

has requested this exemption in order to revise the October 1988 exemption to include additional combustibles such as the 480V Reactor Building Vent Boards 1B, 2B, and 3B; small panels in Units 1, 2 and 3; and the one hour fire rated fire wrap (Thermo-lag) material for the 20-foot separation zones identified.

#### *Environmental Impacts of the Proposed Action*

The proposed action will not significantly increase the probability or consequences of accidents. The NRC staff has completed its evaluation of the proposed exemption and associated amendment and finds that the calculated total doses remain within the acceptance criteria of 10 CFR 50.67 and General Design Criterion 19, and there is no significant increase in occupational or public radiation exposure. The NRC staff, thus, concludes that granting the proposed exemption would result in no significant radiological environmental impact.

The proposed action does not affect nonradiological plant effluents or historical sites, and has no other environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

#### *Alternative to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the exemption would result in no change in current environmental impacts. Thus, the environmental impacts of the proposed action and the alternative action are similar.

#### *Alternative Use of Resources*

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the BFN dated September 1, 1972, for Units 1, 2, and 3.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on February 6, 2007, the NRC staff consulted with the Alabama State official, Kirk Whatley of the Office of Radiological Control, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 26, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O-1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or send an e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 20th day of February 2007.

For the Nuclear Regulatory Commission.

**Eva A. Brown,**

*Project Manager, Plant Licensing Branch II-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E7-3476 Filed 2-27-07; 8:45 am]

**BILLING CODE 7590-01-P**

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#### **NUCLEAR WASTE TECHNICAL REVIEW BOARD**

##### **Privacy Act of 1974; Systems of Records**

**AGENCY:** U.S. Nuclear Waste Technical Review Board.

**ACTION:** Notice of modification to two existing systems of records.

**SUMMARY:** 5 U.S.C. 552a requires that each federal agency review its systems of records containing personal information covered by the Privacy Act of 1974. As a result of its latest review, the Board is amending both of the systems of records that it maintains. A description of these systems was published in November 22, 2006 (71 FR 67654-67655). The Board proposed amending NWTRB-1 and expanding NWTRB-2 to include other information useful to the Board. In the first system, Administrative Files, some categories were overlooked in the previous notice.

The Board further proposed expanding the second system, Mailing List, to become the Contact List. The Board determined that the changes to NWTRB-1 were important enough to republish the notice with the changes and that the changes to NWTRB-2 were substantial enough to accept comments on the proposed expansion until January 15, 2007. The Board received no comments on the proposed expansion.

**DATES:** The changes to NWTRB-2 will become effective on February 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Victoria Reich, 703-235-4473.

**SUPPLEMENTARY INFORMATION:** The Board currently maintains two systems of records, NWTRB-1 and NWTRB-2, that contain information covered by the Privacy Act of 1974. In its review of these systems, the Board has found classes of information that were not included in its previous notice and on November 22, 2006, republished NWTRB-1 with the corrections added. The Board further found that expanding the records in NWTRB-2 would make it more useful and requested comments from the public from November 22, 2006, until January 15, 2007. No comments were received during this period. Accordingly, the Board plans to proceed with the proposed changes on February 28, 2007.

Dated: February 23, 2007.

**William D. Barnard,**

*Executive Director, U.S. Nuclear Waste Technical Review Board.*

[FR Doc. 07-885 Filed 2-27-07; 8:45 am]

**BILLING CODE 6820-AM-M**

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#### **OFFICE OF PERSONNEL MANAGEMENT**

##### **Proposed Demonstration Project; Pay Banding and Performance-Based Pay Adjustments in the National Nuclear Security Administration**

**ACTION:** Notice of a proposed demonstration project plan.

**SUMMARY:** Chapter 47 of title 5, United States Code, authorizes the Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures would result in improved Federal human resources management. The National Nuclear Security Administration (NNSA) and OPM propose to test a pay banding system in which within-band pay progression is

based on performance. Section 4703 of title 5 requires OPM to publish the proposed project plan in the **Federal Register**. This notice fulfills that requirement. The proposed project plan has been approved by NNSA, the Department of Energy, and OPM.

**DATES:** Written comments must be submitted on or before March 30, 2007. A public hearing is scheduled for Wednesday, April 4, 2007, from 10 a.m. to 5 p.m., Eastern Standard Time. *The location of the hearing is:* U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Public parking is limited, but the building is conveniently accessible to the "Smithsonian" and "L'Enfant" Metro stations. The Forrestal Building is a secure facility. Members of the public must show a government-issued photo ID (e.g., State driver's license). Attendees will undergo electronic screening, and their personal belongings will be subject to a physical search. Personal items prohibited in the Forrestal Building include devices that can transmit and record, weapons (guns, knives, explosives, etc.), and alcohol. A member of the public possessing such items will be barred from entering, and such items are subject to confiscation. There will be a sign-in table set up in the main lobby. A greeter, and signs, will direct attendees to the main auditorium location.

There will be a telephone call-in number for members of the public who cannot attend in person. That number will be 202-287-5323, and the line will be active from 10 a.m. to 5 p.m., Eastern Standard Time.

At the time of the hearing, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**, so that NNSA and OPM can plan the hearing and provide sufficient time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

**ADDRESSES:** Comments may be mailed to Demonstration Projects, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415 or submitted by e-mail to [Demoprojects@opm.gov](mailto:Demoprojects@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** National Nuclear Security Administration: Randy Mazzeo, NNSA Assistant HR Director for Policy & Workforce Planning, (301) 903-5192, 19901 Germantown Road, NA-64, Room F-115, Germantown, MD 20874. Office of Personnel Management: Patsy Stevens, Systems Innovation Group Manager, U.S. Office of Personnel Management, (202) 606-1258, 1900 E Street, NW., Room 7456, Washington, DC 20415.

