



Department of Defense INSTRUCTION

NUMBER 1400.25, Volume 1230
July 26, 2012

USD(P&R)

SUBJECT: DoD Civilian Personnel Management System: Employment in Foreign Areas and Employee Return Rights

References: See Enclosure 1

I. PURPOSE

a. Instruction. This Instruction is composed of several volumes, each containing its own purpose. The purpose of the overall Instruction, in accordance with the authority in DoD Directive (DoDD) 5124.02 (Reference (a)), is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the DoD.

b. Volume. In accordance with the authority in DoDD 1400.25 (Reference (b)), this Volume:

(1) Establishes policies and procedures for:

(a) Employing U.S. citizens in foreign areas (employment of foreign nationals is addressed in Volume 1231 of this Instruction).

(b) Rotating DoD civilian employees from foreign areas.

(c) Granting return rights of DoD civilian employees in foreign and nonforeign areas.

(2) Incorporates and cancels DoDD 1400.6 (Reference(c)) and Civilian Personnel Manual Chapter 301.4 as it appeared in the Deputy Assistant Secretary of Defense for Civilian Personnel Policy (DASD(CPP)) Memorandum (Reference (d)).

2. APPLICABILITY. This Volume applies to:

a. OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the

Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the "DoD Components").

b. All appropriated and nonappropriated fund positions and employees unless otherwise excluded in this Volume.

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. DoD Components in each foreign area shall employ a mix of U.S. citizen and foreign national civilians based on decisions that comply with the requirements of host-nation treaties and agreements, and consider the best value to the U.S. Government, career opportunities for U.S. citizens, availability of qualified foreign national personnel, and the desired level of U.S. Government presence abroad.

b. To the extent permitted by law and applicable international agreements, maximum use shall be made of locally available and eligible candidates (i.e., military spouses, family members of military and DoD civilian personnel, and U.S. citizens who are otherwise eligible) when filling vacant positions.

c. Merit factors are the basis for considering individuals for assignment to foreign areas. All programs and personnel practices governing U.S. civilian employees shall be administered in accordance with applicable law and in a manner that does not discriminate based on race, sex, color, national origin, age, religion, disability, genetic information, reprisal, marital status, sexual orientation, status as a parent, political affiliation, or labor organization membership.

d. U.S. law takes precedence in filling DoD jobs, unless a bilateral agreement requires compliance with host nation labor laws.

e. DoD Components shall consider the ability of their command(s) to ensure anti-terrorism protection in accordance with DoD Instruction 2000.12 (Reference (e)), and access to adequate housing, subsistence, medical, educational, commissary, exchange, laundry, transportation, and other essential facilities and services in determining the numbers and types of U.S. employees required in foreign areas.

(1) DoD Components may not initiate recruitment from the United States (except when required to meet unexpected emergency conditions) unless the command or the local community can provide essential facilities and services.

(2) DoD Components shall allocate housing facilities as specified in DoD Manual 4165.63-M (Reference (f)) for employees when local foreign community housing facilities cannot be used because of local restrictions, or when appropriate and adequate housing facilities

do not exist or are not readily available for personnel recruited from the United States and their family members.

f. Implementing policies and procedures that could affect foreign national employment or be affected by international agreements, or issues that could adversely affect relations with the host country shall be fully coordinated within the respective theater and with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) before implementation, in addition to all coordination required by DoDD 5530.3 (Reference (g)).

g. DoD Components shall give preference to family members of military and civilian personnel in accordance with section 1784 of title 10, United States Code (Reference (h)), Volumes 315 and 1232 of this Instruction, and applicable international agreements that give preference to, require employment of, or restrict employment of certain individuals, such as dual nationals and individuals who are ordinarily resident.

h. Civilian employment in the competitive service in foreign areas shall be limited to a period of 5 continuous years unless interrupted by at least 2 years of physical presence in the United States or nonforeign area. This policy serves to increase employment opportunities for military spouses and family members and developmental opportunities for employees in the United States, periodically renew the knowledge and competencies of the overseas workforce, including familiarity with current strategic goals, enhance the interoperability of employees, and promote a joint perspective in the workforce.

