

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

**MD 10.153 ADMINISTRATIVE JUDGES –
COMPENSATION AND STAFFING**

DT-13-09

Volume 10, Personnel Management
Part 6: Senior Executive Service, Senior Level Positions, and Judges

Approved By: Allison M. Macfarlane
Chairman

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Issuing Office: Office of the Chief Human Capital Officer

Contact Name: Anthony Eitreim Johanna Gallagher
301-415-7390 301-287-0715

Servicing Human Resources Specialist
(names and phone numbers are listed [here](#))

EXECUTIVE SUMMARY

Directive and Handbook 10.153 outline the policies, practices, and operating procedures relating to the compensation, recruitment, and staffing of administrative judge positions with the NRC.

The revision (1) clarifies Commissioner interview procedures associated with administrative judge candidates; (2) clarifies the authority of the Chief Administrative Judge in (a) establishing registers of administrative judge candidates (either for (i) full-time administrative judges (i.e., administrative judges with career or term appointments and regularly-scheduled full-time or part-time tours of duty), or (ii) special government employee (SGE) administrative judges (i.e., administrative judges with temporary appointments and intermittent tours of duty)), and (b) requesting the appointment of SGE administrative judges as full-time administrative judges or full-time administrative judges as SGE administrative judges; (3) outlines the compensation levels for full-time administrative judges and for setting the pay and benefits of administrative judges who receive Intergovernmental Personnel Act (IPA) appointments; (4) clarifies the membership of the Administrative Judge Review Committee (AJRC) and the AJRC's authority to act in instances when one or more of its members is unavailable; (5) indicates the responsibility of the Office of the Chief Human Capital Officer (OCHCO) at the time a register of candidates is sent to the Commission to provide the Commission with the list of candidates initially determined by OCHCO to be minimally qualified so as to be eligible for further AJRC screening; and (6) establishes the conditions and procedures associated with appointing, and renewing the appointments of, full-time technical administrative judges to 5-year terms.

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to recruit and compensate administrative judges by applying merit staffing and compensation principles equitable with those applied to other employees in positions above the General Grade (GG) 15 level.

II. OBJECTIVES

- Recruit and retain the highest quality technical and legal administrative judges for the agency.
- Compensate administrative judges in a manner that takes into consideration the compensation of members of the Senior Executive Service, the Senior Level System, and administrative law judges.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Chairman

1. Initiates the appointment, subject to the approval of the Commission, of the Atomic Safety and Licensing Board Panel (ASLBP) Chief Administrative Judge and members.

2. At his or her discretion, interviews all or a selected number of the qualified candidates for appointment to the ASLBP from one or more of the registers established by the Administrative Judge Review Committee (AJRC) from which ASLBP member appointments can be made, and, at his or her discretion, may choose not to interview a candidate interviewed and not selected from a previously established AJRC register.

B. Commission

1. Approves the pay system of full-time administrative judges.
2. Establishes the pay of special government employee (SGE) administrative judges based on recommendations of the Chief Administrative Judge and the Chief Human Capital Officer (CHCO).
3. At the discretion of individual Commissioners, interviews all or a selected number of the qualified candidates for appointment to the ASLBP from one or more of the AJRC-established registers from which ASLBP member appointments can be made, and, at the discretion of individual Commissioners, may choose not to interview a candidate interviewed and not selected from a previously established AJRC register.
4. Approves changes to appointment and compensation procedures affecting ASLBP administrative judges.
5. Approves the appointment of all members of the ASLBP.
6. Delegates the appointment of ASLBP staff to the Chief Administrative Judge.

C. Chief Administrative Judge, ASLBP

1. Assesses judicial staffing needs by legal and technical discipline and informs the Commission of the need for new judges.
2. Upon Commission approval, appoints members and sets pay in accordance with established fiscal and pay-setting practices.
3. Chairs the AJRC, which interviews and establishes the registers of candidates for openings on the ASLBP, including candidates for appointments in accordance with the Intergovernmental Personnel Act of 1970 (IPA).
4. Maintains the registers of candidates in relevant disciplines who are qualified for appointment as full-time or SGE administrative judges, including individuals qualified for an IPA appointment as an administrative judge, and requests the appointment of a current SGE administrative judge as a full-time administrative judge, when appropriate, or the appointment of a current or former full-time administrative judge or former SGE administrative judge as a current SGE administrative judge.

5. Consults with Office of the Chief Human Capital Officer (OCHCO) regarding the policies, practices, and regulations relative to establishing pay of a given administrative judge and makes recommendations to the Commission.

