

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

~~Personnel~~

~~370 DM Addition to FPM~~

~~Chapter 304 Employment of Experts and Consultants~~

~~370 DM 304,1.1~~

Subchapter 1. Administration and General Provisions.

1.1 Scope. This chapter contains the Department's policies and procedures on the employment of experts and consultants to perform personal services on a compensated and without compensation basis. The procedures apply to the acquisition of personal services of experts and consultants by appointment for the performance of service in person in an employee/employer relationship.

1.2 Policy. Individuals selected for appointment as experts or consultants will be representative of outstanding authorities in the field of activities within the jurisdiction of the Department. The employment of individuals for such services will be in compliance with the provisions of the conflict of interest laws. Individuals selected for the services will be selected solely on the basis of merit without discrimination for such reasons as age, race, sex, religion, politics, or national origin. The services of experts and consultants will not be utilized to circumvent competitive employment procedures or Classification Act pay schedules.

1.3 Definitions.

A. "Working day" means calendar days for which work is performed for one hour or more.

B. "Service year" means a 12-month period beginning on the date of the first appointment on the project or assignment.

C. "365-day period" means consecutive days from the original date of appointment, for purposes of determination of the classification of such an employee as a special or regular Government employee for application of the restraints imposed by the conflict of interest laws.

D. "Fiscal Year" means a 12-month period beginning October 1 and ending September 30.

1.4 Secretarial Responsibility.

A. The responsibility for determining the appropriateness of a bureau's recommendation for the employment of an expert or consultant is at the Secretarial level.

B. Requests for such actions will be prepared for the approval of the Assistant Secretary - Policy, Budget and Administration.

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1.5 Bureau Responsibility. The head of the bureau is responsible for obtaining Secretarial approval prior to the employment of an expert or consultant. The bureau or office designated representative is responsible for making the following determinations when employing an expert or consultant.

A. The service of the expert or consultant is necessary and appropriate for the work of the bureau and such service is not available from employees within the Department.

B. No individual will be hired as an expert or consultant when such a person is in the process of being cleared for full-time employment in the Department.

C. The appointee is outstanding in his/her field, has expert knowledge of the particular problem or subject and is qualified for the position.

D. The rate of pay is representative of the duties performed and within the legal limitation of the law, fair to the individual and to the Government, and consistent with rates of other experts and consultants performing similar services for the bureau.

E. The appointment is in compliance with the laws and regulations governing dual compensation, dual employment, conflict of interest, waiver of compensation (when applicable), security determination, and patent requirements.

F. The estimated cost of hire of experts or consultant services is within the bureau's or office's approved amount of allocation under the Departmental limitation.

G. No individual hired as an expert or consultant will earn more than the amount that may be designated in applicable appropriations for each fiscal year.

1.6 Conflict of Interest Provisions of 5 U.S.C. App. section 201 et seq., (18 U.S.C. 201, 202, 203, 205, 207, 208, and 209), Executive Order 11222, as amended, and 43 CFR 20.735. Appointees for expert and consultant services will be advised of the standards of ethical conduct for Government officers and employees. They will be informed of the less stringent restrictions under the statutes for persons serving as special Government employees. Appropriate measures will be taken to impress upon them their responsibility to avoid situations in which a potential conflict of interest could exist or might develop. (See Appendix A, Illustration 2 to this chapter for a sample letter to consultant or expert.)

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A. Regular Officer or Employee. For the purposes of the conflict of interest statutes, an expert or consultant who is appointed or employed on a paid or without compensation basis to serve more than 130 days in any period of 365 consecutive days falls under this category of employee.

B. Special Government Employee. An expert or consultant retained, designated, appointed, or employed to perform with or without compensation, for not to exceed 130 days during any period of 365 consecutive days is a special Government employee.

C. Coordination of Dual Employment for Conflict of Interest Purposes. The Personnel Officer or his/her designated representative is responsible for the determination of an appointee's classification as a special or regular Government employee. When a consultant is working with more than one bureau, or with several agencies, the appointee's classification as a special or regular employee will be based on the aggregate of estimates of service to be performed within the 365-day period which starts from the earliest appointment date.

1.7 Dual Employment and Dual Compensation. The provisions of the Dual Compensation Act, contained in FPM Supplement 990-1, Book I, are applicable to the employment of experts and consultants.

1.8 Waiver of Compensation. An expert or consultant employed on a without compensation basis will agree in writing and in advance of employment that he/she waives any and all claims against the Government on account of such service (27 Comp. Gen. 194). (See Appendix A, Illustration 1 to this chapter for a sample of a waiver of compensation statement.)