(1) The 5-year foreign area limitation is computed by counting all foreign area service in a DoD position in the competitive service that has not been interrupted by at least 2 years of physical presence in the United States.

(2) The limitation established by paragraph 4.h. does not apply to:

(a) Nonappropriated Fund employees.

(b) Educators in the DoD Dependents Schools system.

(c) Employees who are family members and who are accompanying military members or civilian employees stationed in the area. This exemption ceases to apply upon the departure of the sponsor from the area. Unmarried dependent children may be retained in a position past the age of 23 until such time as their sponsor departs the foreign duty station or its commuting area, or the sponsor completes the current period of service requirement, whichever occurs first.

(d) Employees who have been employed continuously in a foreign area since April 1, 1966 through the present.

(e) Employees who were employed before August 24, 1988, in positions at GS-6 or below or in nonsupervisory wage grade positions, and who have remained continuously employed at those levels.

(3) The Head of the DoD Component concerned may grant a single extension not to exceed 2 years beyond the 5-year limitation. This authority may be delegated in writing. An extension shall be based on a written rationale that articulates a business case for retaining the employee in the overseas location, as an exception to the basic policy in paragraph 4.h. that employees shall rotate to the United States or a nonforeign area after 5 years, and that provides a workforce succession plan for replacing the employee by the end of the 2-year extension.

(4) Any subsequent extension after an initial extension beyond 5 years in accordance with subparagraph 4.h.(3) requires the approval of the Head of the DoD Component concerned or an official at the major command or equivalent level who has been delegated the authority in writing by the Head of the DoD Component. A proposal for such an extension shall address unanticipated events or circumstances that resulted in the failure of the workforce succession plan included in the approval package for the first extension. Each such extension may not exceed 2 years.

(5) The Head of the DoD Component or an official at the major command or equivalent level may approve, on a case-by-case basis, a shorter period of physical presence in the United States or nonforeign area than the 2 years required by paragraph 4.h. This authority may be delegated in writing. The requirements of the Joint Travel Regulations, Volume 2 (Reference (i)) must also be addressed.

i. Career and career-conditional employees in the competitive service who are employed in the United States or in a nonforeign area and who accept an assignment in a foreign area or in a nonforeign area different from the one in which they are currently employed shall be granted statutory return rights in accordance with section 1586 of Reference (h) for a period of 5 years if continuously employed in a foreign or nonforeign area. This policy:

(!) Applies whether the employee moves to a position with the same DoD Component or with a different DoD Component.

(2) Applies to both the initial movement and any subsequent movement within the 5-year period (e.g., the employee initially moves to a position with the same DoD Component, and subsequently moves to another foreign area position with a different DoD Component).

(3) Does not apply to employees assigned to nonappropriated fund positions.

j. Temporary quarters subsistence expenses and miscellaneous expenses will be paid by the gaining activity when an employee returning from an assignment in a foreign area is placed through the PPP.

5. RESPONSIBILITIES

a. DASDCCPP. The DASD(CPP), under the authority, direction, and control of the Assistant Secretary of Defense for Readiness and Force Management, shall:

(1) Develop overseas employment policy.

(2) Monitor and evaluate the implementation and effectiveness of overseas employment programs and procedures.

b. Heads of the DoD Components. The Heads of the DoD Components shall:

(1) Ensure compliance with this Volume.

(2) Ensure that supplementary Component policies and procedures comply with this Volume.

6. PROCEDURES. See Enclosures 2 and 3.

7. RELEASABILITY. UNLIMITED. This Volume is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Volume:

a. Is effective July 26, 2012.

b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DoD Instruction 5025.01 (Reference (j)). If not, it will expire effective July 26, 2022 and be removed from the DoD Issuances Website.