**SUPPLEMENTARY INFORMATION:** The goals of this demonstration project are to—

(1) Improve hiring by allowing NNSA to compete more effectively for high quality employees through the judicious use of higher entry salaries;

(2) Motivate and retain staff by providing faster pay progression for high-performing employees;

(3) Improve the usefulness and responsiveness of the position classification system to managers;

(4) Increase the proficiency of administering the position classification system through a simplified pay-banded application of the current General Schedule grade structure, and reduce the procedural steps and documentation requirements traditionally associated with classifying positions;

(5) Eliminate automatic pay increases (i.e., annual adjustments that normally take effect the first day of the first pay period beginning on or after January 1) by making pay increases performance-sensitive, so that only Fully Successful (known as "Fully Meets Expectations" in NNSA) and higher performers will receive pay adjustments, and the best performers will receive the largest pay adjustments;

(6) Integrate with, build upon, and advance the work of several key human capital management improvement initiatives and projects currently underway in NNSA, including—

a. Advancing the ongoing refinement of NNSA's three-year old enterprise-wide performance management program, which currently features a pilot for automating yearly performance ratings, to the next logical level, encompassing performance-based pay adjustments,

b. Achieving greater parity, though not complete harmony, with NNSA's mature excepted service pay-banded and pay-for-performance system (e.g., will have a lower high-end pay band; no automatic pay increases, etc.),

c. Building on the simplified position description (PD) format and automated PD library that are already in place,

d. Continuing to develop improved performance management skills among

first-line supervisors through increased program rigor, additional training, and better guidance materials, to better develop standards that reflect differences in performance,

e. Developing an automated position classification and position control system,

f. Establishing a system of career-enhancing career paths for the purpose of developing, advancing, and retaining employees,

g. Building on the new workforce analysis and planning system, already in place to identify FTE needs and competency needs and skills gaps, to conduct a valid occupational analysis to construct meaningful pay bands,

h. Using a total workforce management approach to controlling costs, not just spending caps and share formulas; i.e., cultivating a managerial culture of accountability in taking and directing personnel actions, fostering judicious yearly employee ratings and prudent performance payouts, and instilling position management discipline.

Office of Personnel Management.

**Linda M. Springer,**

*Director.*

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## I. Executive Summary

This project was designed by NNSA in consultation with OPM. The demonstration project will modify the General Schedule classification and pay system by identifying several broad career paths, establishing pay bands which may cover more than one grade in each career path, eliminating longevity-based step progression, and providing for annual pay adjustments based on performance. The proposed project will test (1) the effectiveness of multi-grade pay bands in recruiting, advancing, and retaining employees, and in reducing the processing time and paperwork traditionally associated with classifying positions at multiple grade levels, and (2) the application of meaningful distinctions in levels of performance to the allocation of annual pay increases under the General Schedule.

## II. Introduction

### A. Purposes and Approach

The purposes of the proposed project are to—

(1) Modify the General Schedule (GS) classification system by establishing pay bands which may cover more than one grade; and

(2) Modify the GS pay system to provide larger annual pay increases to employees who are better performers based on performance distinctions made under a credible, strategically-aligned performance appraisal system/program and thereby improve the results-oriented performance culture within the organization.

NNSA's approach to achieving these purposes is to integrate with and build upon the several ongoing human capital management initiatives and projects that are already underway, and to design a GS pay banding and performance-based pay adjustment system that—

(1) Complements and increases parity with the statutory NNSA excepted service employment system, already in place, and

(2) Profits from the successes, mistakes, and lessons of other agency demonstration projects, past and current.

### B. Problems With the Present System

Position Classification Rigidity, Incomprehensibility, and Procedural Excesses

Although the GS classification system is not a compensation system per se, the classification and pay systems are inextricably intertwined. In practice, the GS classification system is the primary determinant of an employee's basic pay. Furthermore, NNSA believes in the principles underlying the GS classification system (i.e., equal pay for substantially equal work, and variations in pay based on the actuality of work performed, rather than on who performs the work) and believes that these principles are as valid and applicable to the Federal civil service system today as when originally enacted into law in 1923, and when the General Schedule was established in 1949. As Ismar Baruch wrote in a classic groundbreaking 1941 report, *Position Classification in the Public Service*:

“ \* \* \* the very nature of governmental jurisdictions places them in a position of peculiar responsibility to the public at large. Individual actions without plan or system and based merely upon the expediency of the moment are undesirable. Public personnel policies and transactions affecting positions and employees should be supportable by facts and logic in the light of broad considerations applicable to the service as a whole. Further, in the management of public personnel affairs, considerations of fairness and equity require uniform action under like circumstances, particularly in the establishment of pay rates.”

This in essence is what the Federal position classification system was designed to achieve, and has achieved in principle, if not practice, ever since these words were first written. Thus, rather than “scrapping” the current GS classification system and starting over, NNSA believes that modifying the system to accommodate the work and workforce of the 21st century is a more prudent and workable approach.

Pay banding does this. The current GS classification system is cumbersome, labor intensive, and difficult to comprehend. As OPM's April 2002 white paper, *A Fresh Start for Federal Pay: The Case for Modernization* points out, the GS classification system was designed during the World War II years when civil servants were predominantly “process-obsessed” file clerks. Public servants in the middle of the 20th century performed work that tended to be mechanical and repetitive in nature, consisting of job tasks readily observable and measurable. Today, work tends to be knowledge-based and highly specialized, and does not lend

itself to easy categorization based on readily observable characteristics. Nonetheless, as an employee progresses from the entry level to the full-performance level in a given occupation today, under the traditional classification system, a separate position description is still required for each grade. For example, an entry level GS-5 Engineer with promotion potential to GS-12 requires five different position descriptions (or statements of differences) covering grade intervals GS-5, GS-7, GS-9, GS-11, and GS-12. Additionally, each position description should be accompanied by a position evaluation report certifying that the duties and responsibilities of the position meet the requirements for classification into the series and grade. Often, the difference between a higher-graded and lower-graded position in the same career progression may be the level of supervision an employee receives, or the increasing gradations in the scope and effect of an employee's work on agency missions and programs, or some other interpretative degree of occupational difficulty and responsibility. As a result, managers who assign work and who are responsible for describing such assignments of work, and the position classifiers who evaluate assignments of work against OPM's and applicable agency classification criteria, often view the practice attendant to the current GS classification system as an exercise in semantics, and PD writing, for the purpose of “beating the system” to award the highest grade possible to a position, instead of as a management tool by which to make meaningful and significant distinctions between levels of work.

The current GS classification system also directly impacts the effectiveness of agency recruitment activities. Recruiting for a vacancy which may be filled at any level from the entry level to the full-performance level requires a separate position description for each grade, separate qualifications requirements for each grade, separate applicant assessment and rating tools (often referred to as “crediting plans”) for each grade, and separate lists of best-qualified candidates (often referred to as “certificates”) for each grade. For example, recruiting for a single GS-5/12 Engineer vacancy requires five different position descriptions (GS-5, GS-7, GS-9, GS-11, and GS-12) and five different “crediting plans,” and will result in the agency issuing multiple “certificates.” Thus, Federal managers and applicants for Federal employment often view the

system as cumbersome, time consuming, and unresponsive.

