

2 FAH-2 H-100 POST MANAGEMENT ORGANIZATION

2 FAH-2 H-110 CHIEF OF MISSION AUTHORITY AND OVERSEAS STAFFING

*(CT:PMO-1; 11-29-2005)
(Office of Origin: M/R)*

2 FAH-2 H-111 SUMMARY

(CT:PMO-1; 11-29-2005)

- a. This handbook describes the authority of U.S. chiefs of mission (COMs) and provides instructions on how they exercise such authority over U.S. Government staffing at missions abroad. It discusses the President's Letter of Instruction to COMs, the Department of State's Basic Authorities Act, the 1980 Foreign Service Act, the 1986 Diplomatic Security Act, National Security Decision Directive (NSDD) 38, and other relevant laws, instructions, and agreements.
- b. Pursuant to the President's Letter of Instruction (see 2 FAH-2 H-112.1), the COM has authority over every executive branch employee in the host country except those under the authority of a U.S. area military commander or another COM, or those on the staff of an international organization.
 - (1) Executive branch agencies under COM authority must obtain COM approval before changing the size, composition, or mandate of their staffs and when assigning personnel to the Mission or host country, regardless of the duration or purpose of the proposed position or assignment.
 - (2) NSDD-38 governs proposals for the establishment of or changes in full-time, permanent, direct-hire positions. COMs may control changes to other categories of staffing with the NSDD-38 or Country Clearance processes, or other procedures they find most convenient (e.g., Memorandum of Agreement (MOA) and Letter of Understanding (LOU)). Examples of staffing categories include American or Foreign National, direct hire (DH), Personal Services

Agreement (PSA), Personal Services Contract (PSC), on full-time, part-time, intermittent/when actually employed (WAE) work schedules and employed on a permanent or temporary basis, or detail to host government projects.

- c. The Department's Office of Rightsizing the United States Government Overseas Presence (M/R) provides guidance on these issues to promote compliance with applicable laws and directives. It also ensures that the channels of communication among Missions abroad and agencies and bureaus in Washington, DC are kept open.

Note: Refer questions to the Department of State, M/R, HST Room 5214, Washington, DC 20520, telephone (202) 647-0093, unclassified facsimile (202) 647-2524.

2 FAH-2 H-112 CHIEFS OF MISSION (COMS) DEFINED

(CT:PMO-1; 11-29-2005)

- a. COMs are the principal officers in charge of U.S. Diplomatic Missions and certain U.S. offices abroad that the Secretary of State designates as diplomatic in nature. The U.S. Ambassador to a foreign country, or the chargé d'affaires, is the COM in that country. Other COMs include:
- (1) The chiefs of certain permanent U.S. Missions to international organizations (i.e., the U.S. Mission to the Organization for Economic Cooperation and Development [USOECD], the U.S. Mission to International Organizations in Vienna [UNVIE], USUN, OAS, OSCE, USNATO, U.S. Mission to the European Office of the UN, and USEU]);
 - (2) The Principal Officers of the Consulates General in Hong Kong, Curacao, and Jerusalem; and
 - (3) The U.S. Interests Section in the Swiss Embassy in Havana.
- b. The Foreign Service Act of 1980 (Public Law 96-465, Section 102(3) (22 U.S.C. 3902)) defines a COM as: "The principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) to be temporarily in charge of such a mission or office."

2 FAH-2 H-112.1 President's Letter Of Instruction To Chiefs of Mission (COMs) (REVISED)

(CT:PMO-1; 11-29-2005)

a. The President sends a Letter of Instruction to all COMs appointed by the President, and the contents of each letter differs according to whether the COM has a bilateral/country or international organization portfolio. The President's Letter gives a COM full responsibility for the direction, coordination, and supervision of all U.S. Government executive branch employees within the host country or in the relevant Mission to an international organization, except those personnel under the command of a U.S. geographic area military commander or on the staff of an international organization.