1.9 Authorities.

A. P.L. 89-554 (5 U.S.C. 3109) (80 Stat. 416). P.L. 89-554 may be used in the Department for the employment of experts and consultants when authorized by Congress in an appropriation or other act.

(1) This authority may be used to employ paid and without compensation experts and consultants without regard to the civil service laws and the Classification Act. (See 27 Comp. Gen. 194, regarding employment without compensation).

(2) An expert or consultant employed under 5 U.S.C. 3109 is not subject to the classification and civil service laws. The rate of pay may be any amount which does not exceed the per diem equivalent of the highest rate payable under the Classification Act, except when other statutes supplement the authority and specify other maximum rates. The Comptroller General ruled in 29 Comp. Gen. 267 that the highest rate payable under the Classification Act

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means the top salary of GS-15. In 43 Comp. Gen. 509 it was ruled that unless rates are specifically provided in the appropriation or other law, 29 Comp. Gen. 267 does not preclude the use of rates of Grade GS-18 for experts and consultants serving in professional engineering positions primarily concerned with research and development, and professional positions in the physical and natural sciences and medicine. To determine the rate of pay, the following factors should be considered:

(a) The value of the service to the Government as compared to the grade in which the duties would be placed if under the Classification Act.

(b) The professional recognition of the individual in his/her respective field.

(c) The compensation received by the individual in his/her regular occupation or for similar expert or consultant services to other agencies or organizations.

(d) Whether any nonmonetary rewards figure in the assignment.

(e) If the rate of pay exceeds the top step of GS-15, the service to be performed must be of such a nature that would require classification of the professional position in the unlimited category under the Classification Act (i.e., professional positions primarily concerned with engineering research and development, the physical and natural sciences, or medicine).

B. P.L. 83-738. This law implemented by the Department's annual appropriations act authorizes the Bureau of Mines to make temporary and emergency contracts for personal services and to employ persons as required in the conduct of programs relating to the cause and control of fires in inactive coal deposits. This employment may be on a paid or without compensation basis without regard to civil service laws and the Classification Act.

C. Schedule A, Section 213.3102(l), Office of Personnel Management (OPM) Regulations. Appointment under the provisions of this section is limited to consultant service in scientific, technical, or professional fields. Consultants appointed under authority of Schedule A, Section 213.3102(l) must be paid in accordance with the rates established by the Classification Act, except when exemption from the Classification Act is specifically provided by statute such as certain positions for consultation on reclamation work under the Act of February 28, 1929 (45 Stat. 1406), as amended. Consultant positions under Schedule A, Section 213.3102(l) authority and subject to the Classification Act require position descriptions on Optional Form 8.

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D. Schedule A, Section 213.3102(k), OPM Regulations. This authority may be used to appoint experts and consultants without compensation without regard to civil service laws if the bureau or office has statutory authority to appoint them without regard to the Classification Act governing compensation.

E. Defense Production Act of 1950. The policies and procedures for the employment of experts and consultants, compensated and without compensation under the authority of the Defense Production Act of 1950, as amended are contained in FPM Supplement 990-1, Book II.

1.10 Reports. Bureaus and offices must review on a quarterly basis each expert and consultant appointment. Documentation of the quarterly reviews must be submitted by employing bureaus and offices for each expert or consultant who has worked during the quarter. Reports of the review, using Form DI-1908 (Quarterly Report - Consultant and Expert Appointment), must be submitted to the Office of Personnel (PPM) by the 20th day of the month following the end of each quarter. Negative reports are required. PPM will provide the Office of Budget with a copy of each report. (This reporting requirement has been assigned Report Control Symbol 3-DOI-76-074.)

1.11 Forms.

A. DI-1908, Quarterly Report - Consultant and Expert Appointment. Copies of DI-1908 are available from the Bureau of Land Management's Printed Materials Distribution Center in Denver, Colorado. Appendix A, Illustration 3 to this chapter provides a sample of this form.

B. DI-370, Approval of Expert or Consultant Employment Request. Copies of DI-370 are available from the Bureau of Land Management's Printed Materials Distribution Center in Denver, Colorado. Appendix A, Illustration 4 to this chapter provides a sample of this form.

C. DI-213, Confidential Statement of Employment and Financial Interests (For Use by Special Government Employees). Copies of DI-213 are available from the Bureau of Land Management's Printed Materials Distribution Center and Denver, Colorado and designated Ethics Counselors. Appendix A, Illustration 5 to this chapter provides a sample of this form.