Erin C. Conaton
Under Secretary of Defense for
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Enclosures

1. References
2. Foreign Area Employment Procedures
3. Employee Return Rights

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (b) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
- (c) DoD Directive 1400.6, "DoD Civilian Employees in Overseas Areas," February 15, 1980 (hereby cancelled)
- (d) Deputy Assistant Secretary of Defense for Civilian Personnel Policy, "Civilian Personnel Manual (CPM)," March 12, 1997 (hereby cancelled)
- (e) DoD Instruction 2000.12, "DoD Antiterrorism (AT) Program," March 1, 2012
- (f) DoD Manual 4165.63-M, "DoD Housing Management," October 28, 2010
- (g) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (h) Sections 1586 and 1784 of title 10, United States Code
- (i) Joint Travel Regulations, Volume 2, "Department of Defense Civilian Personnel," current edition
- (j) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007
- (k) DoD Instruction 1315.19, "Authorizing Special Needs Family Members Travel Overseas at Government Expense," December 20, 2005
- (l) DoD Instruction 6205.4, "Inunization of Other Than U.S. Forces (OTUSF) for Biological Warfare Defense," April 14, 2000
- (m) DoD Priority Placement Program Handbook, current edition ¹
- (n) Parts 351 and 591 of title 5, Code of Federal Regulations

¹ Available through the Internet on the CARE Website at <http://www.cpms.osd.mil/care/>.

ENCLOSURE2

FOREIGN AREA EMPLOYMENT PROCEDURES

I. INFORMATION ON OVERSEAS EMPLOYMENT. Civilian Human Resources Offices (HROs) supporting the overseas activities shall provide full and accurate information to prospective employees and selectees on the foreign area for which they are being considered, the type of facilities and services that will be available to them, the nature of the work that they will do, the conditions of their employment, and their responsibilities to the command and to the U.S. Government. Comprehensive information for selectees who have family members with special medical and educational needs is essential. This information will enable selectees to make informed decisions about whether assignment to the foreign area is appropriate for them and any family members who may accompany them. The gaining and supporting HRO shall comply with the provisions of DoD Instruction 1315.19 (Reference (k)) in providing this information.

2. HOST NATION EXCLUSIONARY POLICIES. When a civilian employee is denied an entry visa by a sovereign foreign nation based on exclusionary policies, the DoD Component shall submit notification of the denial to the Under Secretary of Defense for Policy (USD(P)) with a copy to the DASD(CPP).

a. The USD(P) may request that the Department of State intercede with the foreign nation.

b. The request will include:

- (1) Name of visa applicant.
- (2) DoD Component sending the civilian employee.
- (3) Purpose of visit.
- (4) Date of denial.
- (5) Foreign nation involved.
- (6) Authority issuing denial.
- (7) Reason for denial.

3. DIFFERENTIALS AND ALLOWANCES. Eligible overseas DoD civilian employees receive pay differentials and allowances that are appropriate to their places of employment and their employment conditions, in accordance with applicable law and as provided in Volume 1250 of this Instruction.

4. IMMUNIZATIONS. Immunizations against biological warfare agents are governed by DoD Instruction 6205.4 (Reference(!)).

5. FIVE-YEAR LIMITATION AND ROTATION OF CIVILIAN EMPLOYEES

a. The employing DoD Component shall require that an employee covered by the 5-year limitation stated in paragraph 4.h. above the signature of this Volume shall sign an overseas employment agreement to return from the foreign area in 5 years as a condition of employment upon appointment or placement in the competitive service in a foreign area position.