- (1) This includes personnel in all employment categories, whether American or Foreign National, DH, PSA, or PSC, on full-time, part-time, or intermittent/ WAE work schedules, and employed on a permanent or temporary basis.
- (2) Additionally, all executive branch agencies with employees in the host country must keep the COM fully informed at all times of their current and planned activities.

b. The President's Letter of Instruction to Chiefs of Mission (1 FAM 013 Exhibit 013.2) is updated periodically. The basic instructions however, have remained the same for a number of years.

2 FAH-2 H-112.2 Chief of Mission (COMs) Responsibilities Under the Foreign Service Act of 1980

(CT:PMO-1; 11-29-2005)

The Foreign Service Act of 1980 (Public Law 96-465, (22 U.S.C. 3927)) contains the following provisions regarding COM responsibilities:

Section 207. CHIEF OF MISSION

- (a) Under the direction of the President, the Chief of Mission to a foreign country --
 - (1) shall have full responsibility for the direction, coordination, and supervision of all Government Executive Branch employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander); and
 - (2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall ensure that all Government Executive Branch employees in that country (except for Voice of America correspondents on official assignment and employees

under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

- (b) Any Executive Branch agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall ensure that all of its employees in that country (except for Voice of America correspondents on official assignment and employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.
- (c) Each chief of mission to a foreign country shall have as a principal duty the promotion of United States goods and services for export to such country.

2 FAH-2 H-112.3 Responsibilities Under the Omnibus Diplomatic Security And Anti-Terrorism Act of 1986

(CT:PMO-1; 11-29-2005)

- a. Pursuant to The Omnibus Diplomatic Security and Anti-Terrorism Act Of 1986 (Public Law 99-399 (22 U.S.C. 4801, et seq.)), as amended, the Secretary of State and, by extension, the COM, are responsible for developing and implementing policies and programs that provide for the protection of all U.S. Government personnel on official duty abroad (except for Voice of America correspondents on official assignment and those under the command of a U.S. area military commander) and their accompanying dependents (see 2 FAH-2 Exhibit H-112.3).
- b. The Act gives the Secretary responsibilities for:
 - (1) Coordinating all U.S. Government personnel assigned to U.S. posts and missions abroad, (except for facilities, installations or personnel under the command of a U.S. area military commander); and
 - (2) Establishing appropriate overseas staffing levels for all such posts and missions for all Federal agencies with activities abroad (except for personnel and activities under the command of a U.S. area military commander or regional inspector general offices under the jurisdiction of the Inspector General, U.S. Agency for International Development).
- c. Section 106 of the Act provides that other Federal agencies, with or without reimbursement, may provide assistance to the Secretary and perform overseas security functions as authorized by the Secretary.

- d. Pursuant to Section 301 of the Act, the Secretary shall convene an Accountability Review Board (ARB) whenever:
- (1) There is a security-related incident resulting in loss of life, serious injury, or significant destruction of property at or related to a U.S. Government mission abroad;
 - (2) There is a serious breach of security involving the intelligence activities of a foreign government directed at a U.S. Government mission abroad (other than a facility or installation subject to the control of a U.S. area military commander); or
 - (3) A visa is issued to an individual who is included in the consular lookout system and there is thereafter probable cause to believe that individual participated in a terrorist activity in the U.S. which resulted in serious injury, loss of life, or significant destruction of property.

2 FAH-2 H-113 PRESIDENT'S MANAGEMENT AGENDA (PMA)

(CT:PMO-1; 11-29-2005)

- a. In August 2001, President Bush launched the PMA to improve management throughout the government by putting the main emphasis on performance and results. The President's Office of Management and Budget (OMB) is the government-wide manager of PMA.
- b. There are five inter-related, government-wide PMA initiatives that may impact COM or agency decisions on overseas staffing:
- (1) Strategic use of "Human Capital" -- aligning human resources strategically with Mission goals and plans;
 - (2) "Competitive Sourcing" -- paying the best possible price for services that are not inherently governmental in nature;
 - (3) Expanding "e-government" -- harnessing information technology to better serve American citizens, develop an effective knowledge management system, and facilitate communication among ourselves and other agencies;
 - (4) "Improved Financial Management" -- meeting federal financial standards, keeping accurate and timely financial records, and integrating financial and performance management systems; and
 - (5) "Budget and Performance Integration" -- linking plans, budgets, and performance evaluation systems to lead to the combined performance and results the President has challenged us to produce.

