

Subject: Excepted Service Employment Under the National Nuclear Security Administration Act

1. PURPOSE:

To provide policy and processes for implementing the authority granted to the Administrator of the National Nuclear Security Administration (NNSA) in Title 32 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65, Section 3241 (NNSA Act).

2. IMPLEMENTATION:

I. Objective:

To establish a standard, NNSA-wide approach for the employment and compensation of individuals appointed under Section 3241 in the NNSA Act.

II. Applicability:

- A.** The requirements herein apply to NNSA Excepted Service employees appointed under Section 3241 of the NNSA Act.

III. Requirements

A. Authority

The National Nuclear Security Administration was established on March 1, 2000, as provided by Title 32 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65. The NNSA is headed by an Administrator for Nuclear Security who also serves as the Under Secretary for Nuclear Security. Section 3241 of the Act provides:

The Administrator may, for the purposes of carrying out the responsibilities of the Administrator under this title, establish no more than 300 scientific, engineering, and technical positions in the Administration, appoint individuals to such positions, and fix the compensation of such individuals. Subject to the limitation in the preceding sentence, the authority of the Administrator to make appointments and fix compensation with respect to positions in the Administration under this section shall be equivalent to and subject to the limitations of, the authority under section 161d. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(d)) to make appointments and fix compensation with respect to officers and employees described in such section.

Section 161d of the Atomic Energy Act of 1954 includes the following general provision:

In the performance of its functions the Commission is authorized to—

Appoint and fix the compensation of such officers and employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949,¹ as

¹The Classification Act of 1949 has been codified as chapter 51, and subchapter III of chapter 53, of title 5, United States Code.

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amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended) whose position would be subject to the Classification Act of 1949, as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act. The Commission shall make adequate provisions for administrative review of any determination to dismiss any employee;

B. Policy

This authority will be used to enhance the NNSA's recruitment and retention of highly qualified scientific, engineering, and technical personnel to support the missions of NNSA. Consistent with section 161d. of the Atomic Energy Act, appointments made, and compensation fixed, under this authority are excepted from the provisions of Title 5, United States Code.

It is the policy of the NNSA to fill positions efficiently and on the basis of merit without discriminating based on race, color, national origin, sex, age, religion, marital status, physical or mental disability, sexual orientation, or political affiliation, and with proper regard for privacy and constitutional rights.

In the implementation of this authority, qualified individuals shall be appointed from appropriate sources in an endeavor to achieve a NNSA workforce representative of all segments of society.

C. 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.

D. Covered Positions

This excepted service authority may be used to appoint individuals to scientific, engineering, and technical positions established within the NNSA and performing NNSA functions. This authority shall not be used to make political appointments or appointments to positions properly classified in the Senior Executive Service (SES). Office of Personnel Management regulations and authorities govern the establishment, appointment process, and other matters for SES positions.

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E. Use of Authority: Use of this authority includes, but is not limited to, the following purposes:

- 1) **Key position; urgent need; recruitment difficulties:** This authority may be used for positions, on a case-by-case basis, (1) when requesting officials demonstrate difficulties experienced in recent recruitment efforts to locate and/or attract highly qualified candidates for the key position or similar positions (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) when potential recruitment difficulties have been or are expected to delay significantly 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; or, (3) when an urgent, mission driven need necessitates the quick hiring of a highly qualified candidate.
- 2) **Designated position categories:** The Associate Administrator for Management and Administration may designate scientific, engineering and technical categories of positions for use of this authority. Categories of positions (e.g., Facilities Representatives) may be designated when appointment and pay flexibilities of this authority should be used to attract or retain individuals for specific mission-critical positions or occupations or when such positions or occupations demand scarce or unique combinations of skills and experience. Managers requesting such designations should demonstrate the need for this designation as well as the effect of such a designation on the relevant segment of the workforce, e.g., to what extent may this designation create pay or employment status differences with non-designated positions requiring similar skills and responsibility.
- 3) **Entry-level hiring:** This authority may be used to recruit individuals for entry-level scientific, technical and engineering positions (to include intern programs) in order to provide NNSA with a competitive tool in a competitive labor market.
- 4) **Time-limited appointments:** This appointment authority may be used to appoint an individual for up to no more than a total of five years when there is a need to fill a position quickly with a highly qualified candidate.

