



Department of Energy  
Washington, DC 20585

**JM CHRONOLOGY**  
JM RECEIVED 8/11/14  
OUT FOR REVIEW 8/11/14  
DRB DISCUSSION 8/21/14

AUG 11 2014

MEMORANDUM FOR: INGRID KOLB  
DIRECTOR, OFFICE OF MANAGEMENT

THROUGH: KEVIN T. HAGERTY  
DIRECTOR, OFFICE OF INFORMATION RESOURCES

FROM: KENNETH T. VENUTO  
DIRECTOR, OFFICE OF HUMAN CAPITAL MANAGEMENT

SUBJECT: Notice of Intent to Revise DOE O 329.1, *Excepted Service Authorities for EJ and EK Pay Plans*

**PURPOSE:** To revise DOE O 329.1 to provide more flexibility for selecting officials when using the excepted service EJ and EK authorities, as well as to make miscellaneous changes, such as streamlining the current structure and expounding and clarifying on items based on the implementation review.

**JUSTIFICATION:** DOE O 329.1 establishes requirements and responsibilities for the employment and compensation of individuals when using the EJ and EK excepted service authorities that are unique to the Department of Energy.

DOE O 251.1C requires an accuracy review one year after directives are issued. DOE O 329.1 was issued March 2012 and an administrative change was issued June 2012. Since implementation, hiring managers and Human Resources Directors (HRDs) have expressed concerns regarding the policy limitations set forth in the Order. Additionally, an internal review, as well as a customer stakeholder review was conducted. Several policy items, miscellaneous corrections, clarifications and expansions have been identified to improve the ease of use and promote effective implementation.

As currently written, DOE O 329.1 limits some hiring flexibilities which are afforded by the laws establishing them and places additional administrative burdens on the use of the EJ/EK authorities in DOE. Based on feedback, two primary flexibilities proposed for consideration in the revised Order are: (1) removal of the requirement to fill permanent EJ and EK positions through competitive placement procedures, and (2) removing the restriction that EJ and EK pay band V positions cannot be supervisory/managerial to establishing the positions can supervise but not more than 25 percent of the time in accordance with the U.S. Office of Personnel Management (OPM) determination. The revised Order will also provide more flexibility to recruit both highly qualified scientific, engineering and professional and administrative personnel allowed by the EJ authority, as well as highly qualified scientific, engineering and technical personnel whose duties relate to the safety at defense nuclear facilities as allowed by



the EK authority will help support the Department’s strategic imperative to transform the nation’s energy system and to secure the U.S. leadership in clean energy technologies. There are no valid external, consensus or other “Standards” (e.g., ISO, VPP, etc.) available which can be used in place of this directive because this is a new hiring appointing authority unique to DOE.

**IMPACT:** The proposed directive does not duplicate existing laws, regulations or national standards and it does not create undue burden on the Department.

The directive will provide guidance for utilizing the appointing authority as stipulated by the EJ and EK laws, to include ensuring DOE is in compliance through specific safeguards and measures. Internal controls are necessary to ensure that use of the hiring authorities is implemented consistently across DOE and in accordance with the law. The directive will also provide hiring managers with the guidelines and flexibilities to best utilize the EJ and EK authorities within their organization. A carefully designed corporate approach to the use of the EJ and EK hiring authorities will result in a flexible and uniform application throughout DOE. It is anticipated that the revision to this directive will have minimal financial impacts to DOE.

The Office of the Chief Human Capital Officer, Office of Executive Resources will have primary responsibility for developing and implementing the guidance, ensuring compliance, and maintaining the allocations.

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Ingrid Kolb, Director, Office of Management (MA-1):

Concur:  Nonconcur: \_\_\_\_\_ Date: 8-21-14

Unless determined otherwise by the Directives Review Board (DRB), writers will have up to 60 days in which to develop their first draft and submit to the Office of Information Resources, MA-90

<u>Standard Schedule for Directives Development</u>	<u>Days</u>
Draft Development	Up to 60 days
Review and Comment (RevCom)	30
Comment Resolution	30
Final Review	30
Total	150

**(NOTE: The standard schedule of up to 150 days will be used unless otherwise specified by the Directives Review Board.)**