- c. The PMA also establishes initiatives involving only selected agencies. The most important of these, from the Department's perspective, is the interagency working group established and led by OMB to rationalize (“rightsized”) overseas presence.
- d. The General Accountability Office (GAO) proposed a definition of rightsizing with which the Department of State agrees:

Rightsizing [is] aligning the number and location of staff assigned overseas with foreign policy priorities and security and other constraints. Rightsizing may result in the addition or reduction of staff, or a change in the mix of staff at a given embassy or consulate (see GAO-02-780 Overseas Presence: Framework for Assessing Embassy Staff Levels Can Support Rightsizing Initiative, page 1, July 2002).

2 FAH-2 H-114 AUTHORITY OF CHIEFS OF MISSION (COM) OVER OTHER THAN FULL-TIME, PERMANENT, DIRECT-HIRE PERSONNEL

(CT:PMO-1; 11-29-2005)

- a. The President’s Letter of Instruction gives COMs authority over all U.S. Government executive branch employees in the host country or in the relevant mission (other than those under the authority of a U.S. area military commander or those on the staff of an international organization). While the Letter does not define “U.S. Government executive branch employee,” the Department interprets this term to cover U.S. citizens and Foreign Service Nationals at posts who are employed via direct-hire appointments, PSCs, or PSAs.
- b. COMs decide the process by which they will make decisions on levels of personnel staffing accomplished by temporary DH appointments, TDY assignments, and PSCs or PSAs. COMs may decide to use NSDD-38 or any other mechanism that works well at post, but should consider the degree to which these employees or contractors occupy space and consume administrative support services. COM decisions are subject to the resource restraints of the affected bureaus, posts, and agencies.

2 FAH-2 H-114.1 Temporary Duty (TDY) ASSIGNMENTS

(CT:PMO-1; 11-29-2005)

- a. TDY refers to the temporary duty assignment (including temporary duty for consultation) of a direct-hire executive branch employee at a location

other than the employee's permanent duty station.

- (1) In cases where the proposed TDY is to a location abroad, the sending agency or Department bureau must ensure that the TDY assignment is acceptable to the receiving COM by obtaining formal country clearance from the COM before allowing the traveler to proceed (see 2 FAH-2 Exhibit H-114).
 - (2) Should a TDY assignment be extended or re-extended with the same or a different person so that the TDY position passes one year, or a new TDY is established with the same or a different person performing essentially the same functions that extend the performance of those functions at post to a year, it would fit within the definition of a full-time, permanent, direct-hire position. In those circumstances, the COM must require the sending agency to submit a formal NSDD-38 proposal to establish a permanent position within the Mission, irrespective of the fact that the position is filled with other than full-time, permanent staff. (Permanent positions are defined as those established or filled for more than one year.)
- b. The COM has full authority over executive branch employees sent abroad on a TDY basis, except those under the authority of the area military commander.

2 FAH-2 H-114.2 Temporary (Formerly PIT) Appointments

(CT:PMO-1; 11-29-2005)

Temporary appointments fill direct-hire, but non-career, positions established with either full-time, part-time or intermittent/while actually employed (WAE) work schedules, for a temporary duration of one year or less. COMs have full authority over these appointments.

2 FAH-2 H-114.3 Family Member Appointments (FMA)

(CT:PMO-1; 11-29-2005)

FMA are also direct-hire, but non-career, positions. However, FMA are used to employ eligible family members of U.S. Government employees assigned to post in long-term positions on either a part-time or full-time basis. FMA may not exceed five years, but can be renewed. COMs have full authority over these appointments.