D. Executive Director for Operations (EDO)

In accordance with the Commission-approved pay system and in consultation with the CHCO, adjusts the annual pay ranges applicable to full-time administrative judges employed by NRC.

E. Chief Human Capital Officer, Office of the Chief Human Capital Officer (OCHCO)

1. Administers staffing and compensation activities for administrative judges.
2. Provides advice and guidance to the Chief Administrative Judge on pay-setting policies, practices, and regulations for ASLBP administrative judges, including setting the pay of a given administrative judge.
3. Provides regulatory review and recommendations for the Commission on requests to establish or adjust compensation for SGE administrative judges.

F. Office of the General Counsel (OGC)

Provides advice and makes determinations with respect to conflict-of-interest matters and financial holdings.

IV. APPLICABILITY

This directive and handbook apply to all administrative judges employed by the NRC, including those appointed as full-time administrative judges with career or term appointments and regular work schedules (whether full-time or part-time) and those appointed as SGE administrative judges with intermittent work schedules. This directive and handbook do not apply to NRC administrative law judges (ALJs), whose recruitment and compensation would be administered in accordance with the provisions of Title 5 of the United States Code and Title 5 of the Code of Federal Regulations regarding ALJs.

V. DIRECTIVE HANDBOOK

Directive Handbook 10.153 provides guidelines for the administration of staffing and compensation of administrative judges.

VI. DEFINITIONS

Full-time Administrative Judge

Full-time administrative judge means an NRC administrative judge appointed under a career (permanent) or term appointment with a regular full-time or part-time work schedule. Full-time

technical administrative judges typically receive 5-year term appointments, which may be extended. Full-time legal administrative judges typically receive career appointments.

Special Government Employee (SGE) Administrative Judge

SGE administrative judge means an NRC administrative judge under a temporary appointment with an intermittent work schedule. An SGE administrative judge may work up to a maximum of 130 days per year.

VII. REFERENCES

Code of Federal Regulations

Code of Federal Regulations, Title 5, “Administrative Personnel.”

Nuclear Regulatory Commission Documents

COMSECY-08-0025, Authorization to Use Recruitment, Relocation, and Retention Incentives for Administrative Judges (December 10, 2008).

Management Directive 10.6, “Use of Consultants and Experts.”

Management Directive 14.1, “Official Temporary Duty Travel.”

SECY-91-274, “Establishment of NRC Position and Pay System for NRC Administrative Judges and Staff at General Grade (GG) 16, 17, and 18 or Equivalent Pay Levels.”

Staff Requirements Memorandum for SECY-92-252, “Procedures for Compensating Part-Time Judges, Members of the Advisory Committees, and Experts and Consultants” (September 18, 1992).

United States Code

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Federal Insurance Contributions Act (26 U.S.C. 3101 et seq.)

Intergovernmental Personnel Act of 1970, as amended (5 U.S.C. 3371 et seq.).

Reorganization Plan of 1980 (5 U.S.C. Appendix).

United States Code, Title 5, “Government Organization and Employees.”

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The revision (1) clarifies Commissioner interview procedures associated with administrative judge candidates; (2) clarifies the authority of the Chief Administrative Judge in (a) establishing registers of administrative judge candidates (either for (i) full-time administrative judges (i.e., administrative judges with career or term appointments and regularly-scheduled full-time or part-time tours of duty), or (ii) special government employee (SGE) administrative judges (i.e., administrative judges with temporary appointments and intermittent tours of duty), and (b) requesting the appointment of SGE administrative judges as full-time administrative judges or full-time administrative judges as SGE administrative judges; (3) outlines the compensation levels for full-time administrative judges and for setting the pay and benefits of administrative judges who receive Intergovernmental Personnel Act (IPA) appointments; (4) clarifies the membership of the Administrative Judge Review Committee (AJRC) and the AJRC's authority to act in instances when one or more of its members is unavailable; (5) indicates the responsibility of the Office of the Chief Human Capital Officer (OCHCO) at the time a register of candidates is sent to the Commission to provide the Commission with the list of candidates initially determined by OCHCO to be minimally qualified so as to be eligible for further AJRC screening; and (6) establishes the conditions and procedures associated with appointing, and renewing the appointments of, full-time technical administrative judges to 5-year terms.