# Risk Identification and Assessment

## DOE Order 329.1 Excepted Service Authorities for EJ and EK Pay Plans

Risk	Probability	Impact	Risk Level
<b>People</b>			
1. Current EJ/EK Order imposes additional restrictions not required by law (e.g., restriction to noncompetitively appoint EJ/EKs to permanent positions)	Likely	High	Extreme
2. Without the revised EJ /EK Order, hiring officials lack the flexibility to help ensure a diverse workforce by restricting the noncompetitive appointment to permanent positions.	Possible	High	Extreme
<b>Mission</b>			
3. The restrictions on internal hiring controls may restrict hiring officials' ability to recruit highly scientific, engineering and professional individuals to meet the mission of the agency.	Possible	High	Extreme
4. The EK authority is time-limited and internal restrictions could possibly result in jeopardizing the Department's use of the authority as a result of stringent internal controls	Possible	High	Extreme
<b>Assets</b>			
	N/A	N/A	<b>None</b>
<b>Financial</b>			
5. Without revised guidance on the EJ/EK authorities, the Department may not be utilizing the compensatory tools (including initial salary, awards, incentives etc.) to the fullest extent by unduly imposing internal restrictions which could hinder hiring and retaining the "best and the brightest".	Possible	Medium	Significant
<b>Customer and Public Trust</b>			
6. Undue burden and application of the hiring authorities could lead to the perception that the Department is imposing internal restrictions contrary to the intent of the law which could jeopardizes future requests for excepted service appointment authorities and the ability to retain current approval and/extensions.	Possible	Medium	Significant

## Gap Analysis of Existing Risks and Controls

Laws	<ul style="list-style-type: none"> <li>• 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</li> <li>• Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals, hereafter referred to as pay plan EK</li> <li>• 5 U.S.C. Chapter 43</li> <li>• 5 U.S.C. Chapter 45</li> </ul>
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	<ul style="list-style-type: none"> <li>• 5 U.S.C. Chapter 75</li> <li>• 5 U.S.C Section 2108</li> <li>• 5 U.S.C. Section 2301</li> </ul>
External Regulation	<ul style="list-style-type: none"> <li>• 5 CFR Part 302</li> <li>• 5 CFR 351</li> <li>• 5 CFR Part 430</li> <li>• 5 CFR Part 451</li> <li>• 5 CFR Part 575</li> </ul>
DOE Regulation	<ul style="list-style-type: none"> <li>• Executive Resources Board (ERB) Charter</li> <li>• DOE Excepted Service EJ and EK Desk Reference</li> <li>• DOE Handbook on Recruitment and Retention Incentives</li> <li>• Office of Personnel Management Handbook of Occupational Groups and Families</li> <li>• Office of Personnel Management Introduction to the Position Classification Standards</li> <li>• Office of Personnel Management Classifier's Handbook</li> </ul>
DOE Orders	<ul style="list-style-type: none"> <li>• DOE N 314.1</li> <li>• DOE M 321.1-1</li> <li>• DOE O 322.1C</li> <li>• DOE O 331.1C</li> </ul>
Contract Controls	None
External Assessments	Secretary of Energy, Office of Personnel Management (OPM), and Congress

## Risk Mitigation Techniques

Risk Assessment for [Directive Number, <i>Directive Title</i> ]					
Risk/Opportunity	Risk Level	Potential Cost/Benefit	External Control(s)	Proposed Mitigation Technique	Internal Control (if needed)
1. Current EJ/EK Order imposes additional restrictions not required by law (e.g., restriction to noncompetitively appoint EJ/EKs to permanent positions)	Extreme	Ensures selectees are appointed following the intent of the laws and not unduly restricted by internal DOE policy	Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals,	Market and train Human Resource Directors (HRDs) on proper use of the hiring authorities to collaborate with hiring managers	<ul style="list-style-type: none"> <li>Continued approval of the appointments and proposed positions by the Senior Management Review Board (SMRB)</li> </ul>
2. Without the revised EJ /EK Order, hiring officials lack the flexibility to help ensure a diverse workforce by restricting the noncompetitive appointment to permanent positions.	Extreme	<ul style="list-style-type: none"> <li>Complies with Merit System Principles</li> <li>Ensures diversity in key positions</li> </ul>	Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals	Market and train HRDs on proper use of the hiring authorities to collaborate with hiring managers	Continued approval of the appointments and proposed positions by the SMRB

<p>3. The restrictions on internal hiring controls may restrict hiring officials' ability to recruit highly scientific, engineering and professional individuals to meet the mission of the agency.</p>	<p>Extreme</p>	<p>Authorities allow the Department to attract and retain highly qualified scientific, engineering and professional individuals to fill critical positions noncompetitively and meet the intent of the laws.</p>	<p>Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals</p>	<p>Provide revised regulatory guidance and applicable restrictions to HRDs and hiring managers</p>	<p>Continued approval of the appointments and proposed positions by the SMRB</p>
<p>4. The EK authority is time-limited and internal restrictions could possibly result in jeopardizing the Department's use of the authority as a result of stringent internal controls.</p>	<p>Extreme</p>	<p>Application of a revised Order could result in increased use and the continued extension of the EK authority.</p>	<p>Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals</p>	<p>Provide revised regulatory guidance and applicable restrictions to HRDs and hiring managers</p>	<p>Continued approval of the appointments and proposed positions by the SMRB</p>
<p>5. Without the revised guidance on applying the EJ and EK to ensure the Department is utilizing the authorities and compensatory tools to the fullest extent of the including initial salary, awards, incentives etc. without the Department unduly requiring internal restrictions which could hinder hiring and retaining the "best and the brightest".</p>	<p>Significant</p>	<p>Ensures individuals are appointed following the intent of the laws and not unduly restricted by internal guidance through available compensatory tools</p>	<p>Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940 and renewals</p>	<p>Provide revised regulatory guidance and applicable restrictions to HRDs and hiring managers</p>	<p>Continued approval of the appointments and proposed positions by the SMRB</p>

