



NASA DESK GUIDE
on
NASA EXCEPTED (NEX) EMPLOYMENT
(Processing and Benefits)

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SECTION 1. Purpose

Since the NASA Excepted (NEX) authority is unique to NASA and is not covered by title 5 of the United States Code (USC) and the Code of Federal Regulations (CFR), there are no direct references to assist human resources specialists and managers when using this authority.

This desk guide was developed to provide a wide range of information to managers, human resources personnel and employees on the NEX authority. The guide outlines the nature and parameters of NEX appointments, pay setting, and benefits of NEX employees, many of which are similar to those of General Schedule (GS) civil service employees. The guide also establishes common practices for processing actions for NEX employees.

Information in this guide must be read together with statutory and regulatory requirements, NASA Policy and Regulations (NPRs). Actions under the authority must be in accordance with the current delegation of authority for NEX positions. Although a copy of the delegation is included at Appendix A of this guide, users are responsible to ensure that actions conform to the most recent delegation of authority.

SECTION 2. Background

Section 203 (c)(2) of the National Aeronautics and Space Act of 1958, as amended, gave the NASA Administrator the authority -

(2) to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. 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, except that (A) to the extent the Administrator deems such action necessary to the discharge of his responsibilities, *he may appoint not more than four hundred and twenty-five of the scientific, engineering, and administrative personnel of the Administration without regard to such laws, and may fix the compensation of such personnel not in excess of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949* [emphasis added].

This section was amended following the passage of the Federal Employees Pay Comparability Act (FEPCA) in 1990, which eliminated grades 16-18 of the General Schedule. Thereafter, the limit for compensation for NEX employees was linked to the salary for Executive Level IV. The NASA Flexibility Act of 2004 increased the salary limit to Executive Level III.

SECTION 3. References

42 USC 2473 (c)(2)(A) (Section 203 (c)(2)(A) of the National Aeronautics and Space Act of 1958, as amended, found at <http://www.hq.nasa.gov/ogc/spaceact.html>)

The NASA Flexibility Act of 2004 (P.L. 108-201)

NPD 3000.1, Management of Human Resources
NPR 3300.1, Appointment of Personnel To/From NASA
NPR 3351.1, Reduction in Force for NASA Employees
NPR 3430.1A, NASA Employee Performance Communication System (EPCS)
NPR 3432.1, Performance-Based Reduction-in-Grade or Removal Actions
NPR 3451.1, NASA Awards and Recognition Program
NPR 3530.1, Pay Policy and Allowances
NPR 3752.1, Disciplinary and Adverse Actions
NPR 3771.1, Grievance System

Memorandum from the NASA Administrator dated May 15, 2002, SUBJECT: Delegation of NASA Excepted Authority (NEX) (at Appendix A)

Memorandum from the Assistant Administrator for Human Resources dated July 25, 2003, SUBJECT: Delegation of NASA Excepted (NEX) Authority (at Appendix A)

SECTION 4. General Provisions

A. Establishing Positions

NEX authority may be used to fill any non-clerical position that otherwise would be a GS position. The Civil Service Reform Act of 1978 established the Senior Executive Service (SES) as the only appointing authority to fill managerial/supervisory positions above the GS-15. The Civil Service Commission (predecessor of the Office of Personnel Management (OPM)) provided a legal opinion that the NEX authority could not be used for SES positions. Therefore, the authority should not be used to perform work clearly above a GS-15 level without prior consultation with the Office of Human Resources, NASA Headquarters. Similarly, position and organizational titles should not reflect a senior level position, and incumbents may not supervise employees who are at levels above GS-15. Job series and qualifications for NEX positions follow OPM guidelines to the extent practicable; however, there are no grade levels associated with NEX positions. Officials with authority to establish GS or other positions have authority to establish positions under NEX.

B. Funding and Allocation

There is no centralized or set-aside funding source for NEX positions. Funding for salary and benefits would come from within the organization's resources. A full-time equivalent (FTE) allocation is needed for an NEX position. In addition, a full-time permanent (FTP) allocation may be needed, depending on the circumstances of the

staffing action and local policy. Appointments of current NASA employees would count against FTP.

C. Appropriate Use

The intent of the NEX authority is that it should be used when other available appointment authorities are not appropriate or not adequate to meet the needs of the situation. It NEVER should be used to circumvent the competitive process. For example, using the authority to hire an individual after a delegated examining activity failed to place the desired candidate within reach would be an inappropriate and risky use of the authority.