Modifying the current system to supplant sequential grade progression with valid, rational, and credible pay bands will (1) provide much needed management relief from the seeming arbitrariness, rigidity, and document heaviness of the current classification system, (2) provide managers with much needed flexibility, and (3) offer applicants and employees greater opportunities for advancement and inducements to retention, while retaining the public policy principles and management values underlying the current civil service system.

#### A Need for Performance-Based Pay Increases

Additionally, the current GS pay system provides annual pay increases to all employees, even those whose performance is less than Fully Successful. Similarly, periodic within-grade pay increases are virtually automatic. Although an employee's performance must be determined to be at an "acceptable level of competence" in order for the employee to receive a within-grade increase (WGI), this is only a single-level threshold and no further distinctions in levels of performance play a role. All performance levels above the threshold are treated the same for purposes of determining the amount of the increase and the rate at which an employee advances through the rate range of his or her grade. NNSA and OPM do not believe it is a wise use of the limited resources available for the compensation of Federal employees—nor does it serve taxpayers effectively or treat employees fairly—to pass on the same pay adjustments, year after year, to all employees regardless of differences in their performance.

The current GS pay system does provide one limited tool to address distinctions in levels of performance—namely, quality step increases (QSIs). QSIs are discretionary adjustments that are not integrated into the normal pay adjustment process; thus, limited funds are available to provide QSIs, and the decision-making process may not be very transparent. In addition, there is no flexibility as to the amount of the QSI; a full step increase is required. Also, QSIs may be used only for those with the highest rating of record. In summary, QSIs alone cannot be relied upon to establish an effective link between pay and performance based on meaningful distinctions among different levels of performance.

Under these constraints of the GS pay system, agencies are severely limited in their ability to establish a results-oriented performance culture as contemplated under the Human Capital Assessment and Accountability Framework (HCAAF). Within the HCAAF, a results-oriented performance culture effectively plans, monitors, develops, rates, and rewards employee performance, consistent with the merit system principle that "appropriate incentives and recognition should be provided for excellence in performance" (5 U.S.C. 2301(b)(3)).

#### C. Changes Required/Expected Benefits

The proposed demonstration project will respond to the GS classification system problems identified above by compressing the 15 GS grades into multi-grade pay bands. Although this "compression" is neither designed nor intended to eliminate the fundamental statutory grading distinctions embedded in the traditional position classification system, it will considerably reduce the excessive rigidity inherent in the current system, making it substantially less cumbersome, less labor intensive, less time consuming, and easier to comprehend and apply. Banding the GS grade structure will also simplify merit promotion activities, by permitting the advancement of employees within given bands without the necessity of advertising promotional opportunities (much like accretion-of-duties procedures under the traditional system), and without the need for handling employee applications in accordance with publicized merit promotion procedures. Because a pay banding system uses broader work levels, the system can be viewed as having more of a rank-in-person emphasis; that is, it permits a more direct relationship between an incumbent's actual (or anticipated) individual level of job performance and a given position's particular level of pay.

The proposed demonstration project will respond to the pay problem identified above by eliminating fixed steps within each of the pay bands and by making annual GS pay adjustments performance-sensitive. Pay adjustments will be funded from a pay pool consisting of the amounts that would otherwise be used to pay the annual GS pay adjustment, WGIs, and QSIs to employees covered by the demonstration project. The pay pool also may include funds saved through the elimination of promotion increases

for promotions between grades that are consolidated into the same band. A share mechanism will be used to allocate pay increases among employees with different levels of performance, and managers will be expected to control costs (and will be held accountable for doing so in their own performance plans). Implementation of the proposed pay system will result in larger pay increases going to employees who demonstrate higher performance. By regularly rewarding better performance with better pay, participating organizations will strengthen their results-oriented performance cultures. Among other things, they will be better able to retain their good performers and recruit new ones.

#### D. Participating Organizations

It is expected that every major headquarters and field organization in NNSA will participate. This includes HQ, program, and support components, including NNSA's cadre of nuclear materials couriers, who are deployed at various locations in the United States, eight geographically dispersed Site Offices and two special purpose Naval Reactors Offices (in Pittsburgh, PA, and Schenectady, NY), and the Service Center in Albuquerque, NM. Each of these units is committed to operating a credible, robust performance appraisal program aligned to the organization's strategic goals and objectives, by providing the necessary training and resources. These organizations have demonstrated this commitment the past three years, as NNSA implemented a comprehensive performance management program enterprise-wide.

#### E. Participating Employees

The demonstration project will cover all GS non-bargaining unit employees in the participating organizations identified in the preceding paragraph. (The only bargaining unit in NNSA is at headquarters, and currently includes 20 positions.) Included in the coverage are Schedule A and B Excepted Service employees. Not included are Schedule C Excepted Service employees and Excepted Service employees authorized under the NNSA Act, National Defense Authorization Acts, and the DOE Organization Act. Table 1 shows the number of employees currently available and subject to coverage under this project by occupational series and grade.



TABLE 1.—COVERED EMPLOYEES BY OCCUPATIONAL SERIES AND GRADE—Continued

Count—OCC Series	Pay Plan GS Grade															GS total
	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	
02010 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	1	.....	2
02101 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	2	15	6	24
02130 .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	9	1	.....	11
02210 .....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	1	6	18	14	3	44
Grand total .....	4	4	14	13	8	30	50	77	104	63	145	260	410	467	353	2002

Management has provided initial notice to affected employees and will continue consultation throughout project implementation.

F. Project Design

The project is designed to (1) fundamentally simplify the position classification system as the key to improving recruitment, retention, and classification activities, (2) ensure that no participating employee with a rating of record of less than Fully Meets Expectations will receive a pay increase, and (3) ensure that funds available for pay adjustments will be allocated on the basis of performance, the better performers receiving the greater performance payouts.

To ensure expeditious and effective project implementation and completion, NNSA will model, to the extent feasible and appropriate, programmatic features and operating systems and procedures relating to NNSA’s own pay-banded, pay-for-performance excepted service system; in addition, NNSA will review the successes, mistakes, and lessons from the experiences of other agency demonstration projects, notably the current Department of Defense (DoD) laboratory projects, which are based on the foundational China Lake project; the National Institute of Standards and Technology permanent Alternative Personnel System; and DoD’s new National Security Personnel System (one of the participating Air Force labs shares Kirtland AFB with NNSA).

Several design principles will underpin this project:

- NNSA will not establish its own classification standards, but rather, will construct band thresholds and boundaries consistent with OPM’s official classification criteria; at the same time, NNSA will streamline documentation requirements, including by eliminating Factor Evaluation System formatted PDs, with greater reliance on the Primary Standard to set band parameters.