F. Allocation/Approval/Review

The Associate Administrator for Management and Administration is responsible for the allocation of Excepted Service positions established under this authority.

Positions in the Developmental Pay Band and Pay Bands III and IV that do not involve SES-equivalent pay: Deputy/Associate Administrators and NNSA Field Managers, or their designees, approve actions under this authority as outlined in the Delegation of Authority Matrix (Attachment 1).

Positions in Pay Band V and Pay Band IV involving SES-equivalent pay: Deputy/Associate Administrators and NNSA Field Managers submit requests for personnel actions at these pay levels to the NNSA Executive Resources Board (ERB). The ERB will review the requests and make recommendations to the Administrator for final approval as outlined in the Delegation of Authority Matrix (Attachment 1).

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G. Duration of Appointments

Appointments made under this authority, unless otherwise stated, are not time-limited. Appointments of employees hired into specialized Department of Energy employment programs, such as the Career Intern Program, are subject to the terms and conditions established by the Department. A DOE employee, who (1) holds a non-time-limited appointment in DOE in the excepted service or a career or career-conditional appointment in the competitive service or a career SES appointment or an appointment of equivalent tenure, and (2) receives a time-limited appointment under this authority without a break in service, and whose limited appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance, shall be entitled to be placed in his/her former position or a position of like status, tenure, and grade.

H. Trial Period

A trial period of two 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 this authority. Employees who have previously completed a probationary or trial period in a Federal Agency will not be required to serve a new probationary/trial period.

I. Employment Processes

Employment processes to be used for employees appointed under the NNSA Act are contained in the NNSA Employment Program Guidebook.

Positions may be filled under this authority by competitive or noncompetitive appointment procedures, or by competitive or noncompetitive internal placement procedures. Applicable qualification standards, established by the Office of Personnel Management for scientific, engineering, and technical positions will be referenced as guides for positions covered by this appointment authority. Alternate qualification standards for a group of positions or a specific position may be developed, consistent with law and regulation. Such qualification standards must be approved by the Director, Office of Human Resources, NNSA.

J. Position Descriptions

The duties and responsibilities of positions established under this authority shall be recorded on formal position descriptions using, as a minimum, the following format:

- 1) Introduction;
- 2) Duties & Responsibilities;
- 3) Technical Knowledge Required in the Position;
- 4) Supervision & Guidance Received.

K. Position Evaluation

The classification of a position under this authority involves the determination of the appropriate pay band, occupational series and title. Policies, practices and matters

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related to the evaluation of any position under this authority are not conditions of employment as defined by 5 U.S.C. 7103 (a) (14).

The grade-evaluation guidelines described below will be used to evaluate scientific, engineering, or technical positions under this authority, and in determining the appropriate pay band:

Developmental Band: Incumbents of positions in this Band may be responsible for the performance of entry level to journey level professional work. The level of duties may be equivalent to grade levels GS-5 through GS-11 of the General Schedule.

Band III: Incumbents of positions in this band are responsible for the performance of senior journeyman professional work involving independent analysis that may have an impact on NNSA program objectives. Assignments are carried out as a full member of a professional team or as an independent performer, under general direction and guidance on project objectives, limits, work plans and conclusions. The incumbent may lead coworkers as a team leader. This level of duties is equivalent to the GS-12 and GS-13 grade levels of the General Schedule.

Band IV: Incumbents of positions in this Band are responsible for the planning and execution of expert professional work of considerable scope and complexity, which has a direct impact on NNSA program objectives. Incumbents have considerable latitude and routinely exercise independent judgment in carrying out their assignments using general NNSA guidance on policy, resources, and planning and provide expert consultation in their technical field. The incumbent may serve in a non-supervisory position, or as a team leader, supervisor or manager in a technical organization. This level of duties is equivalent to the GS-14 and GS-15 grade levels of the General Schedule.

Band V: Incumbents of positions in this Band are responsible for formulating and carrying out exceptionally difficult professional programs of major national importance under general policy guidance that significantly impacts the successful accomplishment of one or more NNSA Programs. An individual in this Pay Band is a recognized authority in a technical professional field whose opinion is sought after in relation to a variety of issues related to that field; has the responsibility to independently design and carry out programs and projects at the forefront of the field; and, applies a high degree of imagination and creativity to solving problems recognized as critical obstacles to progress in an area of exceptional difficulty. The incumbent may serve in a non-supervisory position, or as a team leader, supervisor or manager in a technical organization. This level of duties is greater than the GS-15 grade level of the General Schedule.