(1) For an employee who has return rights in accordance with paragraph 4.i. above the signature of this Volume, the agreement will require the employee to exercise his or her return rights:

(a) Upon completion of the tour of duty specified by Reference (i) for the foreign area duty station; or

(b) If granted one or more renewal tours of duty in accordance with Reference (i), before the end of the 5-year period established by subparagraph 5.a. of this enclosure or the end of an extension approved in accordance with subparagraphs 4.h.(3) or 4.h.(4) above the signature of this Volume, unless registration in the Priority Placement Program (PPP) in accordance with the DoD Priority Placement Program Handbook (Reference (m)) (provided that the employee is eligible for such registration) results in an earlier placement in the United States or nonforeign area.

(2) For an employee who does not have return rights, the agreement will require the employee to register in the PPP in accordance with Reference (m) before the end of the 5-year period or before the end of an extension approved in accordance with subparagraphs 4.h.(3) or 4.h.(4) above the signature of this Volume.

(3) For all employees, the agreement shall further specify that:

(a) The employee shall accept the assignment resulting from PPP registration or from other placement efforts within the Component.

(b) Registration and placement will follow applicable provisions of the PPP.

(c) Failure or refusal to exercise return rights, to register in PPP, or to accept a valid offer, is a basis for separation.

b. An employee who is exempt from the 5-year foreign area limitation may later become covered by the limitation due to a change in policy, status, or position.

(1) As a condition of continued employment in the foreign area, the employee shall sign an overseas employment agreement consistent with paragraph 5.a. of this enclosure effective on the date of the change.

(2) If the individual has already completed 5 continuous years in a competitive service position in a foreign area when the limitation becomes applicable, an extension approved in accordance with subparagraph 4.h.(3) above the signature of this Volume is a precondition for placement into or continued occupancy of the competitive service position.

(3) **If** the individual has completed less than 5 continuous years in a competitive service position in a foreign area when the limitation becomes applicable, the previous time in a competitive service position not interrupted by at least 2 years of physical presence in the United States or a nonforeign area shall be included in the computation of the 5 year period.

c. An employee who has completed 5 years of foreign area service as calculated in accordance with paragraph 4.h. above the signature of this Volume and who has not been granted an extension pursuant to subparagraph 4.h.(3) or 4.h.(4) above the signature of this Volume shall exercise return rights pursuant to paragraph 4.i. above the signature of this Volume, if applicable, or shall be rotated from the foreign area in accordance with the provisions of the PPP.

(I) When the employee is registered to return under these circumstances, employment in the foreign area may continue until the employee exercises return rights or receives a valid PPP offer.

(2) Employees shall register for return placement in accordance with the provisions of section C, chapter 5 of Reference (m).

(3) When an employee is placed through the PPP, the losing activity in the foreign area shall fund the employee's permanent change of station expenses. Temporary quarters subsistence and miscellaneous expenses at the location of the gaining activity will be paid by the gaining activity.

d. Components are required to document overseas tour, return rights, and obligated position information, as applicable, in the Defense Civilian Personnel Data System for each employee who accepts an assignment in a foreign area.

ENCLOSURE3

EMPLOYEE RETURN RIGHTS

1. An employee recruited from a nonforeign area for assignment outside the contiguous United States is granted statutory return rights in accordance with Reference (h) and paragraph 4.i. above the signature of this Volume only if he or she is an actual resident of the nonforeign area as defined in Appendix A of Reference (i).

2. An employee granted return rights shall exercise them within 5 years, unless they are extended or forfeited in accordance with paragraph 3 of this enclosure.

a. An employee may exercise return rights after completing the initial tour of duty specified for the foreign area duty station in Reference (i).

b. The overseas employing activity may waive the requirement in subparagraph 2.a. of this enclosure and allow the employee to exercise return rights before completing an initial tour of duty, in those cases in which the overseas employing activity determines that application of the requirement would be against equity and good conscience or against the public interest.

3. Before the end of the 5-year period, the overseas supporting HRO shall advise, in writing, the activity to which the employee has return rights that the employee will exercise the return rights or that the employee requests an extension of return rights in order to serve an extension at the overseas location approved in accordance with subparagraph 4(h)(3) or 4(h)(4) above the signature of this Volume. Unless the activity to which the employee has return rights formally agrees to continue the employee's return rights, return rights shall be forfeited if not exercised at the end of the 5-year period.