- NNSA will not delegate classification authority to managers. NNSA understands that not delegating classification authority runs counter to

the experiences of other agency demonstration projects. Nonetheless, it is much more efficient to leave the exercise of this authority and all attendant administration activities in the trained hands of the resident human resources (HR) staff. NNSA sees little value in turning managers into classifiers, but rather, believes the value is in preparing managers to become better supervisors. NNSA’s pre-eminent managerial goal is to develop a seasoned cadre of Federal managers who can practice the art of supervision at an uncommonly high level (*i.e.*, the supervisor who is more mentor than taskmaster, who can nurture subordinates and unleash their potential for superior performance through the instruments of performance appraisal and reward programs).

- NNSA will use the career paths derived from this demonstration project to underwrite our new concept of a Management Needs-Based Career Path Model to Employee Development and Career Planning. This concept envisions the use of career paths to acquire well-qualified candidates from the current workforce to satisfy new and emerging mission needs. It will use such traditional mechanisms as in-service placement, reassignment, retraining, enrollment in formal development programs, and mixtures of competitive and noncompetitive procedures, to prepare employees to move within and across career paths in response to new and emerging job requirements.

- NNSA will design this demonstration project as a direct complement to and manifestation of the Administrator’s strong desire to create NNSA as an employer of choice in the Federal Government. The demonstration project will give real definition, direction, and impetus to the Administrator’s concept, which centers on the first-line supervisor as the primary agent in developing a management culture that attracts, develops, and retains a diverse and talented workforce.

III. Personnel System Changes

The 15-grade GS position classification system established under 5 U.S.C. chapter 51 and the GS pay system established under 5 U.S.C. chapter 53, subchapter III, will be modified as described in the following sections. Except as otherwise provided in this plan, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies. NNSA does not currently have employees covered by law enforcement officer (LEO) special base rates. Should any law enforcement officers be covered by this demonstration project in the future, they will not be considered to be General Schedule employees for the purposes of applying LEO special base rates authorized by section 403 of the Federal Employees Pay Comparability Act of 1990; a separate career path would be established for these employees, and band ranges for any such LEOs will take LEO special base rates into account.

A. Pay Banding Classification and Pay System

1. Establishment of Career Paths and Pay Bands

NNSA may establish, and adjust over time, career paths that group one or more occupational categories together and provide a common banding structure (*i.e.*, set of work levels and rate ranges) for occupations within a given career path. Initially, NNSA intends to establish four career paths as follows:

(1) *Professional, Engineering and Scientific*: Research, policy, staff, and managerial positions in science, engineering, computing, mathematics and other positions the duties of which include the performance of professional work. Examples of occupational series in this career path are 510—Accountant, 801—General Engineer, 840—Nuclear Engineer, 905—Attorney, 1102—Contract Specialist, 1301—Physical Scientist, and similar traditional two-grade interval GS occupations whose qualifications requirements include a minimum education requirement.

(2) *Administrative*: Specialist positions in such fields as finance, human resources, public affairs, technical information, and management analysis. Examples of occupational series in this career path are 080—Security Specialist, 201—Human Resources Specialist, 340—Program Manager, 341—Administrative Officer, 343—Management/Program Analyst, 560—Budget Analyst, 1035—Public Affairs Specialist, 2101—Transportation Specialist, and similar traditional two-grade interval GS occupations whose qualifications requirements do not include a minimum education requirement.

(3) *Technician and Administrative Support*: Engineering Technician, clerical, assistant, secretarial, and other support positions not fitting the definitions of any other career path. Examples of occupational series in this career path are 203—Human Resources Clerk and Assistant, 303—General Clerk, 318—Secretary, 525—Accounting Technician, 802—Engineering Technician, 1106—Procurement Clerk/Assistant, and similar traditional one-grade interval technician and administrative support occupations not fitting the definitions of any other career path.

(4) *Nuclear Materials Couriers*: NNSA employs approximately 400 Nuclear Materials Couriers, GS-084, who have a unique set of duties and skills, supporting a separate career path, and who have an unusual single-grade interval pattern from GS-8 through GS-13. All positions in the 084 occupational series are encompassed in this career path. Positions of employees who work in the same organizations, doing related work, but that are not classified in the 084 job series, will be allocated to one of the other three career paths, as appropriate to the nature of the work performed.

Each career path will be subdivided into pay bands. Each pay band will correspond to one or more GS grades. NNSA may establish, and adjust over time, a career path's pay band structure. Initially, the pay bands within each career path and their relationship to GS grades will be as follows:

- (1) Professional, Engineering and Scientific Career Path
  - (a) Pay Band I—(GS-5 through GS-7)
  - (b) Pay Band II—(GS-9 through GS-12)
  - (c) Pay Band III—(GS-13 through GS-14)
  - (d) Pay Band IV—(GS-15)
- (2) Administrative Career Path
  - (a) Pay Band I—(GS-5 through GS-8)
  - (b) Pay Band II—(GS-9 through GS-12)

- (c) Pay Band III—(GS-13)
- (d) Pay Band IV—(GS-14)
- (e) Pay Band V—(GS-15)

Positions in the Professional, Engineering and Scientific and Administrative career paths will normally be filled at Pay Band II or higher. Pay Band I for the Professional, Engineering, and Scientific and Administrative career paths is used primarily, but not exclusively, for basic entry-level appointments, upward mobility, and Student Career Employment Program appointees.

(3) Technician and Administrative Support Career Path

- (a) Pay Band I—(GS-1 through GS-4)
- (b) Pay Band II—(GS-5 through GS-8)
- (c) Pay Band III—(GS-9)

(4) Nuclear Materials Courier Career Path

- (a) Pay Band I—(GS-8 through GS-11)
- (b) Pay Band II—(GS-12) (“Convoy Commander” positions only)
- (c) Pay Band III—(GS-13) (“Unit Commander” positions only)

NNSA will coordinate changes in career paths or pay banding structures with OPM. After coordination with OPM, NNSA will give affected employees advance notice and an opportunity to comment before effecting a change with respect to career paths or banding structure.

## 2. Position Classification

Application of the 15-grade GS position classification system established under 5 U.S.C. chapter 51 will be simplified by allowing a position to be assigned to a specific pay band if the duties and responsibilities of the position meet (or exceed) the requirements for classification into the lowest grade included in that specific pay band. For example, an 801, Engineer, position assigned to Pay Band 1 (GS-5 through GS-7), need only meet the requirements for classification at the GS-5 level. Position descriptions will include examples of higher-level duties and responsibilities to which employees are fully intended to progress. NNSA will establish pay band boundaries consistent with OPM's existing position classification standards, grade-evaluation criteria, and grading practices.