Positions filled under this authority shall be coded with the pay plan prefix "EN" followed by the appropriate occupational series and corresponding difficulty level, e.g., "EN-840-IV."

L. Compensation

The Compensation processes for employees appointed under the NNSA Act are contained in the NNSA Compensation Program Guidebook, and will be used as the basis for compensating employees.

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Consistent with other Department of Energy authorized excepted service pay systems, the total annual compensation (i.e., basic pay and locality pay) for EN positions may not exceed Executive Level III, with annual basic pay no higher than Executive Level IV. Employees appointed under this authority are also subject to the 5 U.S.C 5307 aggregate limitations on pay. An employee's aggregate compensation (basic pay, locality pay, allowances, differentials, bonuses, and awards) per calendar year may not exceed the annual rate payable for Executive Level I.

Basic pay ranges under this broad banding system will be established annually and are linked to the General Schedule Salary Table (incorporating locality-based comparability pay):

<u>Pay Band</u>	<u>Annual Rate</u>
Developmental Band	(GS-7/6 – GS-12/1)
III	(GS-12/1 – GS-14/5)
IV	(GS-14/1 – 136% of GS-15/1)
V	(SL minimum rate to EX-IV rate)

Initial salary will be set in the pay bands as described in the Compensation Program Guidebook, considering such factors as market conditions, salary history, high cost of living area, unique skills, comparable competitive service position, or consistency with other recent pay setting actions.

Locality Pay Increases: Employees appointed under this authority shall receive applicable locality pay increases.

Comparability Increases: Employees appointed to positions under this authority shall receive comparability increases applicable to General Schedule employees.

Pay Progression: Employees appointed under this authority are eligible for either developmental pay adjustments or performance pay increases and performance bonuses on an annual basis as described in the Compensation Program Guidebook.

Promotion: Employees selected for promotion from one pay band to another under this authority will receive an 8% salary increase. If the new salary resulting from the 8% increase falls below the minimum of the new pay band salary range, the employees salary will be adjusted to the minimum of the range. As a general rule, employees may not receive more than one promotion in a 12-month period. Exception to this general rule must be approved by Deputy/Associate Administrators or Field Managers.

M. Employment Benefits

Employees appointed under this authority for periods exceeding one year are entitled to the same basic benefits, e.g., health benefits, life insurance, retirement, and leave accrual, as other employees of the Agency.

N. Performance Management Program

The Performance Management processes to be used for employees appointed under the NNSA Act are contained in the NNSA Performance Management Program Guidebook, and will be used as the basis for evaluating performance and awarding employees.

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Performance Appraisal: Covered employees will have written performance plans against which a performance rating will be issued on an annual basis.

Performance Plan – The performance plan defines the elements and standards that set forth the expected performance. The plan will consist of:

- Individual Performance Attributes - Customer Service, Communication, Teamwork, Professionalism, and Quality Improvements;
- Supervisory Attributes, if applicable - Resource Management; Diversity and Equal Employment Opportunity Management; and Leadership; and
- Specific Performance Objectives - Objectives that are unique to the position occupied.

Performance Rating Levels – Employees will be rated against a four-level rating system as follows:

- Significantly Exceeds Expectations – The individuals' products consistently exceed performance expectations. Demonstrates exemplary performance in all areas of responsibility and excellence in meeting difficult challenges. Demonstrates sound, seasoned judgment and decision-making abilities.
- Fully Meets Expectations – The individual consistently meets all performance expectations and may occasionally exceed those expectations. Demonstrates effective performance and performs duties with the appropriate amount of direction. Consistently performs in a reliable and professional manner.
- Needs Improvement – The individual does not consistently meet all performance expectations. Has not successfully performed tasks of the job in all areas of major responsibility. May have the ability to complete most assignments; however, improvement and further development must be demonstrated.
- Fails to Meet – The individual does not meet most performance expectations. Job performance is below an acceptable standard and corrective action is required.

Performance Appraisal Cycle – The Performance Appraisal Cycle shall be from October 1 through September 30 of each year and is consistent with the senior executive rating cycle. This cycle will facilitate linkage of performance pay to the timing of the annual comparability pay adjustment.