Current policy limits use of NEX for short term or project-type needs, not for continuing positions (see Appendix A). Exceptions require the Administrator's approval.

A recognized and acceptable use of the authority is for NASA GS employees serving on overseas assignments. NEX authority allows setting the employees' salary to offset the loss of locality pay while assigned outside of the continental United States.

D. Delegation of Authority

The Administrator retains all authority to appoint and compensate NEX employees, unless otherwise delegated. The authority to perform certain actions has been delegated to Center Directors and Officials-in-Charge at Headquarters. The current delegation to make appointments under the NEX authority is limited to individuals from outside the Federal Service. Be sure to refer to the most current delegation memorandum when taking any action using the NEX authority (included at Appendix A to this guide). Consult with the Office of Human Resources, NASA Headquarters (Code FPE), if you have any questions or concerns, or wish to pursue an action not covered by a delegation.

E. Citizenship

Although there is no prohibition against hiring non-citizens under NEX authority, such appointments would require the Administrator's approval, and should be for appropriate business reasons. (See also Chapter 5 of NPR 3300.1, Appointment of Personnel To/From NASA.)

SECTION 5 Staffing NEX Positions

A. Nature of Appointments

Although the Space Act does not preclude permanent appointments, NEX appointments – with rare exceptions approved by the Administrator – are time-limited. Since these are excepted service appointments, technically they are not called “term” appointments (like

their counterparts in the competitive service), even though the appointment generally exceeds 1 year. An NEX appointment does not confer competitive status, i.e., the employee acquires neither eligibility nor entitlement to placement in a competitive service position as a result of this appointment.

B. Process

Generally, before making an NEX appointment, a competitive process has been performed to fill a GS position, without yielding satisfactory results. However, an excepted appointment under the NEX authority does not require that a competitive process be conducted. A manager may identify a need for which it can be determined immediately that competitive processes will be inadequate, and may have identified a candidate for the position. The Human Resources Office should document the reason that a competitive process was not used, or proved to be inadequate to meet the staffing need, before using NEX authority. For example, there may be an urgent program need and the available candidate commands a salary which cannot be met under the General Schedule (including available incentives). Another example is an overseas assignment, as discussed in Section 4C above.

In rare cases, NASA may wish to advertise a position under NEX at the outset, without first attempting to fill the position through other means as a GS position. The Human Resources Office should document the reasons for pursuing this route (e.g., recent recruitment efforts for similar positions indicate that it would be unlikely that a qualified candidate would be available at the salary range available for the GS grade). Actions requiring the Administrator's approval should include this justification.

The requirements under part 330 of the Code of Federal Regulations do NOT apply to appointments under NEX, including:

1. Requirement for public notice
2. Veterans preference for hiring
3. The Interagency Career Transition Assistance Program (ICTAP) and Reemployment Priority List
4. The requirements under the Veterans Employment Opportunity Act to provide special consideration to veterans

C. Qualifications Requirements

NEX positions will have an OPM occupational series associated with them; therefore, employees should possess experience and/or education appropriate for work covered by that series, as defined in the OPM Qualifications Handbook. Since NEX positions are ungraded, Centers should define and document the level of qualifications desired for the position.

D. Reassignments

Subject to the conditions of the delegation of authority, NEX employees may be reassigned to other NEX positions. They may not be reassigned to competitive service positions, since NEX appointments do not confer competitive status. However, an employee with prior competitive status may be reinstated to a position in the competitive service, provided the appropriate legal and regulatory requirements are met (e.g., ICTAP).

E. Details

NEX employees may be detailed to other positions within the Agency in accordance with 5 U.S.C 3341, consistent with the conditions and intent of the current delegation of authority for NEX positions. Although details to competitive service positions are permitted, they should be rare and should not be used to circumvent the competitive process.

F. Promotions

Since NEX positions are ungraded, there are no “promotions,” *per se*, for NEX employees. However, the pay of an NEX employee may be adjusted based on the level of the duties and the qualifications and performance of the employee. The delegation of authority addresses the frequency of pay adjustments for NEX employees. Time-in-grade restrictions do not apply to NEX employees.

SECTION 6: Compensation

A. Initial Appointment

The salary of an NEX employee may be set at any rate, not to exceed the current rate for EX-III. NEX employees are not covered by locality pay; therefore, all pay is base pay.