## 3. Minimum Qualifications Requirements

*Application of the OPM Operating Manual*: Qualification Standards for General Schedule Positions is simplified by allowing a candidate to qualify for a specific pay band if the candidate meets (or exceeds) the requirements for the

lowest grade included in that specific pay band. For example, a candidate for an 801 Engineer position assigned to Pay Band 1 (GS-5 through GS-7), need only meet the qualifications requirements for a GS-801 Engineer position at the GS-5 level.

For NNSA demonstration project employees and employees of other Federal agencies who are in sufficiently similar pay banding systems, the common OPM requirement of one year of experience “at the next lower grade in the normal line of progression for the occupation” is changed to “at the next lower pay band in the normal line of progression for the occupation.”

Federal employees in the General Schedule pay system, Federal employees in other pay systems comparable to the General Schedule, and non-Federal applicants must meet the common OPM requirement of one year of experience “at the next lower grade in the normal line of progression for the occupation.”

## 4. Elimination of Fixed Steps

The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system was designed to reward longevity. A pay banding system is an important element of any effort to make pay more performance-sensitive. No employee will lose pay as a result of becoming covered by the demonstration project. However, demonstration project employees will no longer receive longevity-based within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance adjustments as described in section C below.

## 5. Rate Range

The normal minimum and maximum rates of the rate range for each pay band will equal the applicable step 1 rate and step 10 rate, respectively, for the lowest and highest grades, respectively, in the General Schedule that are included in the pay band. The minimum rate of the pay band is extended 5 percent below the normal minimum for employees with a rating of record below Fully Meets Expectations. Such an employee's rate may fall below the normal pay band minimum when that minimum increases as a result of a pay band adjustment, but the employee cannot receive a pay adjustment because the employee's rating of record is below Fully Meets Expectations, as described in section C.4.

The maximum rate of each pay band is extended 5 percent above the normal maximum for all employees with a

rating of record at the highest level (currently called "Significantly Exceeds Expectations" in NNSA). This feature will help ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. If an employee within this rate extension receives a rating of record below the highest level, the employee's rate may not be increased except as necessary to prevent the rate of an employee with a rating of record of Fully Meets Expectations or higher from falling below the normal pay band maximum due to a rate range adjustment.

#### 6. Rate of Basic Pay Upon Initial Appointment

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization, or other authority primarily designed for initial entry into the Federal service (e.g., Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's pay rate may be set at any rate within the normal pay band range. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, the appointee's potential contributions to NNSA mission accomplishment, and the rates received by on-board employees. This flexibility will allow NNSA to compete more effectively with private industry for the best talent available, though managers will be expected to use this flexibility with great judiciousness and prudence.

#### 7. Rate of Basic Pay Upon Promotion

Upon promotion to a higher pay band, an appointee's pay rate generally will be set at a rate within the normal pay band range to which the appointee is being promoted that provides a pay increase of 8 percent, unless a greater increase is necessary to set pay at the normal range minimum. NNSA may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after a demotion, employees with exceptional performance warranting a larger increase with higher management approval, etc. In exercising this flexibility, NNSA will consider the appointee's qualifications, competing job offers, NNSA's need for the appointee's talents, and the appointee's potential contributions to NNSA mission accomplishment. A pay band in a different career path will be considered to be a higher pay band (i.e., a promotion) under policies prescribed by NNSA. NNSA may adopt policies

providing a promotion-equivalent increase to a Federal employee outside the demonstration project who is selected, through merit promotion procedures, to fill a higher-level position (as defined in NNSA policies) covered by the demonstration project.

NNSA may establish special rules for computing the promotion increase for promotions involving positions covered by a staffing supplement that take into account the staffing supplement and locality pay, subject to guidance provided by OPM.

#### 8. Rate of Basic Pay in Noncompetitive Lateral Actions

Upon non-competitive lateral movement (e.g., via transfer or reassignment) to a demonstration project position from another Federal position, an employee's pay rate will be set at an amount that is equal to the employee's current pay rate. For such an employee moving from a position outside the demonstration project, NNSA may provide an immediate increase in the rate of basic pay to reflect the prorated value of the employee's next scheduled within-grade increase under the former pay system, consistent with the requirements in section V.A.

#### 9. Other Pay Administration Provisions

Performance-based pay adjustments described in section C will be made to the rate of basic pay. These adjustments are scheduled to be made on the same date that annual rate range adjustments normally take effect—i.e., the first day of the first pay period beginning on or after January 1.

Locality-based comparability payments under 5 U.S.C. 5304 will be paid on top of the rate of basic pay in the same manner as those payments apply to other GS employees. Staffing supplements may apply as described in section III.A.10.

Subject to guidance provided by OPM, NNSA will establish final pay administration rules for determining an employee's rate of pay upon initial appointment, promotion, demotion, transfer, reassignment, or other position change, as needed. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 are not applicable (i.e., no band retention). The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 continue to apply to demonstration project employees, except that an employee with a rating of record below Fully Meets Expectations

may not receive an increase in his or her retained rate under 5 U.S.C. 5363(b)(2)(B). If such an employee's retained rate falls below the applicable pay band adjusted maximum rate (including any applicable locality payment or staffing supplement), pay retention ceases and the rate is converted to an equal within-pay band rate (i.e., the rate is not set at the range maximum).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former members of the Senior Executive Service continue to apply to demonstration project employees, except that an employee with a rating of record below Fully Meets Expectations may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2). If such an employee's retained rate falls below the applicable range adjusted maximum rate, pay retention ceases and the rate is converted to an equal within-range rate (i.e., the rate is not set at the range maximum).

An employee's rate of basic pay may not exceed the normal maximum rate for the employee's band unless the employee is receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 or is entitled to a rate within the upper range extension, as provided under section III.A.5. An employee's rate of basic pay may not be below the normal minimum rate for the employee's grade unless the employee's most recent rating of record is below Fully Meets Expectations.

NNSA may adopt supplemental pay administration policies governing matters not specifically addressed in this plan, subject to any OPM guidance.

#### 10. Staffing Supplements

An employee who is assigned to an occupational series and geographic area covered by an OPM-established special rates schedule, and who meets any other applicable coverage requirements, will be entitled to a staffing supplement if the maximum adjusted rate for a covered position in the GS grades corresponding to the employee's band is a special rate that exceeds the applicable maximum GS locality rate. The staffing supplement is added on top of the rate of basic pay in the same manner as locality pay. An employee will receive the higher of the applicable locality payment or staffing supplement.

