with, the Assistant General Counsel for General Law.

e. Appointments.

- (1) Appointments, unless otherwise stated, shall be indefinite.
- (2) EJ and EK permanent positions must be filled by competitive placement procedures, while temporary positions with time-limited appointments may be filled by either competitive or noncompetitive placement procedures; all placement procedures must be consistent with merit principles and result in excepted service appointments.
- (3) A DOE employee
  - (a) who was serving on an appointment without time limitation in the excepted service, a career or career-conditional appointment in the competitive service, a career SES appointment, or an appointment of equivalent tenure immediately prior to receiving a time-limited appointment without a break in service, and
  - (b) whose limited appointment is terminated for reasons other than misconduct, neglect of duty, malfeasance, or performance must be placed in his/her former position or a position of like status, tenure, and grade.
- (4) A DOE or nonDOE employee who voluntarily converts from the competitive service, SES, SL/ST, or other pay system to an EJ or EK appointment without time limitation is not afforded "fallback rights" to the pay system previously assigned prior to the conversion.
- (5) All employees will be required to complete a new 1-year probationary period even if converted from an appointment with career status.

- (6) All employees selected for an initial supervisory position must also complete a 1-year probationary period.

f. Position Classification.

- (1) Classification materials applicable to other comparable Federal positions, e.g., classification standards and guides applicable to General Schedule positions, shall be used as guidelines for application to EJ/EK positions.
- (2) Positions shall be coded with the prefix EJ or EK, as appropriate, followed by the appropriate GS occupational series and pay band level based on the following section.
- (3) The duties and responsibilities of positions established will be recorded on formal position descriptions using, as a minimum, the following format.
  - (a) Introduction
  - (b) Major Duties and Responsibilities
  - (c) Technical Knowledge Required in the Position
  - (d) Supervision and Guidance Received

g. Compensation.

- (1) A broad banding system consisting of 5 pay band levels will be used in which the pay rates will range from the specified GS-equivalent rates without locality pay up to Executive Schedule (EX) III.

<u>Pay Band</u>	<u>Level of Duties</u>	<u>Pay Range</u>
I	GS-5 - 7	GS-5/1- 9/5
II	GS-9 -11	GS-9/1- 12/5
III	GS-12-13	GS-12/1 - 14/5
IV	GS-14-15	GS-14/1 – 103% of GS-15/10
V	Above GS-15	EX-V to EX-III

- (2) Locality rates will be applied only to the above GS pay rates to constitute basic pay.
- (3) The initial basic pay rate may be set at any point in the pay bands based on consideration of such factors as market conditions, salary history, experience, and comparable level of assignment complexity and responsibility.
- (4) The maximum rate of basic pay may not exceed EX-III.

- (5) The maximum pay rate authorized for Pay Band IV is reduced from 136% of GS-15/1 to 103% of GS-15/10.
  - (a) Employees on Pay Band IV at the time that this directive is effective are grandfathered indefinitely; i.e., they will continue to use the pay range that was previously in effect providing 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.
  - (b) For implementation purposes during the period of transition to the new pay range, the pay range that was previously in effect will apply to any employee hired from a competitive announcement issued prior to the effective date of this directive, and to any employee hired or reassigned non-competitively only if the Senior Management Review Board, on behalf of the ERB, approves the action prior to the effective date of this directive.
  - (c) Any employee hired, promoted, or reassigned into Pay Band IV on or after the effective date of this directive will be subject to the new pay range unless paragraph (b) applies.
  - (d) Two pay ranges will be in effect concurrently.
- (6) The aggregate compensation, i.e., basic pay plus performance-based pay adjustment, incentive, award, differential, etc., per calendar year may not exceed EX-I.
- (7) Employees will receive the same general pay comparability and locality pay increases that are applicable to other Federal employees in comparable positions.
- (8) No more than one performance-based pay adjustment may be authorized annually that will result in an approximate 3% up to a 6% salary increase within the assigned pay band unless DOE is restricted in providing such adjustments.
- (9) For pay bands I through V, a promotion will result in a pay increase up to 6%, not to exceed the top of the range of the higher pay band, or the minimum of the higher pay band, whichever is greater.
  - (a) Except as provided for under a career development program, as a general rule, employees may not receive more than one promotion in a 12-month period.

- (b) The adjusted salary may not be less than the minimum salary established for the pay band to which the individual is promoted.
- (10) Employees are eligible for the same pay incentives available to comparable level employees.
- h. Leave. Employees in Pay Band V are authorized by OPM to receive 8 hours of annual leave per pay period upon entrance on duty or conversion, regardless of the years of Federal service.

5. RESPONSIBILITIES.

- a. Executive Resources Board (ERB).
  - (1) Monitors the allocation and the overall usage of EJ and EK positions.
  - (2) Establishes policies and procedures for EJ and EK positions. Recommends changes to the Secretary as needed.
  - (3) Approves all actions for EJ and EK positions identified in the ERB Charter unless redelegated by the Charter or otherwise specified in communications to Heads of Departmental elements.
- b. Office of the Chief Human Capital Officer.
  - (1) Develops or revises policy and procedures for EJ and EK positions on behalf of the ERB.
  - (2) Coordinates applicable personnel actions with the ERB and Office of the General Counsel for internal control purposes.
- c. Office of the General Counsel. Concurs, or for NNSA coordinates, on all noncompetitive personnel selections in an administrative field; e.g., 301 series.
- d. Heads of Departmental Elements.
  - (1) With the exception of paragraphs (2) and (3), in conjunction with the applicable servicing human resources staffs, forward all personnel actions involving EJ and EK positions to the ERB or, if redelegated, the applicable approving authority.
  - (2) Approve incentive awards up to the amount authorized by the ERB Charter or, in the absence of such information, DOE O 331.1C, Employee Performance Management and Recognition Program.

6. DEFINITION.

- a. Promotion. Movement into a pay band as a result of either a competitive selection process or a non-competitive lateral conversion action, or a reassignment within a pay band to a position with a significant increase in duties and responsibilities in which an employee's salary increases at least one dollar.

7. REFERENCES.

- a. Section 621(d) of the DOE Organization Act (42 U.S.C., section 7231(d)).
- b. Section 3161(a) of the National Defense Authorization Act for Fiscal Year 1995 (P. L. 103-337, Oct. 5, 1994) and renewals.
- c. 5 CFR Part 302, Employment in the Excepted Service.
- d. DOE O 331.1C, Employee Performance Management and Recognition Program.
- e. DOE Excepted Service EJ and EK Desk Reference.
- f. Executive Resources Board (ERB) Charter.

- 8. CONTACT. Questions concerning this directive should be addressed to the Office of Strategic Planning & Policy at (202) 586-3372 or, for the application of the directive to specific personnel actions, to the Executive Resources Services Division, Office of Human Resource Services at (202) 586-9662.

BY ORDER OF THE SECRETARY OF ENERGY:



DANIEL B. PONEMAN  
Deputy Secretary