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Appendix A. Procedural Instructions Regarding Employment of Experts and Consultants

A.1 Procedure for Obtaining Secretarial Approval of Expert and Consultant Employment. Bureaus will not act finally with respect to the appointment or status change of paid or without compensation experts and consultants until the proposed action has been approved by the Assistant Secretary - Policy, Budget and Administration. The request for prior approval of the employment or extension of an expert or consultant will be submitted to the Office of Personnel on Form DI-370, Request for Approval of Expert and Consultant Employment. (See Illustration 4 to this Appendix for a sample of the form.)

A. The Request for Approval of Expert or Consultant Employment will be submitted to the Office of Personnel in sets of five, through the Office of Budget, accompanied by SF-171, Application for Federal Employment, or a resume of the background of experience and qualifications of the appointee. The DI-370 form is self-explanatory except for Item 11.

(1) Item 11 will contain a statement of the status of funds previously allocated to the bureau by the Assistant Secretary - Policy, Budget and Administration for expenses of expert and consultant services when pay is involved. The DI-370 will be submitted to the Office of Budget for approval of the funding allocation prior to submission to the Office of Personnel.

B. Appointment and Status Change. The DI-370 will be used in obtaining the prior approval of the Assistant Secretary - Policy, Budget and Administration for an appointment or status change of a paid or without compensation expert or consultant. If the services to be performed extend into the next fiscal year, a separate DI-370 must be submitted prior to the beginning of the next fiscal year.

A.2 Responsibilities, Ethical and Other Conduct of Experts and Consultants. A completed Form DI-213, Confidential Statement of Employment and Financial Interests (for use by special Government employees), will be obtained from an expert or consultant prior to the date of entrance on duty and will be kept current by supplementary statements from the employee. (See Illustration 5 to this Appendix for a sample of the form. When an expert or consultant is expected to be compensated above the GS-15 level for a period in excess of 60 days in any calendar year a Public Financial Disclosure Statement, Standard Form 278 is required in accordance with the Ethics in Government Act of 1978. See 43 CFR 20.735, Subpart F for Departmental regulations governing the responsibilities and conduct of special Government employees.)

A. The statement of employment and financial interests of an expert or consultant will be maintained by the designated Ethics Counselor. The DI-213 statements will be destroyed two years after an employee leaves a position in

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which a statement is required or after the employee leaves the Department whichever is earlier. (Sections 43 CFR 20.735-30(h) and 43 CFR 20.735-31(j)(2) Departmental Regulations on Employee Responsibilities and Conduct.)

A.3 Security. The appointing officer is responsible for determining that the appointment of an expert or consultant is consistent with the interests of national security.

A. Investigative Requirements. Procedures for obtaining and processing investigative forms may be excluded for experts and consultants receiving the following types of appointments to nonsensitive positions.

(1) Temporary or intermittent employment specifically limited to one year or less.

(2) Intermittent employment for more than one year but not more than 130 days of service to be performed in any one year.

A.4 Record of Service Performed. There will be maintained in the Official Personnel Folder of each expert or consultant a record of the number of days service performed by the employee. The record will show the dates the service was performed.

A.5 Guidelines for Experts and Consultants. Personnel employed in the Department as experts or consultants will be advised that as Government employees they have an obligation to comply with Federal statutes and regulations governing the ethical conduct and responsibilities of employees. The following informational material will be furnished each expert or consultant:

A. A letter explaining the obligations of an employee appointed as an expert or consultant to comply with the conflict of interest statutes and to complete the SF-278 or Form DI-213, Statement of Employment and Financial Interests. (See Illustration 2 to this Appendix for a sample letter to consultant or expert.)

B. A copy of the Departmental Booklet covering Regulations Governing Responsibilities and Conduct of Employees.

A.6 Requirement for Experts and Consultants.

A. See FPM 304, Subchapter 1-2, for definitions of (1) consultant (2) consultant positions (3) expert (4) expert positions (5) intermittent employment and (6) temporary employment.

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B. Appointments and services of experts and consultants must conform with the Office of Personnel Management's regulations, statutes, Comptroller General decisions, conflict of interest provisions of E.O. 11222, as amended, concerning the standards of ethical conduct for Government employees.

C. Official personnel records must include the following forms and information for each expert and consultant:

(1) SF-171, Application for Employment, or a resume of experience and training.

(2) Evidence that completed Form DI-213, Statement of Employment and Financial Interests was received and reviewed prior to the entrance on duty of the expert or consultant.