2 FAH-2 H-114.4 Overseas Employees

(CT:PMO-1; 11-29-2005)

a. Individuals are considered overseas employees regardless of citizenship, legal residency, and family status, if they are recruited and employed under DH appointment, PSA or PSC at Foreign Service posts abroad by U.S. Government agencies and establishments that are under COM authority.

- (1) This does not include U.S. recruited individuals or U.S. personal services contractors (USPSC) hired under applicable contracting authority outside of the host nation and who are not ordinarily resident in the host nation (see 3 FAM 7120).
- (2) Locally Employed Staff (LES) are overseas employees who are “ordinarily resident” in the host nation. They are paid under Local Compensation Plans. LES are not transferred from the United States, regardless of the employee’s nationality. LES may be employed via a direct-hire appointment, a Personal Services Agreement (PSA), or a Personal Services Contract (PSC). Eligible family members and “not ordinarily resident” individuals are not considered LES (see 3 FAM 7120).

b. In 2002, the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669) was amended to allow the Department, upon the request of the head of any other department or agency of the U.S., to enter into PSAs with individuals abroad. These PSAs would enable the Department to perform services in support of other agencies under COM authority.

Note: 22 U.S.C. 2669 permits the Department to employ by contract for services abroad without regard to Federal Acquisition Regulations.

c. The Department has developed a generic MOA to formalize the exercise of its PSA authority on behalf of another U.S. department or agency under COM authority. If another U.S. department or agency wishes to employ individuals abroad via State’s hiring authority, they must agree to the terms and conditions and sign a department-specific or agency-specific MOA. The listing of departments and agencies that have entered into such an MOA can be found on HR/OE’s intranet website. The Department cannot exercise this authority on behalf of another agency until post verifies that the agency has signed the MOA.

Note: This PSA authority does not/not amend National Security Decision Directive (NSDD) 38 or the formal NSDD-38 process that is required to change the size, composition, or mandate of full-time, permanent, DH positions (American and Foreign Service National) abroad (e.g., NSDD-38 processing is still required to change a full-time, permanent (FTP), DH position to a PSA position; such a change, if approved by the COM, would result in a reduction in the size of FTP DH positions at the U.S. Mission.) Neither PSA or PSC LES positions are subject to the NSDD-38 process.

However, the COM may consider requiring a NSDD-38 request for such positions to maintain record accountability for all employees of the mission.

- d. PSA Plus is a program that was instituted worldwide by the Department's Office of Overseas Employment (HR/OE) as the standard employment authority for all LES at missions abroad. Under PSA Plus, positions that were previously identified as FSN, PSA, USPSC, PIT, etc. are now just referred to as "overseas employee" positions and can be filled by either LES or by an eligible family member or "not ordinarily resident" overseas employees. Those employees filling overseas employee positions may be employed on a temporary basis (one year or less under DH appointment; less than one year if PSA or PSC), or on a non-temporary basis (greater than one year if DH appointment; one year or greater if PSA or PSC). The employee's workweek schedule may be full-time, part-time, or intermittent.

Note: Local law must be consulted to properly hire LES on a temporary basis to avoid creating an inadvertent permanent employment situation.

2 FAH-2 H-114.5 Non-Personal Services Commercial Contractors

(CT:PMO-1; 11-29-2005)

- a. Certain U.S. Government agencies may enter into contracts with non-U.S. Government entities (e.g., commercial firms, private voluntary organizations, educational institutions) to obtain service(s). The employees of these organizations are often referred to as commercial, independent, or institutional contractors. They render services not subject, either by the terms of a contract or by the manner of a contract's administration, to the supervision and control that usually prevails in relationships between the U.S. Government and its employees. The employees of these organizations do not function as U.S. Government employees and may not be considered U.S. Government employees for any purpose. This is true regardless of the type of passport held by individual commercial contractors.
- b. COMs do not directly decide levels of staffing by commercial firms. Contracting U.S. Government agencies must obtain COM approval before beginning a process that would lead to an award (or extension) of a contract that would include commercial firm employees working in-country. COMs can also require U.S. Government agencies to provide details of their activities, operations, and plans for staffing contracts, including projections. The type and amount of support that a U.S. Mission provides commercial firm employees, if any, must be coordinated between the U.S. Mission and the contracting agency. The COM should

carefully define the support services the U.S. Mission is prepared to offer and obtain agreement from the contracting agency beforehand of additional resources beyond what would be provided for any private U.S. citizen. Otherwise, unless specifically stated in the contract and approved by the COM, the U.S. Mission's support responsibilities for U.S. citizen employees of commercial firms must not exceed those it would have for any private U.S. citizen.

