UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

| FSIS DIRECTIVE | 4735.9 Revision 2 | 9/7/16 |
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# OFFICE OF FIELD OPERATIONS ASSIGNMENT RESTRICTIONS AND RULES ON GIFTS FROM REGULATED INDUSTRY

## I. PURPOSE

This directive sets out the Agency's specific procedures regarding ethical employee conduct, specifically related to employee assignment restrictions and gifts from regulated establishments (i.e., official meat and poultry products establishments, egg products plants, or facilities receiving voluntary inspection). FSIS has rewritten this directive in its entirety.

## II. CANCELLATION

FSIS Directive 4735.9, Revision 1, Ethics and Conflicts of Interest, 8/22/07

## III. BACKGROUND

A. All FSIS employees are to conduct themselves in accordance with Department's ethics standards (see USDA Office of Ethics). This site includes, among other items:

1. Rules of the Road;

2. Self Help Guides; and

3. Frequently Asked Questions

B. In addition to these Department standards, FSIS does have specific standards, requirements, or procedures related to OFO field assignments and gifts from the regulated industry, which are supplementary to those of the Department.

## IV. ASSIGNMENT RESTRICTIONS AND FAMILY OR PERSONAL RELATIONSHIPS

A. Office of Field Operations (OFO) supervisors are not to assign, in any capacity, employees to any establishment or plant where:

1. A member of the employee's immediate family (i.e., mother, father, sister, brother, spouse, or child) is employed by the establishment regardless of the positions held by either party;

2. Extended family members (i.e., In-laws, stepparents, step children, step siblings, half siblings, aunt, uncle, niece, nephew, cousin, grandparents, and grandchildren) work in a supervisory, managerial or policy-making capacity at the establishment or are employed by the establishment and reside with the employee; and they are engaged in a personal relationship (i.e., dating, living with, engaged, or involved financially e.g., through child support, alimony, palimony, or general household finances) with an establishment employee.

B. Family members indirectly employed by the establishment through contracting positions are not considered to pose a conflict of interest regarding the assignment of Agency employees. However, FSIS OFO supervisors are to review contractor responsibilities that directly relate to inspection (e.g., sanitation) for any potential conflicts of interest.

C. In cases of unique or unusual assignment situations, the District Office is to consult with the Labor and Employee Relations (LERD) specialist assigned to their district before making the assignment.

## V. EXEMPTIONS

A. The Office of Field Operations (OFO) Assistant Administrator (AA) may grant exemptions from the provisions in Section IV when there is a clear showing that such prohibitions would result in a severe economic or personal hardship for the employee.

B. Employees seeking an exemption are to make their requests in writing to the OFO AA through supervisory channels. Each supervisor is to provide comments and a recommended action on the request before forwarding it to the next higher level.

C. Employees requesting the exemption are to provide the following information:

1. Name, title, series, grade, organizational unit, and location;
2. Name of the relative and their relationship to the employee;
3. Position, title, and duties performed by the relative;
4. Name and type of establishment;
5. Duration of the employee's assignment and the relative's employment with the establishment in question;
6. An explanation of the proximity and level of interaction between the employee and his or her relative at the work site;
7. A detailed account of the economic or personal hardship that would occur if the employee were to be reassigned; and
8. Any other pertinent facts.

D. When the OFO AA denies an exemption request, the employee has the right to appeal the decision through the negotiated or administrative grievance systems (See the Labor Management Agreement or FSIS Directive 4771.1, *Administrative Grievance System*).

## VI. ASSIGNMENT RESTRICTION AND PREVIOUS EMPLOYMENT

A. Employees who previously worked for a business under FSIS mandatory or voluntary inspection for any amount of time during the year prior to becoming an FSIS employee, may not be assigned, in any capacity, to establishments under their previous employer's corporate umbrella for a period of 1 year upon commencement of their FSIS employment. This 1-year prohibition pertains to new hires, intermittents, and permanent employees applying for a reassignment or promotion.

