

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

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# FSIS DIRECTIVE

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4304.1  
REVISION 2 9/28/93

## EMPLOYMENT OF EXPERTS AND CONSULTANTS

### I. PURPOSE

This directive provides policy, requirements, and procedures for employing experts and consultants in positions excepted from competitive service by statute or OPM.

### II. CANCELLATION

This directive cancels FSIS Directive 4304.1 Revision 1, dated 3/13/90.

### III. REASON FOR REISSUANCE

This directive deletes the requirement for:

- A. Prior approval by OP for employing experts and consultants.
- B. Use of Form FSIS 4304-1, Request for Approval for Employment of Experts and Consultants, which is obsolete.

### IV. ABBREVIATIONS AND FORMS

The following will appear in their shortened form:

BFD	Budget and Finance Division
FPM	Federal Personnel Manual
OP	Office of Personnel
OPF	Official Personnel Folder
OPM	Office of Personnel Management
PD	Personnel Division
SPO	Servicing Personnel Office
U.S.C.	United States Code

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Form AD-332, Position Description Cover Sheet  
Form AD-392A, Statement of Financial Interests and Outside Employment  
(Special Government Employees)

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Form SF-52, Request for Personnel Action  
Form SF-171, Application for Federal Employment  
Form OP-300EX, Quarterly Report on Expert or Consultant Position

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**DISTRIBUTION:** All Washington Offices

**OPI:** PD – Employment and Employee  
Benefits Branch

## V. REFERENCES

FSIS Directive 4735.3, Employee Responsibilities and Conduct  
Title 5, U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent  
FPM Chapter 304, Employment of Individual Experts and Consultants  
FPM 213, Appendix A, Schedule A, Section 213.3102 (k) and (1), Excepted Service

## VI. POLICY

The proper use of experts and consultants is a legitimate and economical way to improve FSIS services and operations. At times, FSIS activities are strengthened by the highly specialized knowledge and skills of persons employed for brief periods of need.

A. The temporary or intermittent services of experts and consultants may be properly used for:

1. Specialized opinions unavailable in FSIS or other USDA agencies.
2. Outside points of view to avoid too limited judgment on administrative or technical issues.
3. Advice on developments in industry, college, university, and foundation research.
4. The opinion of noted experts whose national or international prestige contributes to the undertaking and success of especially important projects.
5. The advisory participation of citizens to develop or implement government programs that, by their nature or by statute, call for citizen participation.
6. Filling positions when the services of specialized persons are not needed on a permanent, full-time basis.

B. Improper use of experts and consultants is not only illegal, it is wasteful and destroys the morale of the career specialists. The improper use of experts and consultants is to:

1. Do a job that can be done as well by regular employees.
2. Do a full-time, continuous job.
3. Avoid competitive employment procedures.
4. Avoid general schedule pay limits.

## VII. DEFINITIONS

A. **Consultant.** A person who serves as an advisor to an FSIS organization or official. The person gives views or opinions on problems or questions presented by FSIS, but neither performs nor supervises the performance of operating functions. The person is a specialist of broad and

comprehensive training and experience whose work has established the individual as a leader among colleagues in a line of work distinctly related to the FSIS officials to whom advice is provided or to the unit to which appointed.

B. **Consultant Position.** A position requiring the performance of purely advisory or consultant services, but **not including** performance or supervision of operating functions.

C. **Expert.** A person with excellent qualifications and a high degree of attainment in professional, scientific, technical, or other field. The individual's knowledge and mastery of the principles, practices, problems, methods, and techniques of a particular field or a specialized area in the field are clearly superior to those usually possessed by ordinarily competent persons in that activity. The individual normally is regarded as an authority or as a practitioner of unusual competence and skill by other persons in the profession or occupation.

D. **Expert Position.** A position that, for satisfactory performance, requires the services of an expert in the particular field with duties that cannot be performed satisfactorily by someone not an expert in the field.

E. **Intermittent Employment.** Occasional or irregular work performance in programs, projects, problems, or phases requiring periodic service. When an intermittent expert or consultant works more than 130 days in a service year, the individual's employment automatically ceases to be intermittent and becomes temporary. Under these circumstances, the employee may be reappointed in the next service year only on a purely intermittent basis. When an employee's work is no longer intermittent in nature, immediately terminate the person's employment.

F. **Temporary Employment.** Employment on a program, project, problem, or phase thereof requiring temporary service for 1 year or less.