(3) Evidence of notification to the employee informing him/her of the provisions of the conflict of interest laws and advising him/her of their responsibility to avoid situations in which a potential conflict of interest might occur while serving as a consultant in the Department.

(4) Appropriate remarks on the SF-50, Notification of Personnel Action when appointee is regarded as a special Government employee for the purposes of application of provisions of the conflict of interest law (18 U.S.C. 202 through 209).

(5) Estimate of the number of days the appointee's services are required during the 365-day period, recorded under the "Remarks" portion of the SF-50.

(6) Appointment of the expert or consultant is made under the correct appointing authority.

(7) Appointments are terminated at the end of each 365-day period in which they became effective, unless longer duration is provided by law.

(8) Record of the number of days and the dates service performed by the expert or consultant.

(9) Adequate statement of duties or service performed.

A.7 Review of Expert and Consultant Activities in the Department. The Office of Personnel will make a periodic review of the expert and consultant personnel records. The objectives of the review are to insure that the employments are in compliance with the Office of Personnel Management regulations.

SAMPLE WAIVER OF COMPENSATION

I understand my service to the Government of the United States as an expert or consultant for the (Organizational location of work), is on a voluntary basis and without compensation. I agree to release the Government of the United States from any claims or demands for compensation for services performed under this appointment.

(Signature of Witness)

(Signature)

(Date)

**SAMPLE LETTER TO CONSULTANT OR EXPERT
(Appointed to Occupy Consultant or Expert Position)
(Special Government Employee)**

Dear Mr. (Ms.)

Your appointment as a consultant with the _____ has been approved. This places you in the category of special Government employee and requires that you complete the enclosed form DI-213, Confidential Statement of Employment and Financial Interests, prior to your appointment becoming effective. One copy is to be returned to this Office as soon as possible in the enclosed self-addressed envelope. You may retain the other copy for reference so that you can file an amended statement upon the occurrence of any change in your employment or financial interest during the period you are employed with the Department. Information required to be reported is outlined in 43 CFR 20.735-43. The information which you are required to disclose will be held in confidence and will be disclosed outside the Department only if a situation arises that requires disclosure pursuant to law and regulations. Your statement will be reviewed by a designated Ethics Counselor who will advise you prior to the effective date of your employment of any real or potential conflicts which need to be resolved.

Enclosed is a copy of the Department's regulations. Your attention is particularly directed to those portions of the regulations pertaining to special Government employees. See 43 CFR 20.735, Subpart F.

If you will be serving the Department in a position classified at a GS-16 or above and you serve for more than 60 days in a calendar year you will be required to file a Standard Form 278. The SF-278 is a comprehensive financial disclosure report that is available to the public. The report is required by 5 U.S.C. section 202 et seq..

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QUARTERLY REPORT
CONSULTANT AND EXPERT APPOINTMENT

1. Bureau or Office _____

2. Name of Consultant/Expert _____

3. Appointment Authority _____

4. Appointment Limitations:

Dollars _____ Days _____ Date _____

5. Salary Rate _____ Number of days worked in Quarter _____

7. Employment and Financial Interest Certification on file: Yes No

8. If employment terminated, give date _____

9. Total salary paid during Quarter _____

10. The following duties were performed by the Consultant/Expert during the past 90 days:

Signed _____ Date _____
RESPONSIBLE PROGRAM OFFICIAL

11. Certification by Servicing Personnel Officer

Signature _____ Date _____

12. Certification by Head of Bureau or Office

Signature _____ Date _____

COPIES OF THE QUARTERLY REPORT ARE DISTRIBUTED IN THE FOLLOWING MANNER:

- 1. The original and 1 copy sent to the Division of Employment.*
- 2. One copy retained in the Official Personnel Folder*

Form DI-370
 (Revised 2-82)

UNITED STATES
 DEPARTMENT OF THE INTERIOR

SEE INSTRUCTIONS
 ON REVERSE

APPROVAL OF EXPERT OR CONSULTANT EMPLOYMENT REQUEST

1. Name of expert or consultant	
2. Bureau	6. Regular employment (position, company, and location)
3. Nature of appointment and C.S. or other authority	
4. Rate of pay	
5. Duty Station	
7. Home address (City, State, and zip code)	
8. Describe clearly services to be performed (see 370 DM 304, 1.11, attachment A for instructions)	

SAMPLE

9. Special qualifications of expert or consultant (list any qualification which relate specifically to services to be performed)