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I. COMPENSATION

A. Alignment with Other U.S. Nuclear Regulatory Commission Executive Systems

1. The Commission approves the pay system of full-time administrative judges (with career or term appointments and regularly-scheduled full-time or part-time tours of duty) and special government employee (SGE) administrative judges (with temporary appointments and intermittent tours of duty).
2. Base pay rates for full-time administrative judges may not exceed the pay rate for Executive Level IV, and basic pay, including locality pay, may not exceed the pay rate for Executive Level III.
3. In accordance with the Commission-approved pay system and in consultation with the Chief Human Capital Officer (CHCO), the Executive Director for Operations (EDO) adjusts the pay ranges applicable to full-time administrative judges employed by NRC. Yearly adjustments are typically based on general and locality increases

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- afforded to General Grade (GG) employees and increases to Executive Schedule pay levels.
4. Pay for full-time administrative judges is divided into four levels:
 - (a) Level A is the pay range for newly-appointed administrative judges. The higher entry-level pay for administrative judges, as compared to the pay of Senior Executive Service (SES) and Senior Level System (SLS) personnel, helps compensate for the ineligibility of administrative judges for performance-based pay incentives and awards.
 - (b) Level B is the rate for experienced administrative judges.
 - (c) Level C is the rate for an Associate Chief Administrative Judge.
 - (d) Level D is the rate for the Chief Administrative Judge.
 5. The pay rate for an SGE administrative judge cannot exceed that of Executive Level IV. The Commission may set the pay of an SGE administrative judge below the maximum pay rate but is not required to do so.

B. Waiting Period for Career Judges

There is a 1-year waiting period before full-time administrative judges may move from Level A to Level B.

C. Pay-Setting at Initial Appointment

1. The Chief Administrative Judge sets pay for new full-time administrative judge appointees in accordance with established fiscal and pay-setting practices.
2. Pay-setting actions are reviewed by the CHCO for regulatory and procedural compliance before consultation with the Commission.
3. NRC employees at the GG-15 pay level who are selected for full-time administrative judge positions normally have pay set within the Level A pay range. This practice is consistent with pay-setting practices for GG-15 level employees who are selected for the SLS.
4. Appointees from outside NRC who are selected for full-time administrative judge positions normally have pay set at a level in accord with their experience and current pay, generally within the Level A pay range.
5. Appointees selected for non-permanent, full-time administrative judge positions under the provisions of the Intergovernmental Personnel Act of 1970 (IPA) (5 U.S.C. 3371 et seq.) shall have pay set in the same manner as that used for career appointees from outside NRC, subject to applicable regulations of the Office

of Personnel Management (OPM) pertaining to said act. Benefits will be set in accordance with applicable regulations governing IPA appointments.

D. Annual General Pay Adjustment

1. When the EDO implements a pay adjustment, full-time administrative judges receive the same annual general and locality pay adjustment as those provided to GG employees, within the limitations set forth in Section I.A.2 above.
2. In accordance with the September 18, 1992, staff requirements memorandum associated with SECY-92-252, the Commission establishes the pay of SGE administrative judges based on the recommendations of the Chief Administrative Judge and the Office of the Chief Human Capital Officer (OCHCO). The Chief Administrative Judge consults with the CHCO regarding the policies, practices, and regulations relative to setting the pay of a given SGE administrative judge.

E. Performance-Based Awards

As a matter of NRC policy stated in SECY-91-274, NRC administrative judges are not eligible for performance-based awards or pay increases.

F. Incentives

As a matter of NRC policy stated in COMSECY-08-0025, NRC administrative judges are eligible for recruitment and relocation incentives, but not for retention incentives.

G. Benefits for Judges

1. Employees should be aware that the obligations, benefits, and privileges of all Governmentwide benefit programs are provided by statute and are subject to change by legislation and by regulations of other Government agencies. All benefit determinations are made in accordance with applicable laws and regulations and are dictated by the circumstances of each case. Federal benefits eligibility is affected by the nature of the appointment as well as the work schedule.
2. Full-time administrative judges (those with career or term appointments and regular work schedules) are eligible for the full range of benefits available to Federal employees.
3. Benefits for SGE administrative judges with temporary appointments and intermittent tours of duty are set in accordance with the appropriate provisions of Directive Handbook 10.6, "Use of Consultants and Experts," Part II. The following information is provided as a general guide to help answer the most common concerns in the benefits area relating to SGE administrative judges.