When setting pay for an NEX employee, consideration should be given to the same factors used to establish GS positions and set pay for GS employees:

- kind and level of work
- qualifications required by the position and possessed by the candidate
- the relative difficulty to recruit and retain a comparable employee
- the criticality of the position
- salaries of employees with comparable duties and skills in the organization and in the same geographic area

Salary should be set at the lowest rate necessary to recruit or retain the individual.

B. Recruitment, Relocation, Redesignation, and Retention Bonuses

NEX employees are eligible for bonuses under the same criteria and limitations as employees in the competitive service. Bonuses may be paid under the authority of chapter 57 or 98 of title 5. Since salaries of NEX employees are base pay only (no locality pay), a bonus based on a percentage of annual salary will be calculated on the entire salary amount.

C. Increases and Adjustments in Pay

Generally, an NEX employee's pay may be adjusted once per year.

Although pay for NEX employees is independent of salary schedules and attendant pay-setting rules, Centers may wish to follow practices similar to those applied to GS employees. The normal practice is to adjust pay at the time the General Schedule is adjusted, and at the same rate as GS employees in the same locality. Employees performing at least at an acceptable level of competence generally receive an increase equal to the amount received by GS employees in the same geographic location (base plus locality). (For example, if GS employees receive a combined base plus locality increase of 4%, NEX employees receive a 4% salary increase.) However, employees may be given a larger or smaller increase or no increase at all. The decision to grant an increase (including granting no increase) should be based on the employee's performance and contributions, or other job-related factors (which should be documented).

All pay increases are discretionary; there is no entitlement to ANY pay increase.

D. Within-grade and Quality Step Increases

NEX employees do not earn within-grade increases. For alignment purposes, managers may wish to take this into consideration when making annual pay adjustments (e.g., giving a high-performing employee a 3% increase on top of the "January increase," similar to a within-grade or quality step increase which a GS employee might receive).

E. Pay limitations

1. Limit to base pay: Base pay is limited to the rate payable for Executive Level III. NEX employees do not receive locality pay.

2. Aggregate pay limit: NEX employees are subject to the aggregate pay limitation under 5 U.S.C. 5307. This means that the total compensation during a calendar year, including salary, bonuses, cash awards and other payments, may not exceed the rate payable for Executive Level I. See 5 CFR 530.203 for information on what payments are included, and what actions must be taken when the limit is exceeded.

F. Premium Pay: NEX employees are eligible for overtime and compensatory time off under the Fair Labor Standards Act for covered (non-exempt) employees, or 5 U.S.C. chapter 55 (for exempt employees). Exempt employees are subject to the biweekly limit on premium pay (see 5 U.S.C. 5547 and 5 CFR part 550, subpart A).

SECTION 7 Documentation of NEX Appointments

A. Case Files

A case file should be maintained for each NEX staffing action, containing enough information to reconstruct the actions that occurred. As a minimum, the following should be maintained:

1. Position description
2. Vacancy announcement (if applicable)
3. Qualification requirements
4. Record of recruitment efforts
5. Justification for using NEX authority, as opposed to another hiring mechanism
6. Resume of selectee and any other candidates for the position
7. Rationale for pay setting, including any bonuses
8. Copy of any approval documents
9. Copy of offer letter
10. Any other information needed to reconstruct the staffing action

Case files should be retained for 3 years.

B. Personnel Actions (SF-50)

Processing Appointment Actions:

A sample appointment SF-50 is found at Appendix B.

Processing Pay Adjustment Actions:

Nature of Action/Nature of Action Code:	894 Pay Adjustment
Authority Code:	Same as for Appointment

Remarks: None required.

SECTION 8 Benefits and Entitlements

A. Leave

NEX employees accrue and use annual and sick leave under 5 U.S.C. chapter 63, if otherwise eligible. They are covered under Section 9812 of the NASA Flexibility Act of 2004, which permits consideration of qualifying non-Federal experience in determining the annual leave accrual rate. This legislation also provides that NEX employees whose salary exceeds the rate of basic pay for a GS-15, step 10 will accrue 1 day of annual leave for each full biweekly pay period.

The annual carryover limit for NEX employees is 240 hours unless eligible for a higher “personal ceiling” based on other employment.