For employees being converted into the demonstration project, the employee's total pay immediately after conversion will be the same as immediately before, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to



the conversion process as there will be no change in the total salary rate. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 GS base rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

*Simplified, the formula is this:*

Staffing factor = (Maximum special rate for banded grades) / (GS base rate corresponding to that special rate)

Demonstration base rate = (Former GS adjusted rate [special or locality rate]) / (Staffing factor)

Staffing supplement = demonstration base rate  $\times$  (staffing factor - 1)

Salary upon conversion = demonstration base rate + staffing supplement [sum will equal existing rate]

If a special rate employee is converted to a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former special rate by the applicable locality pay factor (for example, in the Washington-Baltimore area, the locality pay factor is 1.175 in 2006). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any General Schedule or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied, as appropriate. Upon geographic movement, an employee who receives the special staffing supplement will have the supplement recomputed; any resulting reduction in the supplement will not be considered

an adverse action or a basis for pay retention.

Established salary including the staffing supplement will be considered basic pay for the same purposes as a special rate under 5 CFR 530.308—e.g., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker's compensation payments and lump-sum payments for accrued and accumulated annual leave. Staffing supplement adjusted rates are subject to the Executive Schedule level IV cap that applies to GS locality rates and special rates.

### *B. Performance Appraisal*

NNSA recognizes the importance of maintaining highly credible performance management systems. NNSA will use a performance management program under the Department of Energy appraisal system that has been approved by OPM consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that will be included in the demonstration project evaluation plan.

#### 1. Program Requirements

The NNSA performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one mid-year progress review.

The NNSA appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program currently uses a four-level rating pattern to both summarize performance and to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, and Significantly Exceeds Expectations, respectively. Employees must be covered by their performance plan for at least 90 days before they can be assigned a rating of record. Supervisors and managers apply the appraisal program in a way that makes

appropriate differentiations in performance. These differentiations reflect overall organizational performance. Employees receive a written performance appraisal (i.e., a rating of record) annually. Forced distributions of ratings are prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section C.

Additional guidance on the NNSA performance appraisal program is provided through internal operations manuals. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees, and they will be given a chance to comment before NNSA implements the changes.

#### 2. Supervisory Accountability

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. The performance plans for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training must be provided to prepare supervisors and managers to exercise these responsibilities. NNSA has provided supervisory training each of the past three years on philosophical and procedural aspects of its new and still evolving performance management program (i.e., the lessons learned in the administration of each performance appraisal cycle have resulted in refinements each subsequent year). NNSA understands that this demonstration project will heighten the need for continuing supervisory training to support the accurate and realistic appraisal of performance.

#### 3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record by a management official other than the rating official. Such reconsiderations must be initiated no more than 15 days after the official rating of record is assigned, consistent with the applicable administrative grievance policy. If the reconsideration of the appraisal results in a different

rating of record, the revised rating of record will become the basis for the employee's pay adjustment(s) in accordance with section C. If the adjustment occurs after all pay deliberations have been finalized, it does not result in a recalculation of other employees' pay adjustments.

### C. Performance-Based Pay Adjustments

#### 1. Pay Pools

Participating employees whose most recent rating of record is below Fully Meets Expectations will not receive an annual across-the-board increase as do GS employees. Funds that otherwise would be spent on the across-the-board GS pay adjustment, WGs, and QSIs for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance-based pay increases for those employees. The pay pool also may include funds saved through the elimination of promotion increases for promotions between grades that are consolidated into the same band. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with relatively lower ratings of record and (2) to control costs without resorting to a forced distribution of ratings. Each employee will be assigned a certain number of shares, based on his or her rating of record in accordance with section C.2. All employees in the normal band rate range whose rating of record is at least Fully Meets Expectations will receive an adjustment equal to at least the amount of the annual GS base pay comparability increase under 5 U.S.C. 5303.

Participating organizations will establish pay pools for allocating performance pay increases. NNSA will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of pay pools, NNSA will initially allocate an amount for performance pay increases equal to the estimated value of the WGs, QSIs, and annual GS pay adjustments that otherwise would have been paid to participating employees. In computing the estimated value of WGs and QSIs, NNSA may use Governmentwide averages.

#### 2. Performance Shares

NNSA will establish rating/share patterns for each pay pool—that is, the relationship between a rating of record and a single number of shares. NNSA rating/share patterns will ensure that a higher rating of record receives a higher

performance payout percentage for employees in the normal rate range.

NNSA may adjust rating/share patterns over time after coordination with OPM, and after giving affected employees advance notice. A change in the rating/share pattern may be applied in computing performance-based pay adjustments based on an appraisal period only if it takes effect at least 120 days before the end of that appraisal period. Initially, the number of shares for each rating level will be as follows: 3 shares are assigned to the Significantly Exceeds Expectations rating, 2 shares to the Fully Meets Expectations rating, and 1 share to the Fully Meets Expectations rating when the employee receives a rating of Needs Improvement in a critical element but the Final Summary Rating is Fully Meets Expectations.

No shares may be assigned to any rating of record below Fully Meets Expectations, since no pay increase is payable to employees with such a rating of record. After the ratings of record and shares are assigned to employees, the value of a single share can be calculated.

In addition to performance-based pay increases, demonstration project employees remain eligible to receive both monetary and non-monetary forms of recognition, so long as employees are not rewarded twice for the same contributions using incentive awards authorities under Chapter 45 of title 5. NNSA will adopt supplemental award administration policies not specifically covered by this plan.

#### 3. Pay Adjustments

*In general:* NNSA will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout is determined by multiplying the determined percentage value of a performance share by the number of shares assigned to the employee. The performance payout is computed as a percentage of the employee's rate of base pay as in effect on the date determined in NNSA policies. On the first day of the first pay period beginning on or after January 1 of each year, this amount must be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper band extension rated below the highest rating level are subject to special rules as described in section III.A.5. Any portion of an employee's

performance pay increase amount that cannot be delivered as a basic pay increase will be paid out as a lump sum (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code.

An employee with a rating of record of Fully Meets Expectations or higher may not receive a performance payout that is less than the percentage value of any simultaneous rate range adjustment, except for (1) an employee receiving a retained rate and (2) an employee in the upper band extension with a rating of record below Significantly Exceeds Expectations (as provided in section III.A.5). This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the same pay pool who received the modal rating for that period, subject to NNSA proration policies.

NNSA may establish policies on prorating the performance pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate.