- (a) SGE administrative judges are normally excluded from coverage under the Federal Employees Retirement System, because employment is temporary or intermittent.
- (b) The only administrative judges who can earn leave are those who have a regular full-time or part-time tour of duty. SGE administrative judges, who are employed on an intermittent basis, are excluded from Federal leave-earning provisions.
- (c) SGE administrative judges are excluded from Federal health benefits and group life insurance programs. However, persons who previously had this coverage and who are employed by NRC without a break in service retain their coverage with the following exception: life insurance coverage is not retained when an intermittent employee is not expected to return to his or her previous position.
- (d) All SGE administrative judges are subject to withholding under the Federal Insurance Contributions Act, unless they were hired without a break in service after previous Civil Service Retirement System coverage.
- (e) Re-employed annuitants who have intermittent tours of duty are not eligible for a supplemental or readjusted annuity.
- (f) SGE administrative judges who sustain injuries during the performance of assigned duties are entitled to worker's compensation under the Federal Employees Compensation Act. In case of injury resulting in death, the estate is entitled to compensation.
- (g) Travel expenses are paid in accordance with policies and procedures specified in Management Directive 14.1, "Official Temporary Duty Travel."
- (h) To the extent authorized or approved, SGE administrative judges may be reimbursed for direct out-of-pocket expenses associated with their assignments. This category covers items such as postage, long distance calls, information processing services and facilities, and reproduction services when use of Government facilities is not feasible.

H. Financial Obligations

The Chief Administrative Judge is responsible for instituting appropriate systems and controls to account for expenditures and commitment of funds for both compensation and miscellaneous expenses of SGE administrative judges.

II. RECRUITMENT AND STAFFING

A. Recruitment

1. Applicants will be considered without regard to race, religion, age, color, national origin, sex, handicap, political affiliation, or any other non-merit factor. Positions are filled in accordance with veterans preference requirements
2. Recruitment should be conducted with the assistance of the CHCO on an extensive, nationwide basis to obtain the broadest range of candidates.
3. The Chief Administrative Judge, or his or her designee, will advise OCHCO of appropriate recruiting sources, including professional societies, trade and professional journals, and so forth.
4. A register recruitment announcement should indicate the skill specialization needed and whether the position is a career or term appointment (with a regularly scheduled full-time or part-time tour of duty) or an SGE appointment (with an intermittent tour of duty). All other pertinent information regarding the position requirements should also be provided. Recruitment announcements for legal and technical administrative judges generally will be issued separately, although announcements seeking full-time or SGE administrative judges can be combined, as can announcements seeking technical administrative judges with different engineering or scientific specialities.

B. Administrative Judge Review Committee

1. The Administrative Judge Review Committee (AJRC) shall be composed of the following individuals: the Chief Administrative Judge, each of the Associate Chief Administrative Judges, and a representative of the Office of the General Counsel (OGC) appointed by the General Counsel. The AJRC is authorized to perform any or all of its duties with less than all of the above members, provided that in making a final recommendation to the Commission regarding a candidate register, participating Committee members shall include the Chief Administrative Judge, at least one Associate Chief Administrative Judge, and an OGC representative. If the Chief Administrative Judge is unavailable to serve on the AJRC, the Associate Chief Administrative Judge (Legal) may serve as Chair of the review committee if all other committee members are available and participating. If an Associate Chief Administrative Judge is unavailable to serve on the AJRC, the Chief Administrative Judge may appoint a career administrative judge of the same description (i.e., legal or technical) to serve on the committee. Additionally, if an Associate Chief Administrative Judge takes career part-time status, the Chief Administrative Judge may exercise his or her discretion to permit that individual to continue to serve as a member of the AJRC. Alternatively, the Chief Administrative Judge may exercise his

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- or her discretion to appoint a career technical judge (either full-time or part-time) to serve as a member of the AJRC with regard to the appointment of technical judges. An alternate representative also may be appointed by OGC to serve in appropriate instances (e.g., when the OGC representative is unavailable).
2. The AJRC interviews and evaluates candidates and presents for Commission consideration a register consisting of at least two candidates for each appointment to the Atomic Safety and Licensing Board Panel (ASLBP). For good cause shown to the Commission, the AJRC can recommend the amendment or supplementation of an existing legal or technical administrative judge register or the creation of a new legal or technical administrative judge register to present a single candidate for Commission consideration for a full-time position. Good cause could be shown by demonstrating that despite efforts to identify individuals with appropriate legal, scientific, or technical expertise through the customary recruitment process for establishing a register, a sufficient number of qualified candidates could not be found to provide two candidates for each appointment.
 3. The AJRC screens candidates for both full-time and SGE administrative judge positions.
 4. OCHCO provides personnel and administrative support to the review committee.
 5. OGC will be consulted regarding financial holdings, conflicts of interest, and related determinations concerning candidates.
 6. Candidates found qualified for full-time or SGE administrative judge positions will be placed on a register in their discipline for Commission consideration, from which appointments may be made.