B. Hours of Duty

NEX employees are covered by the work schedules established by local policy. In addition to applicable standard, compressed, or flexible schedules, they may work part-time or intermittent schedules, or be on a 1st-40 tour of duty, if otherwise permitted by local policy. Employees on flexible schedules may earn and use credit hours, in accordance with applicable regulations and local policy.

C. Retirement Coverage

NEX employees who are appointed for longer than 1 year and have never held a Federal position will be covered automatically under the Federal Employees Retirement System (FERS).

Employees currently covered under CSRS, CSRS Offset, or FERS who convert to an NEX appointment without a break in service (or a break of 3 days or less) will continue that coverage, regardless of the length of the NEX appointment.

Except for employees converted to an NEX appointment from another civil service appointment, an employee given an NEX appointment of 1 year or less will be covered by Social Security (FICA).

For employees who do not meet one of the conditions above, consult your retirement officer for advice.

D. Other Benefits

Subject to applicable regulations (e.g., length of appointment) concerning eligibility for coverage, NEX employees are considered employees for purposes of coverage under the following benefits programs for Federal employees:

1. Thrift Savings Plan
2. Flexible Spending Account
3. Health Insurance under the Federal Employees Health Benefits Program (FEHB)
4. Life Insurance under the Federal Employees Government Life Insurance Program (FEGLI) or the NASA Employees Benefit Association (NEBA) insurance program.

E. Awards

1. Cash awards: NEX employees may receive cash awards for performance and superior accomplishments under part 451 of title 5, U.S.C. Cash awards may not exceed \$10,000.

2. Honor awards: NEX employees may be nominated for Distinguished Service, Equal Employment Opportunity, Exceptional Achievement, Exceptional Administrative Achievement, Exceptional Bravery, Exceptional Engineering Achievement, Exceptional Scientific Achievement, Exceptional Service, Exceptional Technology Achievement, Group Achievement, Outstanding Leadership, and Space Flight (as flight crew members) Medals.

F. Performance

NEX employees are covered under chapter 43, 5 U.S.C. As such, a performance plan should be established within 30 days of their appointment. An NEX employee must serve under a performance plan at least 90 days during an appraisal cycle to receive a rating of record. When a rating of record cannot be prepared at the end of the appraisal period, the appraisal period will be extended for the amount of time necessary to meet the minimum 90-day period.

Employees who have completed 1 year of continuous employment in the same or similar positions and are reduced in salary or terminated based on unacceptable performance are covered by the procedures established in 5 CFR Part 432.

G. Grievance Procedures

NEX employees are covered by the Agency grievance procedure established in NPR 3771.1, Grievance System, unless excluded by paragraph 2.2.2. of that regulation.

H. Reduction in Force

As excepted service employees, NEX employees would be placed in separate competitive levels and compete in a RIF only with other NEX appointees. Excepted service employees have no assignment rights, i.e., they cannot bump or retreat. Employees with appointment of 1 year or less are tenure group 0; those with appointments of more than 1 year (including temporary appointments extended beyond 1 year) are in tenure group 3.

I. Travel and Transportation

NEX appointees are entitled to the same travel and transportation benefits as competitive service appointees with similar appointments.

J. Training

NEX employees are eligible for training under 5 CFR 410.

K. Bargaining Status

NEX employees are not excluded from coverage in a bargaining unit on the basis of the NEX appointing authority. Coverage will depend on the position occupied and the length of the appointment, and the terms of the particular bargaining agreement.

APPENDIX A: Delegation of Authority

July 25, 2003

FP

TO: Directors, NASA Centers
Officials-in-Charge of Headquarters Offices

FROM: F/Assistant Administrator for Human Resources

SUBJECT: Delegation of NASA Excepted (NEX) Authority

In his memorandum of May 15, 2002, (copy enclosed) the Administrator delegated authority to make certain appointments using our unique NEX appointing authority. As we monitor the appointments made under this delegation, we are pleased to see that managers are making wider use of this hiring flexibility to meet our human capital needs, with 115 NEX appointees currently on board throughout the Agency.

We would like to emphasize, however, how the NEX authority should be used. It should be used to appoint individuals from outside the civil service to meet temporary, short-term or project-related needs rather than to fill ongoing positions. It should not be used as a recruitment tool to incentivize current Federal employees to move to NASA from other Federal agencies. If you need assistance identifying appropriate recruitment incentives, please contact your human resources office.

