

ACTION BY: All Divisions and Offices

Appointment of Experts and Consultants

I. PURPOSE

This instruction sets forth procedures on the appointment of experts and consultants in positions excepted from the competitive service by statute or by the Office of Personnel Management (OPM).

II. POLICY

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

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

1. Specialized opinion unavailable in the Federal Grain Inspection Service (FGIS) or other USDA agencies.
2. Outside points of view to avoid 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.

ORIGINATING OFFICE:
Employment Branch, PE
AMS
DISTRIBUTION:

DIRECTIVES MAINTENANCE INFORMATION:
Remove AMS/FGIS Instruction 328-1, Rev. I.
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Page 1
12-12-83

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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 (GS) pay limits.

III. DEFINITIONS

A. Expert means a person who:

1. Possesses excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field. The expert's knowledge and mastery of the principles, practices, problems, methods, and techniques of a field of activity, or of a specialized area in the field, are clearly superior to those usually possessed by ordinarily competent persons in that activity; and

2. Is usually regarded as an authority or as a practitioner of unusual competence and skill by other persons in a profession, occupation, or activity.

B. An expert position is one that, for satisfactory performance, requires the services of an expert in the particular field, as defined above, and with duties that cannot be performed satisfactorily by someone not an expert in that field.

C. Consultant means a person who:

1. Serves primarily as an advisor to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out an agency's duties and responsibilities;

2. Has a high degree of broad administrative professional, or technical knowledge or experience which should make any advice given distinctively valuable to the Agency;

3. Provides views or opinions on problems or questions presented by an agency, but neither performs nor supervises performance of operating functions.

D. A consultant position is one which primarily requires performance at advisory or consultant services, rather than performance of operating functions.

E. Service Year. A service year is a 12-month period beginning with the date of the first appointment under the authority. A subsequent service year for the same person is counted from the same date in the subsequent year.

F. Intermittent Employment. Occasional or irregular work performance in programs, projects, problems, or phases requiring intermittent service. When an intermittent expert or consultant works more than 130 days in a service year, his/her 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; i.e., 130 days of work or less. 1/ If at any time it is determined that the employee's work is no longer intermittent in nature, the employment must be terminated immediately.

G. Temporary Employment. Employment totaling more than 130 workdays 1/ on a program, project, problem, or phase thereof requiring temporary service for 1 year or less.

H. Certifying Official. An agency management official who:

1. Possesses knowledge of the legal and other requirements applicable to expert and consultant appointments and extensions; and

2. Has been delegated authority by the Agency Head to give final approval to the selection and is at a high enough level to accept responsibility for an erroneous action.

IV. AUTHORITIES

The basic authorities available to hire experts and consultants are:

A. Section 3109, Title 5, United States Code (USC). 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 has an appropriate 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. Positions in the Senior Executive Service (SES) may not be filled under this authority. Therefore, it is not appropriate to assign experts or consultants to the policymaking managerial work which characterizes the SES.

B. Schedule A 213.3102(1)(3). This authority excepts the employee 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.

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

1/ Any part of a day shall be counted as a full day; and a Saturday, Sunday, or holiday on which work is performed shall be counted equally with a regular workday.

V. LIMITATIONS

A. Monetary. Appointments of experts and consultants are controlled by a monetary limitation published in agency appropriations for each fiscal year. The Form SF-52, Request for Personnel Action, requesting the appointment of an expert or consultant shall include a statement that the expenditures associated with the appointment will not exceed the monetary limitation. The monetary limitation amount will be specified on the SF-52 along with the appropriate accounting information.

B. Time. Intermittent appointments can be renewed from year to year; temporary appointments (part- or full-time tours of duty) cannot. Therefore, if a consultant or expert has worked under a temporary appointment, he/she cannot be reappointed to continue his/her services the following year, unless the criteria listed in VI.D.1.b. are applicable.

VI. APPOINTMENT PROCEDURES

Each proposed appointment (and extension of appointment) must be reviewed by the FGIS Position Management Committee, the Director, Personnel Division (PE), Agricultural Marketing Service, and certified as necessary and appropriate by the Certifying Official.

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 Employment Branch, PE:

1. SF-52, Request for Personnel Action. See AMS Instruction 333-1, Request for Personnel Action, for specific procedures to be followed when preparing this form.
2. AD-332, Position Description, and draft position description.
(Not needed for those experts and consultants hired under section 3109, title 5, USC.)
3. Proposed appointee's SF-171, Personal Qualifications Statement.
4. Form FGIS-300, Expert Certificate, or Form FGIS 300-1, Consultant Certificate (exhibits A and B).
5. Form FGIS-300-2, Expert or Consultant Supplemental Information (exhibit C). 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.
6. AD-392, Statement of Employment and Financial Interest.
No appointment will be made without approval of this form.

B. Estimating Period of Service. At the time of the original appointment, the program manager will provide the Director, PE, with an estimate of the number of days during the period of employment (not to exceed 365 calendar days) the Agency will require the services of the appointee. A part of a day should be counted as a full day; and a Saturday, Sunday, or holiday on which duty is to be performed should be counted equally with a regular workday. This information can be provided on Form FGIS-300-2, Expert or Consultant Supplemental Information (exhibit C).

C. Conflict of Interest Determinations. See AMS Instruction 365-3, Conflicts of Interest - Part-Time or Intermittent Consultants or Advisors, for details on determining any conflict of interest.

D. Reappointment.

1. Criteria. The general rules of reappointing an expert or consultant are:

a. Intermittent appointments can be renewed from service year to service year.

b. Temporary appointments cannot be renewed from service year to service year. Therefore, once an expert or consultant has worked under a temporary appointment, the individual cannot 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 not just an extension of that assignment. Indicators of a different assignment include (1) different agency, (2) different organizational location within the agency, (3) different area of work, or (4) work on an unrelated program.

2. Approval Requirements.

a. In unusual cases, two positions may be different even though no obvious indicator is present. A reappointment under these circumstances should have the written prior approval of an FGIS official other than the one who authorized the initial appointment. The basis for the conclusions must be made a matter of record and filed as a part of the temporary records in the employee's Official Personnel Folder.

b. To ensure that reappointments beyond 2 consecutive years do not constitute continuing employment, the FGIS Position Management Committee and the Director, PE, will review each position and appointee to determine if the reappointment should be approved.

E. Review by PE. Each request for an expert or consultant will be reviewed by the Classification Branch and Employment Branch to assure:

1. Necessity for the position. Based on the written explanation of the product and/or improvement provided FGIS through this appointment.
2. Concurrence that the position requires the service of an expert or consultant.
3. Propriety of the designation of the position as temporary or intermittent.
4. Appropriateness of the appointing authority.
5. Qualifications of the proposed appointee.
6. Appropriateness of intended level of pay in relation to both work to be performed and qualifications of the proposed appointee.
7. Completeness of documentation.

No offer of employment will be made until prior approval is received from the Office of Personnel, USDA. Once the prior approval is received and the offer of employment is accepted, the Employment Branch, PE, will process the personnel action.

/s/ Richard T. Certo
Associate Deputy Administrator Management