

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service

Chapter Series CC26--Conditions of Service  
Subchapter CC26.9--Miscellaneous  
Personnel INSTRUCTION 1 -- Civil Employment by a Foreign Government  
of Retired Regular and Reserve Corps Officers  
and Inactive Reserve Corps Officers.

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Section A. Purpose and Scope

1. The purpose of this INSTRUCTION is to establish policies and procedures by which retired officers of the regular and reserve corps and officers of the inactive reserve corps may request and be granted permission to accept civil employment with a foreign government.
2. This INSTRUCTION is applicable to any retired officer of the regular or reserve corps, and any officer of the inactive reserve corps, who plans to provide services, with or without compensation, to any agency of any country other than the United States. This includes acceptance of an office or title from any agency of a foreign government. Officers already employed by a foreign government at the time this INSTRUCTION is issued are also subject to the policies and procedures contained herein.

Section B. Authority

1. The Constitution of the United States, in Article I, Section 9, Clause 8, provides that no officer of the United States "shall, without the consent of Congress, accept any present, emolument, office or title of any kind whatever, from any King, Prince, or Foreign State." This clause has been interpreted to apply to retired officers and reservists.

2. The Comptroller General of the United States has ruled that a retired officer who violates this constitutional prohibition by accepting employment with a foreign government must forfeit his/her retired pay to the extent of the pay received from the foreign government.
3. 37 U.S.C. 908 grants the required Congressional consent to the employment of certain retirees and reservists by foreign governments provided that approval for such employment is obtained from both the Secretary of State and the Secretary in charge of the retiree's or reservist's branch of Government service ("the Secretary concerned") prior to the individual's acceptance of the employment. For retired and reserve members of the PHS Commissioned Corps, the Secretary of Health and Human Services (HHS), or his/her designee, is "the Secretary concerned."
4. Pursuant to the regulations promulgated by the Secretary of State, the Secretary of HHS, or his/her designee, has responsibility for the initial approval of applications for foreign government employment. Applications approved by the Secretary of HHS, or his/her designee, will be forwarded to the Secretary of State for review and approval.
5. Authorities contained in title 37 of the United States Code relating to the administration of the PHS Commissioned Corps were delegated to the Assistant Secretary for Health by the Assistant Secretary for Administration and Management on September 27, 1973, and were continued in effect by the Secretary on March 8, 1977 (42 FR 13262-13263). Further redelegations of these authorities to other PHS officials are contained in Part 3 of this manual.
6. The Secretary of State has delegated to the Director, Bureau of Politico-Military Affairs, Department of State, and to persons designated by that officer, the Secretary of State's authority to approve civil employment of a retired or reserve officer by a foreign government.

Section C. HHS Application Procedures

1. Applications requesting approval of foreign government employment must be sent to the following address no later than 60 days prior to the expected date of employment:  
Director  
Commissioned Personnel Operations Division (CPOD)  
Office of Personnel Management, Office of Management  
Public Health Service  
Room 4-35, Parklawn Building  
5600 Fishers Lane  
Rockville, Maryland 20857
2. The application must contain the following information:
  - a. Applicant's name;
  - b. Official status (retired regular corps, inactive reserve corps, etc.);
  - c. PHS serial number;

- d. Identity of and relationship of proposed employment to the foreign government concerned;
- e. Proposed length of service with the foreign government;
- f. Detailed description of work to be performed; and
- g. Any special condition of employment such as taking an oath of allegiance to, or becoming a citizen of, the foreign country. 1/

Section D. HHS Approval Procedures

1. Upon receipt of an application, CPOD will review the information submitted, make a formal recommendation for or against approval, and forward the application materials and recommendation to the Assistant Secretary for Health for approval.
2. Approval or disapproval of the application will be based on whether the officer's proposed foreign government employment would adversely affect, insofar as HHS is concerned, the foreign relations of the United States in light of the officer's official status as a retiree or reservist (inactive).
3. Upon approval by HHS, the application will be forwarded to the Director, Bureau of Politico-Military Affairs, Department of State, for his/her review and decision regarding approval.
4. In the event the application is disapproved by HHS, the applicant will be notified and provided with a statement of the reasons for disapproval, together with a notice of the officer's right to seek reconsideration of the application within HHS. The disapproval of an application for foreign government employment will be considered final unless a timely request for reconsideration is received.
5. Within 60 days after receipt of the notice of disapproval of the proposed foreign government employment, the applicant may submit a request for HHS reconsideration. The request for reconsideration should provide information relevant to the reasons set forth in the notice of disapproval.
6. In the event of a request for HHS reconsideration, a decision on such request will be made by the HHS reviewing official after review of the record of the application and the additional information supplied in the request. The applicant will be informed of the decision and the reasons therefore. The decision of the HHS reviewing official will be final.

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1/ Note that under the provisions of 8 U.S.C. 1481-1489, United States citizenship can be lost, with subsequent loss of PHS entitlements, including retired pay, by, for example, becoming a citizen of or taking an oath of allegiance to another country.

Section E. Department of State Approval Procedures

1. Upon receipt of an application for approval of foreign employment which has been initially approved and forwarded by the HHS approving official, the Director, Bureau of Politico-Military Affairs, Department of State, or his/her designee, will review the application and make a decision regarding approval. The basis for the decision will be whether the applicant's proposed foreign employment would adversely affect the foreign relations of the United States in light of the applicant's official status as a retiree or reservist.
2. The Director, Bureau of Politico-Military Affairs, will notify the HHS approving official when an applicant's foreign employment is approved. The applicant will be notified of approval by the HHS approving official.
3. In the event the application is disapproved, the Director, Bureau of Politico-Military Affairs, will notify the applicant directly and will inform the HHS approving official. The applicant will be given a statement of the reasons for the disapproval together with a notice of the applicant's right to seek reconsideration.
4. Within 60 days after receipt of the notice of disapproval, the applicant may submit a request for reconsideration to the Director, Bureau of Politico-Military Affairs. The request for reconsideration should provide information relevant to the reasons set forth in the notice of disapproval, and a copy should be sent to the HHS approving official.
5. The disapproval of foreign employment by the Director, Bureau of Politico-Military Affairs, will be final, unless a timely request for reconsideration is received. In the event of a request of reconsideration, the Director, Bureau of Politico-Military Affairs, will make a final decision after reviewing the record of the application and the additional information supplied in the request. A final decision after reconsideration to approve the applicant's proposed employment with a foreign government will be communicated to the HHS approving official, who will inform the applicant. A final decision after reconsideration to disapprove the applicant's proposed employment with a foreign government will be communicated directly to the applicant, and the HHS approving official will be informed.

Section F. Change in Status

1. In the event there is to be a material change in the applicant's approved foreign government employment, either by a substantial change in duties from those described in the application upon which the original approval was based or by a change of employer, the applicant must obtain approval for such change following the procedures outlined in Sections C, D, and E above.