C. Qualifications Requirements

1. A background in law, engineering, or scientific disciplines is required to conduct the work of the ASLBP.
2. Candidates should have extensive, in-depth (e.g., at least 7 to 10 years) work experience in related fields or fields that can be applied directly to the adjudicatory work of the ASLBP.
3. SGE administrative judge candidates should indicate their ability to devote the time required to perform ASLBP work.
4. To qualify for employment as an SGE administrative judge, an individual shall have demonstrated by his or her experience, training, or other evidence evincing mastery of his or her field, such as writings, inventions, or professional recognition, that the individual possesses the specialized knowledge and skills needed by NRC for the

position, or that the individual is otherwise eminently qualified for the specific assignment. Generally, an SGE administrative judge is a recognized authority in his or her field.

D. Submitting Applications and Recommendations for Commission Selection

1. The AJRC forwards registers and any appointment recommendations to the Commission.
2. Applications are forwarded in registers categorized by discipline.
3. Registers may be used for up to 3 years before a new register must be established. An individual listed on a register that was established more than 3 years previously may be placed on a new register established within 3 years of the previous register if, upon inquiry by the Chief Administrative Judge, or his or her delegate, the individual indicates a continuing interest in being on the register and provides any additional information requested.
4. A short summary of the recruiting process, the recruiting sources, the number of applicants, and the number of qualified applicants will be provided to the Commission.
5. The complete appointment recommendation package will indicate that appropriate regulatory and legal conflict-of-interest reviews have been accomplished by OCHCO and OGC. Any comments provided by these offices will be included in the complete appointment recommendation package. Also provided with the package will be the list of candidates initially determined by OCHCO to be minimally qualified so as to be eligible for further screening by the AJRC.
6. The Chief Administrative Judge may submit to the Commission a request to appoint as an SGE administrative judge an individual who previously has served as either an NRC full-time or SGE administrative judge. The Chief Administrative Judge may submit a request to the Commission to appoint a current SGE administrative judge as a full-time administrative judge if the vacancy announcement from which the SGE administrative judge was selected indicated the possibility of conversion to a full-time administrative judge position without further competition, or if the SGE administrative judge formerly served as a full-time administrative judge.

E. Implementing Commission Decisions

1. The Commission will advise the Chief Administrative Judge of all ASLBP member appointment decisions. The Chief Administrative Judge will implement the Commission's ASLBP member appointments accordingly.

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2. The Chief Administrative Judge will contact OCHCO to begin procedures necessary for appointment.
 3. Pay for both full-time and SGE administrative judges will be set in accordance with guidelines specified in Section I.A of this handbook.
 4. Any employment offer is contingent upon satisfactory completion of pre-employment processing and the granting of an NRC security clearance.

F. Appointments

1. The authority of NRC to appoint ASLBP members (judges) is contained in Section 191 of the Atomic Energy Act of 1954, as amended, and Section 201(g)(1) of the Energy Reorganization Act of 1974, as amended.
2. Full-time administrative judges in legal disciplines receive career appointments. An SF 50, "Notification of Personnel Action," will be used to document appointments.
3. Full-time administrative judges in nonlegal disciplines will receive 5-year term appointments. At the end of the first 2 years of each nonlegal administrative judge's initial 5-year term, and annually thereafter, the Chief Administrative Judge will assess whether the Panel has a foreseeable continuing need for the administrative judge over the next 5-year period and, if such a need is found, can seek authorization to renew the administrative judge's service for a 5-year period from the date of renewal. An SF 50, "Notification of Personnel Action," will be used to document appointments and renewed appointments.
4. Full-time non-permanent administrative judges appointed pursuant to the authority of the IPA shall have terms of employment as permitted by said act and OPM regulations pertaining thereto.
5. SGE administrative judges will receive 1-year temporary appointments, renewable indefinitely with an intermittent tour of duty. Work of SGE administrative judges may not total more than 130 days each year, but SGE administrative judges may be reappointed annually for a service year of 365 days. The service year of 365 days may or may not coincide with a fiscal or calendar year. An SF 50, "Notification of Personnel Action," will be used to document appointments.
6. Full-time administrative judges will be assigned an appropriate technical or legal generic position description upon appointment.
7. A current SGE administrative judge can be appointed as a full-time administrative judge at the request of the Chief Administrative Judge if the vacancy announcement from which the SGE administrative judge was selected indicated the possibility of

conversion to a full-time administrative judge position without further competition or if the SGE administrative judge formerly served as a full-time administrative judge.

8. A current or former full-time administrative judge or former SGE administrative judge can be appointed as an SGE administrative judge at the request of the Chief Administrative Judge.