4. The commander at an overseas location may require an employee to exercise return rights in order to avoid or reduce the effect of a reduction in force.

5. An employee may receive placement assistance, if otherwise eligible, in returning from the foreign area through the PPP if the return rights are to a position that has been, or is scheduled to be, abolished, and the employee's return would initiate a reduction in force or the exercise of return rights would result in a separation or a change to lower grade.

a. Such assistance will continue until the employee is placed, declines a valid offer, is extended, exercises return rights, or is directed to return, whichever occurs first.

b. The DoD Component shall require the employee to exercise his or her return rights before the return rights expire in accordance with paragraph 3 of this enclosure.

6. The HRO supporting the activity to which an employee has return rights and the HRO supporting the overseas activity shall keep each other informed regarding any action that affects an employee's return rights. At a minimum, activities shall notify each other promptly when:

- a. The position to which an employee has return rights is changed, moved, or abolished;
- b. An extension of return rights is approved or disapproved;
- c. An employee's overseas tour is extended or not extended;
- d. The employee moves to another foreign location for assignment;
- e. The employee moves to a different continental U.S. activity than that from which recruited for the overseas assignment; or
- f. The employee exercises or forfeits return rights in accordance with paragraph 3 of this enclosure.

7. In accordance with section 1586 of Reference (h), when an employee exercises return rights:

a. The employee shall be placed in the position that he or she held immediately before the assignment to duty outside the United States, if such position exists.

b. If the position described in paragraph 7.a. of this enclosure does not exist, or with the employee's consent, the employee shall be placed in another existing or new continuous position:

(1) For which he or she is qualified, (2)

In the same DoD Component, and (3) In

the same geographic area as, with

(4) The rights and benefits equal to the rights and benefits of, and

(5) In a grade equal to the grade of the position which he or she held immediately before the assignment to duty outside the United States.

c. If the positions described in subparagraphs 7.a. and 7.b. of this enclosure does not exist, the employee shall be placed in an additional position that shall be established by the DoD Component to which the employee has return rights for a period not to exceed 90 days. This additional position shall:

(1) Be in the same geographic area as, with

(2) The rights and benefits equal the rights and benefits of, and

(3) In a grade not lower than the grade of, the position held by the employee immediately before his or her assignment to duty outside the United States.

d. If a vacant existing position or new continuing position is available in the DoD Component concerned, within 90 days of placement under paragraph 7.c.:

- (1) For which the employee is qualified,
- (2) In the same geographic area as, with
- (3) The rights and benefits equal to the rights and benefits of, and

(4) In a grade equal to the grade of, the position held immediately before his or her assignment to duty outside the United States, the employee shall be placed in such position.

e. If the employee cannot be placed in a position in accordance with subparagraph 7.c.(1) within the 90-day period referred to in paragraph 7.c., he or she shall be reassigned or separated in accordance with part 351 of title 5, Code of Federal Regulations (Reference (n)).

f. If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph 7.a. of this enclosure) was located, he or she shall be placed, in the manner provided by paragraphs 7.b., 7.c., and 7.d, as applicable, in a position in the DoD Component concerned in a geographic area other than the geographic area in which such former position was located.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
DoDD	DoD Directive
HRO	Hinnan Resources Office
PPP	Priority Placement Program
USD(P)	Under Secretary of Defense for Policy
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

These terms and their definitions are for the purposes of this Volume.

foreign area. Areas outside the contiguous United States that are not identified as nonforeign areas in part 591 of Reference (n).

nonforeign area. Those areas listed in part 591, subpart B of Reference (n).

ordinarily resident. Typically, an individual who is a local resident in an overseas location and who has legal, permanent resident status within the host country. Specific criteria for determining those who are "ordinarily resident" are typically established in Status of Forces agreements or similar sources.