If an employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through a reconsideration or grievance process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

*Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits:* Special pay-setting provisions apply to employees who do not have a rating of record to support a pay adjustment but who are returning to duty status after a period of leave

without pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, NNSA will determine the employee's prospective rate of basic pay upon return to duty by making performance pay adjustments for the intervening period based on the modal rating of record for employees in the same pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

*Special provision for employees receiving a retained rate:* An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with a rate range adjustment. For a retained rate employee whose rating of record is Fully Meets Expectations or higher, the retained rate must be adjusted consistent with the normal pay retention rules (5 CFR part 536, subpart C, or 5 CFR 359.705, as applicable)—i.e., 50 percent of an increase in the applicable maximum rate of the grade, but if the resulting rate would fall below the new range maximum, the employee's rate of basic pay must be set at the range maximum. A retained rate employee whose rating of record is below Fully Meets Expectations may not receive an increase in basic pay. At the discretion of the Administrator or the Administrator's designee, a retained rate employee may receive the same lump-sum payment approved for an employee in the same pay pool who is at the applicable range maximum and who has the same performance rating of record and number of shares.

#### 4. Employees Who Do Not Receive a Pay Adjustment

Employees with a rating of record below Fully Meets Expectations are prohibited from receiving a pay increase, except if necessary to prevent an employee's rate from falling more than 5 percent below the normal range minimum. When an employee does not

receive a pay increase because of performance below Fully Meets Expectations, his or her pay rate may fall below the normal minimum rate of the pay band, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be reduced more than 5 percent below the normal range minimum. In other words, the minimum of the band is extended by 5 percent for employees rated below Fully Meets Expectations.

If NNSA chooses to give such an employee a new rating of record of Fully Meets Expectations or higher before the end of the current appraisal period, the employee is entitled to an increase effective on the first day of the first pay period beginning on or after the date the new rating of record is final. The increase must be the same dollar amount as the increase the employee would have received if he or she had been rated Fully Meets Expectations at the time the increase was initially denied.

Each employee who does not receive an increase in basic pay because his or her performance is less than Fully Meets Expectations will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

#### 5. Locality Pay and Staffing Supplement

When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is below Fully Meets Expectations is entitled to the increased locality payment, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated below Fully Meets Expectations will not receive a pay increase; it does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5

percent below the normal range minimum.)

Similarly, when a staffing supplement is increased, a demonstration project employee whose rating of record is below Fully Meets Expectations is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase.

#### D. Reduction-in-Force

1. If, during the life of the demonstration project, NNSA enters into a reduction-in-force (RIF), the RIF will be conducted in accordance with 5 U.S.C. 1302, 3502, and 3508 and 5 CFR part 351, except as follows:

(a) Each of the four career paths in each NNSA local commuting area will constitute separate competitive areas (i.e., separate from the other career paths, and separate from the competitive areas of other NNSA employees);

(b) NNSA will establish competitive levels consisting of all positions in a competitive area which are in the same pay band and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any of the other positions in the level without undue interruption. Each demonstration project competitive level will become a Retention List for purposes of competition when employees are released from their competitive levels, displaced by higher-standing employees, or placed during the exercise of assignment rights.

(c) Assignment rights will be modified by substituting "one pay band" for "three grades" and "two pay bands" for "five grades."

(d) NNSA will use retention standing when it chooses to offer vacant positions within the meaning of 5 CFR 351.704.

2. Prior to conducting a RIF, NNSA will issue and implement a policy for the establishment and operation of an agency-level reemployment priority list (RPL) designed to assist current NNSA competitive service demonstration project employees who will be separated as a result of a RIF and, subsequently, former NNSA competitive service demonstration project employees who have been separated as a result of a RIF, or who have fully recovered from a compensable injury after more than one year, in their efforts to be reemployed at NNSA, by affording them priority consideration over certain outside job applicants for NNSA

competitive service demonstration project vacancies.

NNSA will develop and adopt supplemental RIF administration procedures to augment the RIF policies stipulated by this plan.

#### IV. Training

As NNSA has learned during the past three years of implementing and refining a new performance management program, training for all involved will be essential to the success of the demonstration project. Training will be provided to employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance expectations; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on expectations; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance expectations set for and appraisals made of their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including videos, on-line tutorials, and train-the-trainer concepts.

#### V. Conversion

##### A. Conversion to the Demonstration Project

1. Employees whose positions become covered by the demonstration project will convert into the career path and pay band covering the occupational series and grade of their position of record. Employees will convert to the demonstration project with no change in their total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement). Special conversion rules apply to special rate employees as described in section III.A.10, Staffing Supplements. Any simultaneous pay action that is scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the pay banding system. NNSA implementing policies will

provide procedures for converting an employee on grade retention under 5 U.S.C. 5362 or receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 to the demonstration project.

2. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled within-grade increase (WGI). The prorated value is determined by calculating the portion of the time-in-step employees have completed towards the waiting period for their next WGI. This WGI "buy-in" adjustment will not be paid to (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Meets Expectations.

3. Adverse action provisions under 5 U.S.C. chapter 75, subchapter II, do not apply to reductions in pay upon conversion into the demonstration project as long as the employee's total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement, or staffing supplement) is not reduced upon conversion.

4. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2008.

5. For employees who enter the demonstration project by lateral reassignment or transfer (*i.e.*, not by conversion of position), NNSA may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before performing the pay conversion.

##### B. Conversion to the General Schedule System

NNSA implementing policies will provide procedures for converting an employee's pay band and pay rate to a GS-equivalent grade and rate of pay if the employee moves out of the demonstration project to a GS position. The converted GS-equivalent grade and rate of pay will be determined before any geographic move, promotion, or other simultaneous action that occurs

simultaneously with conversion back to the GS system. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (*e.g.*, rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and grade and pay retention under 5 CFR part 536). The converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the demonstration project pay banding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action. NNSA will perform the computations for employees who remain within NNSA and DOE. NNSA may perform the computations, as a courtesy, for employees who move to other Federal agencies. At a minimum, NNSA will provide a copy of the conversion procedures to gaining Federal agencies for their use. If an employee moves out of the demonstration project to a non-GS system, the employee's pay will be set under the pay-setting rules governing that system.

#### VI. Project Duration

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended, modified, or terminated on or before the expiration of the five-year period.

#### VII. Project Evaluation

Chapter 47 of title 5, United States Code, requires an evaluation of the results of the demonstration project. NNSA, in coordination with OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance and the extent to which the project is achieving its other stated goals. Workforce data will be analyzed to make this assessment and to determine whether the project is resulting in any adverse impact on particular groups of employees. Key indicators, including leadership commitment, communication, stakeholder involvement, training, planning, mission alignment, and the rewarding of performance, will be assessed to ensure compliance with stated project goals. The evaluation will address the extent to which the project

has incorporated the elements required by section 1126 of Public Law 108–136 (5 U.S.C. 4701 note). In addition, the project will be examined during each phase of the evaluation to assess that costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. Finally, employee feedback will be sought through surveys, interviews, and focus groups to assess employee perceptions of the fairness and integrity of the performance appraisal and pay adjustment processes.