<p>6. Undue burden and application of the hiring authorities could lead to the perception that the Department is imposing internal restrictions contrary to the intent of the law which could jeopardizes future requests for excepted service appointment authorities and the ability to retain current approval and/extensions.</p>	<p>Significant</p>	<p>Ensure the Department is not limiting its options and missing critical hiring opportunities as a result of internal controls being too stringent</p>	<p>Section 621(d) of the DOE Organization Act (42 United States Code (U.S.C.), section 7231(d); Section 3161(a) of the National Defense Authorization Act for Fiscal year 1995 (Public Law (P.L.) 103-337, Oct 5, 19940</p>	<p>Provide revised regulatory guidance and applicable restrictions to HRDs and hiring managers</p>	<p>Continued approval of the appointments and proposed positions by the SMRB</p>
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## References

### Risk/Opportunity Categories

- People – Risks that affect the individual well-being.
- Mission – Risks that impede the ability of the department or offices to accomplish their mission.
- Assets – Risks that impact federal land, buildings, facilities, equipment, etc.
- Financial – Risks that may incur costs or obligations outside of DOE’s control.
- Customer and Public Trust – Risks that affect the trust and political environment around DOE.

### Probability Ratings

- Rare – even without controls in place, it is nearly certain that event would not occur
- Unlikely – without controls in place, it is unlikely the event would occur
- Possible – without controls in place, there is an even (50/50) probability that the event will occur
- Likely – without controls in place, the event is more likely than not to occur
- Certain – without controls in place, the event will occur

### Impact Ratings

Rating	Risk	Opportunity
Negligible	Events of this type have very little short-term or long-term impact and whatever went wrong can be easily and quickly corrected with little effect on people, mission, assets, finances, or stakeholder trust.	A benefit with little or no improvement of operations or utilization of resources.
Low	Events of this type may have a moderate impact in the short term, but can be easily and quickly corrected with no long term consequences.	A benefit with minor improvement of operations or utilization of resources.
Medium	Events of this type have a significant impact in the short term and the actions needed to recover from them may take significant time and resources.	A benefit with somewhat major improvement of operations or utilization of resources.
High	Events of this type are catastrophic and result in long-term impacts that significantly affect the ability of the Department to complete its mission.	A benefit with major improvement of operations or utilization of resources.

### Risk Level Ratings

		Impact			
		Negligible	Low	Medium	High
Probability	Certain	Minor	Moderate	Extreme	Extreme
	Likely	Minor	Moderate	Significant	Extreme
	Possible	Minor	Moderate	Significant	Extreme
	Unlikely	Minor	Minor	Moderate	Significant
	Rare	Minor	Minor	Minor	Moderate

## Risk Mitigation Options and Guidance

- Acceptance
- Monitoring
- Mitigation
- Avoidance

Unmitigated Risk / Strategy	Extreme	Significant	Moderate	Minor
Acceptance	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Not Appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• Risks can be handled through performance feedback and accountability</li> </ul>
Monitoring	<ul style="list-style-type: none"> <li>• Mandatory Contractor independent assessments</li> <li>• Federal oversight with a mandatory periodicity</li> <li>• Mandatory, periodic reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory Contractor Self-assessments with a minimum periodicity</li> <li>• Federal oversight with a periodicity that is based on performance</li> <li>• Mandatory, periodic reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Limited Federal oversight based on performance</li> <li>• Mandatory reporting of threshold events</li> </ul>	<ul style="list-style-type: none"> <li>• Federal oversight on a for-cause basis</li> <li>• Standard performance evaluation processes</li> </ul>
Mitigation	<ul style="list-style-type: none"> <li>• Federal approvals of individual transactions</li> <li>• Detailed performance or process requirements</li> <li>• Detailed design requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Federal approvals of systems and programs</li> <li>• Detailed performance or process requirements</li> <li>• Detailed design requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed performance requirements</li> </ul>	<ul style="list-style-type: none"> <li>• General Performance Requirements</li> </ul>
Avoidance	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibition of activities or operations</li> </ul>	<ul style="list-style-type: none"> <li>• Guidance</li> </ul>