#### VIII. **EMPLOYER-EMPLOYEE RELATIONSHIP**

When the employer-employee relationship exists, the requirements of this Directive must be met. The employer-employee relationship usually exists when the expert or consultant:

- A. Serves under the direction and supervision of a Federal employee.
- B. Works in space and with equipment provided by the Government.
- C. Has access to Agency records and files.
- D. Analyzes for solution specific Agency problems and functions and presents recommendations or reports.
- E. Ordinarily serves on more than one occasion on the same project.
- F. Works on dates or at hours set by or required to be reported to FSIS.

IX. **AUTHORITIES**

The basic authorities available to hire experts and consultants are:

A. **Title 5, U.S.C. 3109.** This statutory authority allows for the employment of experts and consultants intermittently or temporarily (1 year or less) without regard to civil service or classification laws. This authority as an appropriation limitation and may be used to hire only bona fide experts and consultants who are qualified to perform the duties of the position. This authority may not be used to fill a continuing full-time job.

B. **Schedule A, Section 213.3102(k).** This authority is to be used when appointing consultants or advisors to serve without compensation.

C. **Schedule A, Section 3.3102(1).** This authority excepts the employees from OPM examination, but the positions are established and classified under the general schedule. The employee must be an expert in his/her field (professional, scientific, or technical) and the position to which appointed must be a professional, scientific, or technical one and not of an operating nature. The service must be of such a nature that the need is temporary (1 year or less) or intermittent.

X. **APPOINTMENT PROCEDURES**

The Director, PD, reviews and certifies the need of each proposed appointment and extension of appointment.

A. **Submitting Request.** Program managers planning to employ or to extend the appointments of experts or consultants will prepare and submit the following to the SPO.

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1. SF-52.
2. AD-332 and a draft of the position description. (**Not needed** for experts and consultants hired under Title 5, U.S.C. 3109.)
3. Proposed appointee's SF-171.
4. AD-392A. **NOTE:** No appointment will be made without approval of this form.
5. A written explanation of program circumstances necessitating the employment of an expert or consultant. This explanation should include a description of the product and/or improvement the Agency would expect through this employment.

B. **Estimating Period of Service.** At the time of the original appointment, the program gives the Director, PD, an estimate of the number of days the appointee's services will be used during the appointment period (must not exceed 365 calendar days). Count part of a day as a full day. Count a Saturday, Sunday, or holiday on which duty is to be performed as a regular workday.

C. **Conflict of Interest Determinations.** See FSIS Directive 4735.3 for details on determining conflict of interest.

D. **Reappointment.**

1. **Criteria.** The general rules to reappoint an expert or consultant are:

a. **Intermittent appointments** may be renewed from year to year.

b. **Temporary appointments** may not be renewed from year to year. Therefore, once an expert or consultant has worked under a temporary appointment, the individual may not be reappointed to continue the following year. The following are exceptions to this general rule:

(1) Reappointment to the same position on an intermittent appointment.

(2) Reappointment to a different position. A different position is one that has recognizably different duties and responsibilities than those of the previous assignment and is not just an extension of that assignment. Indicators of a different assignment include: different agency, different organizational location within the agency, different area of work, or work on an unrelated program.

2. **Approval Requirement.**

a. In unusual cases, two positions may be different even though no obvious indicators are present. Under these circumstances, a reappointment should have the written prior approval of an official other than the one who authorized the initial appointment. The basis for the conclusion must be made a matter of record placed in the employee's OPF.

b. To insure that reappointments beyond 2 consecutive years do not constitute continuing employment, the Director, PD, will review each position and appointee to determine approval of the reappointment. \* \* \*

E. **Certification by Administrator.** Before an expert or consultant may begin work, the Administrator must certify the: ■

1. Necessity of the position, based on the written explanation of the product or improvement provided to FSIS through this appointment. ■

2. Concurrence that the position requires the services of an expert or consultant.

- involved. 3. Type of appointment and the pay are proper for the circumstances ■  
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  - 4. Appropriateness of the appointing authority.
  - 5. Qualifications of the proposed appointee fully meet the requirements of the position being filled. ■  
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  - 6. Required documentation is properly initiated and maintained. ■
- F. **Funding Approval.** Once the employment authority is determined, PD will advise BFD of the proposed appointment to determine funding availability. If funding is not available, PD will advise program managers. ■  
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XI. **REQUIRED REPORTS**

- A. Once the consultant or expert is employed, PD submits Form OP-300EX, in duplicate, to OP by the 15th day of the month following the end of each. quarter. ■
- B. BFD provides quarterly reports of actual expenditures.
- C. BFD provides quarterly reports to the Administrator and appropriate deputy administrators on the employment of all experts and consultants.

  
Assistant Deputy Administrator  
Administrative Management