## VIII. Costs

### A. Buy-in Costs

There will be added costs resulting from the within-grade increase “buy-in” provision described in section V; however, those costs will be offset to some degree by the elimination of within-grade step increases that otherwise would have occurred.

### B. Recurring Costs

All funding will be provided through the organization’s budget. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations, including those incurred in the areas of project development, training, and project evaluation.

## IX. Waiver of Laws and Regulations Required

### A. Title 5, United States Code

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to bar employees with a rating of record lower than Fully Meets Expectations from receiving saved rate increases under 5 U.S.C. 3594(c)(2))

Chapter 51, section 5104: Basis for grading positions.

Chapter 51, section 5106: Basis for classifying positions.

Chapter 51, section 5107: Classification of positions.

Chapter 53, section 5303: Annual adjustments to pay schedules.

Chapter 53, section 5305: Special pay authority.

Chapter 53, sections 5331–5336: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III;

this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay), section 5545(d) (relating to hazard pay), and sections 5753–5754 (dealing with recruitment, relocation, and retention incentives))

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) replace “grade” with “band” and (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B).

Chapter 75, section 7512(34): Adverse actions (only to the extent necessary to replace “grade” with “band”).

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee’s total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement increase as a result of receiving a rating of record below Fully Meets Expectations.)

**Note:** If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must notify OPM when any such waiver is terminated.

### B. Title 5, Code of Federal Regulations

Part 300, subpart F, section 300.604: Restrictions (only to the extent necessary to restrict advancement to a higher pay band to candidates who have completed a minimum of 52 weeks in positions no more than one pay band lower than the position to be filled).

Part 330, subpart B, section 330.201: Establishment and maintenance of Reemployment Priority List (RPL) (only to the extent necessary to establish and maintain a reemployment priority list exclusively for NNSA competitive service demonstration project employees).

Part 351, subpart D, section 351.402: Competitive area (only to the extent necessary to permit the use of career paths in conjunction with organizational units and geographic locations when establishing competitive areas).

Part 351, subpart D, section 351.403: Competitive level (only to the extent necessary to substitute “same pay band” for “same grade”).

Part 351, subpart G, section 351.701: Assignment involving displacement (only to the extent necessary to substitute “one pay band” for “three grades” and “two pay bands” for “five grades”).

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to bar employees with a rating of record lower than Fully Meets Expectations from receiving a saved rate increase under 5 CFR 359.705(d)(1)).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under C.3 or 4 of this project plan).

Part 511, subpart B: Coverage of the General Schedule.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 536, subpart B: Grade Retention.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) replace “grade” with “band” and (2) bar employees with a rating of record lower than Fully Meets Expectations from receiving retained rate increases under 5 CFR 536.305).

Part 550, section 550.703: Definitions (to the extent necessary to modify paragraph (c)(4) of the definition of “reasonable offer” by replacing “two grade or pay levels” with “one pay band level” and “grade or pay level” with “pay band level”).

Part 752, section 752.401(a)(3): Adverse actions (only to the extent necessary to replace “grade” with “band”).

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee’s total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement rate increase as a result of receiving a rating of record below Fully Meets Expectations).

**Note:** If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, NNSA may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. NNSA must

notify OPM when any such waiver is terminated.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55328; File No. SR-Amex-2007-16]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to an Amendment to the Options Marketing Fee

February 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 14, 2007, the Amex submitted Amendment No. 1 to the proposed rule change. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Amex under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to decrease the equity options marketing fee from the current level of \$0.75 to \$0.35 per contract for those equity, exchange traded fund share, and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.amex.com](http://www.amex.com).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The proposal seeks to reduce the current fee of \$0.75 per contract to \$0.35 per contract for those equity, exchange traded fund share, and trust issued receipt options series that quote and trade in one cent increments under the penny pilot program. In February, 2006, the Exchange increased its equity options marketing fee from \$0.40 per contract on the transactions of specialists and registered options traders (“ROT’s”) in equity options to \$0.75 per contract (except for SPDR options which will continue to remain subject to the current fee level of \$1.00 per contract<sup>5</sup>).

Currently, the equity options marketing fee is assessed on electronically executed customer orders from firms that accept payment for directing their orders to the Exchange (“payment accepting firms”) with whom a specialist has negotiated a payment for order flow arrangement.

The Exchange has no role with respect to the negotiations between specialists and payment accepting firms. The Exchange collects and administers the payment of the fee collected on those transactions for which the specialist has advised the Exchange that it has negotiated with a payment accepting firm to pay for the firm’s order flow. Included in this general administrative support, the Exchange tracks the number of qualified orders sent by a payment accepting firm, bills specialists and ROTs through their clearing firms, and issues payments to payment accepting firms to reflect the

<sup>5</sup> See Securities Exchange Act Release No. 51685 (May 11, 2005), 70 FR 28587 (May 18, 2005) (SR-Amex-2005-050).

<sup>6</sup> See Securities Exchange Act Release No. 53341 (February 21, 2006), 71 FR 10085 (February 28, 2006) (SR-Amex-2006-15).

collection and payment of the marketing fee. The Exchange rebates to specialists and ROTs, on a quarterly basis, the amount of marketing fees collected that have not been paid to order flow providers.

The specialists are solely responsible, but are not required, to negotiate payment for order flow agreements with payment accepting firms and are responsible for any arrangements made with the payment accepting firms. The specialists will use the funds that are collected from a particular post on the Exchange to market for those specific products traded at that particular post on the Exchange. Additionally, supplemental registered options traders have the ability to enter into payment for order flow agreements with affiliated firms. So long as it is within the above described parameters, the specific terms governing the orders that qualify for payment and the amount of any payments are determined by the specialists in their discretion.

The Exchange asserts that the proposal is equitable, as required by Section 6(b)(4) of the Act.<sup>7</sup> In connection with the revision to the said options marketing fee, the Exchange notes that decreasing the fee in the delineated circumstances from \$0.75 to \$0.35 per contract is reasonable given the competitive pressure to attract options order flow. Accordingly, the Exchange believes that the proposal is an equitable allocation of reasonable fees among Exchange members.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and Section 6(b)(4) of the Act<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among exchange members and issuers and other persons using exchange facilities.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>7</sup> Section 6(b)(4) of the Act states that the rules of a national securities exchange should provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).