PREAPPOINTMENT REVIEW AND CERTIFICATION—EXPERT OR CONSULTANT APPOINTMENT

In approving the filling of this expert or consultant position without regard to the laws and regulations governing appointments in the competitive civil service, and in approving the rate of pay set for this position without regard to the classification and pay laws, I have considered the requirements of law, relevant Comptroller General decisions, the instructions of the Office of Personnel Management that spells out the conditions under which this appointment may be made without the prior approval of (OPM). More specifically, I have satisfied myself that:

1. The position is necessary. The work cannot be performed effectively by regular employees.
2. The position is a consultant or expert position as defined by OPM in FPM chapter 304.
3. The position is appropriately designated as temporary (not to exceed one year) or intermittent (no regular tour of duty or work is performed only occasionally); and is of a purely advisory nature.
4. This authority is the most appropriate appointing authority for meeting the agency's needs and is not used in lieu of other more appropriate authorities.
5. The proposed appointee meets the OPM's definition of Expert or Consultant, and does in fact possess the kind and level of expertise that will permit him to render the required services.
6. The daily rate intended to be paid the appointee is commensurate with the level of the work to be performed and his qualifications for the work.
7. All required documentation is in order.

CERTIFIED:	SIGNATURE	DATE
	Bureau or Office Director	
CONCUR:	SIGNATURE	DATE
	Director of Personnel	
APPROVED:	SIGNATURE	DATE
	Assistant Secretary -- PBA	

(Continued on Reverse. Previous editions of this form are obsolete, and may not be used.)

10. Indicate total period for which availability is desired. Estimate number of days individual is expected to perform services for the Government.

11. Estimated cost of services, status of allocated funds, etc. (for Budget and Finance purpose)

12. Additional Justification/Comments/Remarks

SAMPLE

INSTRUCTIONS

In accordance with 370 DM 304, DI-370 will be used to request Secretarial approval of appointments and status changes of experts and consultants. Five (5) copies will

be submitted to the Office of the Secretary for all personnel actions except requests for approval of separations or notifications of termination because of death.

Distribution:

- cc Secretary's Reading File
- cc Surname copy, General Files, Office of the Secretary
- cc Office of Budget
- cc Office of Personnel
- cc Original copy when signed will be returned to Bureau showing approval of the Secretary

Form DI-213
REV. 12-76

UNITED STATES DEPARTMENT OF THE INTERIOR
CONFIDENTIAL STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS
(FOR USE BY SPECIAL GOVERNMENT EMPLOYEES)

PART I - TO BE COMPLETED BY AGENCY

1. Name (Last, first, initial)	2. Birth Date (month, day, year)
3. Bureau and Office Organizational Segment	4. PERIOD OF APPOINTMENT (this Agency)
	FROM TO

PART II - TO BE COMPLETED BY APPOINTEE

1. a. Number of days already worked during a consecutive 365-day period

(1) with this Department

(2) with other Federal agencies

b. Estimated remaining number of days expected to work during the consecutive 365-day period

(1) with this Department

(2) with other Federal agencies

c. TOTAL

2. FEDERAL GOVERNMENT EMPLOYMENT - List all other Federal agencies in which you are presently employed. (If none, write "none.")

AGENCY AND LOCATION	TITLE OR KIND OF POSITION	APPOINTMENT PERIOD	
		FROM	TO

3. NON-FEDERAL EMPLOYMENT - Name all corporations, companies, firms, State or local Government organizations, research organizations, and educational or other institutions in which you are serving as employee, officer, member, owner, trustee, director, expert, advisor, or consultant, with or without compensation. (If none, write "none.")

NAME AND KIND OF ORGANIZATION (e.g., manufacturing, research, insurance)	LOCATION (City, State)	TITLE OR KIND OF POSITION

4. FINANCIAL INTERESTS - List the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions in which you have any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. (If none, write "none.")

Interest, if any, of a spouse, minor child, or other member of your immediate household shall be reported in this statement as your interest. Member of your immediate household includes only those blood relations who are full-time residents of your household.

ORGANIZATION		NATURE OF INTEREST AND IN WHOSE NAME HELD. For stockholdings of Listed Corporations show number of shares. For all other Financial Interests show value and annual return, if applicable.
NAME	KIND (manufacturing, storage, public utilities, etc.)	

If additional space is required, use reverse side

I certify that the statements I have made are true, correct, and complete to the best of my knowledge and belief.

Review completed and determination made that no conflict of interest exists: (43 CFR 20.735-23)

Signature of Employee

Date

Ethics Counselor

Date