If you have any questions regarding the use of NEX authority, please contact John Pennington on (202) 358-1195 or Joanne Mueller on (202) 358-1202.

(original signed by)

Vicki A. Novak

Enclosure

cc: Directors of Human Resources

May 15, 2002

TO: AB/Associate Deputy Administrator (Institutions)
Directors, NASA Centers

FROM: A/Administrator

SUBJECT: Delegation of NASA Excepted Authority (NEX)

Consistent with our Freedom to Manage efforts to liberate our supervisors from unnecessary barriers to effective management and permit them to carry out their responsibilities, I am delegating NEX authority to the Associate Deputy Administrator (Institutions) and to NASA Center Directors. This authority gives you another tool to assist you in dealing with recruiting objectives. I encourage you to use it when you have a critical need to accomplish short-term projects, or for which the expertise required will only be necessary for a limited duration.

As we discussed in the May 13, 2002, Enterprise Council Meeting, this delegation may be used to appoint individuals from outside the Civil Service for up to 3 years, and to renew appointments for an additional 3 years. If you plan to fill a position at the SES level, our colleagues in the Office of Human Resources and Education are prepared to provide the necessary assistance. I expect all appointments to be made within existing funding and FTE guidance and to reflect diversity. In addition to making appointments under this authority, you may make annual salary adjustments and merit increases, and approve recruitment and relocation bonuses, retention allowances, and cash awards.

On a monthly basis the staff of the Office of Human Resources and Education will review the use of this authority with the Enterprises. I hope that this hiring tool will provide additional flexibility in managing our human capital challenges.

(original signed by)

Sean O'Keefe

APPENDIX B: Sample Notification of Personnel Action (SF-50) for NEX Appointment

Standard Form 50
Rev. 7/91
U.S. Office of Personnel Management
FPM Chapter 296-33, Subch. 4

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle) Spice, Sugar N.					2. Social Security Number 123-45-6789			3. Date of Birth 12/18/1982		4. Effective Date 03/21/2004			
FIRST ACTION					SECOND ACTION								
5-A Code		5-B Nature of Action			6-A Code 171		6-B Nature of Action Excepted Appt NTE 09/30/05						
5-C Code		5-D Legal Authority			6-C Code ZLM		6-D Legal Authority 42 U.S.C. 2473 (c)(2)(A), as amended						
5-E Code		5-F Legal Authority			6-E Code		6-F Legal Authority						
7. FROM: Position Title and Number					15. TO: Position Title and Number Super Expert on Complicated Technical Matters								
8. Pay Plan		9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Total Salary		13. Pay Basis	16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay		12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay		20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay				
						\$95,000	\$0	\$95,000	\$0				
14. Name and Location of Position's Organization					22. Name and Location of Position's Organization National Aeronautics and Space Administration Any Center Technical Directorate								
EMPLOYEE DATA													
23. Veterans Preference					24. Tenure			25. Agency Use		26. Veterans Preference for RIF			
1	1 - None	3 - 10-Point/Disability	5 - 10-Point/Other		3	0 - None	2 - Conditional			<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
	2 - 5-Point	4 - 10-Point/Compensable	6 - 10-Point/Compensable/30%			1 - Permanent	3 - Indefinite						
27. FEGLI					28. Annuitant Indicator			29. Pay Rate Determinant					
CO		Basic Only			9								
30. Retirement Plan					31. Service Comp. Date (Leave)			32. Work Schedule		33. Part Time Hours Per Biweekly Pay Period			
K					03/21/2004		F						
POSITION DATA													
34. Position Occupied					35. FLSA Category			36. Appropriation Code		37. Bargaining Unit Status			
2	1 - Competitive Service	3 - SES General	4 - SES Career Reserved		E	E - Exempt	N - Nonexempt					7777	
38. Duty Station Code					39. Duty Station (City -- County -- State or Overseas Location)								
00000000					Center City, USA								
40. Agency Data		41.	42.	43.	44.								
45. Remarks													
[Usual appointment remarks, e.g., M01, M06/A20, etc.]													
46. Employing Department or Agency National Aeronautics and Space Administration								50. Signature/Authentication and Title of Approving Officer					
47. Agency Code		48. Personnel Office ID		49. Approval Date									
NN00				03/19/2004									

50-314

1 - Employee Copy - Keep for Future Reference

Editions Prior To 7/91 Are Unusable After 6/30/93