Awards: Covered employees may be granted non-monetary awards, Special Act or Service monetary awards, and Time-Off awards consistent with local office procedures. Inasmuch as covered employees are eligible for annual performance bonuses, Sustained Superior Performance awards may not be granted.

O. Federal Employees Pay Comparability Act (FEPCA) Provisions

The following FEPCA provisions are available for use with this authority. Detailed information on these authorities may be found in the regulations cited and in implementing Agency guidance.

Recruitment Bonus (5 CFR § 575.101) A recruitment bonus of up to 25% of basic pay may be made to a newly appointed employee when it has been determined that, in the absence of such a bonus, difficulty would be encountered in filling the position. Before a

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recruitment bonus may be paid, the individual must execute a written service agreement to complete a specified period of employment with NNSA. The minimum period to be established under a service agreement shall be twelve (12) months.

Relocation Bonus (5 CFR § 575.201) A relocation bonus of up to 25% of basic pay may be authorized to a current employee who must relocate to accept a position with the NNSA in a different commuting area when it has been determined that, absent such a bonus, difficulty would be encountered in filling the position. Before a relocation bonus may be paid, the employee must execute a written service agreement to complete a specified period of employment at the new duty station is required. The minimum period to be established under a service agreement shall be twelve (12) months.

Retention Allowance (5 CFR § 575.301) An annual retention allowance of up to 25% of the annual rate of basic pay may be paid to a current employee if the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and it has been determined that, absent the retention allowance, the employee would be likely to leave the Federal Government. Retention allowances may not be paid concurrently if the employee is receiving a recruitment/relocation bonus and may be renewed annually upon review if criteria continue to exist.

P. Involuntary Separations

Trial Period: Employees separated within their trial periods will be provided the same rights as competitive service employees who are involuntarily separated during a probationary period. Employees who have previously completed a probationary or trial period in a Federal Agency will not be required to serve a new probationary/trial period.

Non-Trial Period: The procedures and appeal rights contained in 5 United States Code, Chapters 43 and 75 are applicable to employees serving on appointments without time limitation who have completed a trial period.

Time-Limited Appointments: Termination of time-limited appointments at the expiration of the appointment is not grievable/appealable within the Agency or to the Merit Systems Protection Board.

Reduction-In-Force: Procedures governing reduction-in-force applicable to excepted service employees contained in 5 C.F.R. Part 351, as implemented by the Administrator, are applicable to appointments made under this authority.

Q. Appeal Rights-Adverse Actions

Departmental procedures for taking adverse actions, e.g., suspension of 15 days or more, applicable to competitive service employees will apply to employees appointed under this authority. 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 United States Code, Chapter 75.

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R. Grievance Rights

Employees in these positions will be covered by the locally applicable Administrative or Negotiated Grievance Procedures.

S. Political Appointments

This authority shall not be used to make political appointments. Political appointments are made through established Schedule C, non-career SES appointment and Presidential authorities and processes. This authority shall not be used to convert non-competitively current or former political appointees to excepted service appointments.

T. Applicability of Other Departmental Policies

Unless otherwise described above or in supplemental program guidebooks, Agency policies and procedures will apply to appointments and positions under this authority.

3. RESPONSIBILITIES:

NNSA Administrator: Implements and delegates the authority granted in Title 32 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65. (NNSA Act)

NNSA Executive Resources Board (ERB): Make recommendations to the Administrator with regard to personnel actions affecting employees appointed under this authority at Pay Band V and for those Pay Band IV employees whose positions currently, or through proposed initial pay setting or increase in pay would result in a rate comparable to or in excess of the current minimum SES ES-1 level base pay rate.

Associate Administrator for Management and Administration: Implement the policies and systems for Excepted Service Employment under the National Nuclear Security Administration Act. Allocate positions and designate position categories for use under the NNSA Act.

Director, Office of Human Resources: Develop policies and systems for implementation of Excepted Service authority under the NNSA Act. Approve alternate qualification standards.

Deputy/Associate Administrators: Establish positions and make appointments to positions in the Developmental Pay Band and Pay Bands III-IV that do not result in SES-equivalent pay. Recommend actions to the NNSA ERB at Pay Band V and Pay Band IV that involve SES-equivalent pay.