B.  On a case-by-case basis, the OFO AA may authorize the employee or applicant to forego the 1-year "waiting" period based on a determination that the interest of the Government outweighs the concern that a reasonable person may question the integrity of the Agency's programs and operations.

C. The OFO AA considers the following factors in making this determination:

1. Nature of the employee’s duties with the former employer;

2. Nature of the personal relationship between the employee and the former employer;

3. Adverse financial effect that resolution of the matter would have upon the employee involved;

4. Degree to which the employee exercises discretion in making decisions affecting the former employer;

5. Difficulty involved in reassigning another FSIS employee; and

6. Adjustments required to reduce or eliminate any question of the employee’s impartiality.

D.  OFO supervisors may not assign, in any capacity, employees to any establishment owned or affiliated with a corporation from which employees are receiving an annuity or pension.  The OFO AA may grant exemptions to this prohibition if the best interest of the Agency outweighs a possible perception of a financial conflict of interest, based on the factors in B.

## VII. GIFTS FROM OUTSIDE SOURCES

A.  The Federal Meat Inspection Act (FMIA) provides that all employees authorized to perform duties under the Act are prohibited from receiving anything of value given with the intent to influence their performance of official duties.  The Agency’s position is that all things of value except in paragraph B, are given with the intent to influence.  Specifically, employees may not accept gifts or engage in business or financial dealings (e.g., buying, selling, or trading) with regulated establishments or their employees.

**NOTE**:  Although the Poultry Products Inspection Act and the Egg Products Inspection Act do not have the same prohibitive language regarding items of value, FSIS extends the provision of the FMIA to employees working with the regulated industry.

B.  The Untied State Office of Government Ethics (USOGE) regulations on receiving gifts from outside sources provide exceptions to prohibiting gift acceptance from entities with which Federal employees conduct business. However, these exceptions do not apply to FSIS employees.

C.  On behalf of FSIS, USDA entered into a Memorandum of Understanding with the Attorney General that specifies that the following circumstances do not constitute acceptance of a thing of value:

1. Exchanging social gifts in family or personal relationships when the relationship rather than the business is the motivating factor (e.g., employee and parents, spouse, employee’s children, or close personal friends);

2. Accepting loans from banks or other financial institutions on customary terms to finance proper and usual employee activity (e.g., automobile and home mortgage loans);

3. Accepting unsolicited advertising or promotional material of low value (e.g., pens, pencils, note pads, calendars and other things of nominal value), including from a regulated establishment. Accepting gifts such as meat products, alcoholic beverages, or items of higher value, such as boxes of candy, wallets, jewelry and cufflinks, are strictly prohibited;

4. Exchanging an occasional customary social courtesy that is free of embarrassing or improper implications and has low value (e.g., a soft drink or cup of coffee);

5. Accepting food and refreshments of nominal value on infrequent occasions when the interest of the Government is served by the participation of Agency employees in industry-sponsored activities at which a luncheon or dinner may be served, and where the discussion of matters of mutual interest to the Government and industry will take place. Only authorized employees may accept participation in non-FSIS sponsored meetings and events under this exception. (Refer to FSIS Directive 1050.1, *Requesting Participation at Non-FSIS Sponsored Meetings and Events;* and

D. The 5 U.S.C. 7342, *Receipt and disposition of foreign gifts and decorations*, permits employees to accept gifts, presents, decorations, or other things from a foreign government or agent under certain circumstances. Employees may only accept a gift from a foreign entity if:

1. It has nominal value and refusing the gift would likely cause offense or embarrassment, or would otherwise adversely affect foreign relations; or

2. Employees are attending an event sponsored by a foreign government where a meal is being served and refusing the meal could embarrass the Agency.

**VIII. QUESTIONS**

Refer questions regarding the provisions in this directive through supervisory channels.

Assistant Administrator
Office of Policy and Program Development