Field Managers: Establish positions and make appointments to positions in the Developmental Pay Band and Pay Bands III-IV. Recommend actions to the NNSA ERB at Pay Band V and Pay Band IV that involve SES-equivalent pay.

Servicing HR Offices: Administer NNSA Excepted Service policies and systems for their respective organizations. Provide advice and counsel to employees and managers concerning the Excepted Service.

Supervisors/Managers: Make decisions and manage the workforce consistent with Excepted Service Policies and Systems.

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4. REFERENCES:

- A. Title 32 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106-65.
- B. NNSA Special Employment Authority Interim Policy dated June 22, 2001 (issued by Administrator on July 19, 2001)
- C. NNSA ERB Charter dated July 19, 2001
- D. DOE Order 331.1B, Employee Performance Management System, March 14, 2001
- E. 5 USC Section 2301, Merit Systems Principles
- F. 5 USC Chapter 43, Performance Appraisal
- G. 5 USC Chapter 45, Incentive Awards
- H. 5 USC Chapter 75, Adverse Actions
- I. 5 CFR Part 302, Employment in the Excepted Service
- J. 5 CFR Part 351, Reduction in Force
- K. 5 CFR Part 430, Performance Management
- L. 5 CFR Part 451, Awards
- M. 5 CFR Part 575, Recruitment and Relocation Bonuses, Retention Allowances

5. CONTACT INFORMATION:

Questions concerning this policy may be directed to NNSA Office of Human Resources.

Original Signed By

Anthony R. Lane
Associate Administrator
Office of the Associate Administrator for
Management and Administration

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Attachment 1 – Delegation of Authority Matrix

Policy Section	Action	Delegation
2.III.E – Use of Authority	Designate position categories for use of Excepted Service Authority.	Authority to designate position categories is delegated to the Associate Administrator for Management and Administration.
2.III.F – Allocation/Approval/Review	Allocation of Excepted Service Positions	Authority to allocate Excepted Service Positions is delegated to the Associate Administrator for Management and Administration.
	Establish positions in the Developmental Pay Band and in Pay Band III and Pay Band IV that do not involve SES-equivalent pay*	Authority to establish positions within the authorized allocation is delegated to the Deputy/Associate Administrators and NNSA Field Managers, ** or their designees.
	Make appointments to positions in the Developmental Pay Band and Pay Bands III and IV, that do not involve SES - equivalent pay	Authority to make appointments to positions within the authorized allocation is delegated to the Deputy/Associate Administrators and NNSA Field Managers, or their designees.
	Establish positions and make appointments to positions in Pay Band V and at Pay Band IV involving SES - equivalent pay	Authority to make appointments to such positions granted by NNSA ERB on a case-by-case basis upon recommendation by a Deputy/Associate Administrator or Field Manager. Positions must be within the authorized slot allocation under this authority.
2.III.I – Employment Processes	Appointment and promotion to positions without announcement and competition under the circumstances identified in the Employment Program Guidebook. Approve alternate qualification standards.	Authority is delegated to the Selecting Officials, with concurrence of their servicing HR Office. Authority is delegated to NNSA HQ/HR. ***
2.III.J – Position Evaluation	Classify positions within Developmental Pay Band and Pay Bands III – IV	Authority is delegated to NNSA HQ/HR and field servicing HR organizations.
2.III.K – Compensation	Set pay upon initial hire or as an annual pay adjustment within the Developmental Pay Band and in Pay Bands III – IV, that does not involve SES equivalent pay, consistent with the requirements outlined in the Compensation Program Guidebook.	Authority is delegated to position 's selecting official, with concurrence of servicing HR Office.
	Set pay upon initial hire or an annual pay adjustment within Pay Band V and at Pay Band IV involving SES - equivalent pay	Approval of pay actions is granted by the NNSA ERB, on a case-by-case basis upon recommendation by a Deputy/Associate Administrator or Field Manager.
	Effect more than one promotion in a 12-month period.	Authority is delegated to Deputy/Associate Administrator or Field Manager

* SES-equivalent Pay – Pay which through proposed initial pay setting, or increase in pay, would result in a rate comparable to or in excess of the minimum SES ES-1 level base pay rate.

** NNSA Field Managers are Manager, AL, NV and OAK and Manager, Y-12 Area Office and Savannah River NNSA Area Office.

*** NNSA HQ/HR is the Director, Office of Human Resources, NNSA/HQ.