2 FAH-2 H-114.6 Non-Executive U.S. Government Employees

(CT:PMO-1; 11-29-2005)

- a. In 1987, Congress amended Section 207 of the Foreign Service Act by adding the phrase "executive branch" in three places (see 2 FAH-2 H-112.2). Its intent, as set forth in relevant legislative history, was to remove all congressional, including General Accountability Office (GAO) employees, from COM supervision and to clarify Congress' view that the COM's responsibilities and authorities are limited to U.S. Government executive branch employees. The 1987 amendment does not affect members of Congress, since they are not "Government employees" and Section 207 therefore has not been viewed as applicable to the travel of members in foreign countries.
- b. Since COM authority derives ultimately from the President's constitutional powers rather than from statute, the terms of section 207 are of lesser significance than the President's Letter of Instruction (see 1 FAM 013, Exhibit 013.2) in defining the COM's authority. The President's letter, however, mirrors section 207 in referring to "executive branch agencies" and "executive branch employees" in relation to COM authority.
- c. With respect to security of U.S. Government personnel abroad and their dependents, the COM's responsibilities are not limited to executive branch employees. The President's Letter of Instruction states: ". . . as Chief of Mission [you] must protect all United States Government personnel on official duty abroad other than those under the protection of a U.S. area military commander or on the staff of an international organization and their accompanying dependents." Similarly, the Secretary of State's responsibilities under Section 103 of the Diplomatic Security Act extend to "protection of all United States Government personnel on official duty abroad (other than those personnel under the command of a United States area military commander) and their accompanying dependents. The COM also is expected to provide security for visiting members of Congress or the Judiciary, even though they are not government "personnel" for whom he or she is responsible.
- d. Even though the COM's authority, as stated in the Letter of Instruction

and Section 207, does not extend to members of other branches of government and their staffs, as a constitutional matter the COM is the President's official U.S. Government representative to a foreign country or international representative. As such, the COM is in charge of and responsible for U.S. relations with that country or organization. As noted in the Letter of Instruction, the Secretary of State is responsible for the overall coordination of all U.S. Government activities and operations abroad, without limitation. Given these responsibilities, as well as the COM's security responsibilities and the support which posts typically provides to visiting delegations, the established practice is that members and staff from other branches of government should seek country clearance before visiting a foreign country. However, given the sensitivities regarding the strict application of country clearance requirements to Legislative Branch travelers, the term "country notification" is used in place of "country clearance" for Congressional travel.

- e. Country clearance for employees of other branches of government should operate on the basis of mutual accommodation. Normally, therefore, the Congressional or judicial travel is facilitated to the maximum extent possible. If, however, the COM believes that for exceptional reasons specific proposed travel is problematic (e.g., in view of security concerns or significant timing problems such as coincidence with a Presidential visit), posts should raise their concerns with the Department. In such cases, posts should not cable refusals of country clearance but rather should consult with the Department to determine the appropriate course of action.
- f. It is Department policy to cooperate with, and assist, GAO on travel and other matters (see 5 FAM 473 and 5 FAH-4). The GAO signed a MOU (<http://arpsdir.a.state.gov/mou/mou.html>) with the Department regarding COM authority.
- g. The Library of Congress also signed a MOU (<http://arpsdir.a.state.gov/mou/mou.html>) with the Department that effectively places its personnel overseas under COM authority.

2 FAH-2 H-115 U.S. GOVERNMENT EMPLOYEES ASSIGNED TO INTERNATIONAL ORGANIZATIONS (IO)

(CT:PMO-1; 11-29-2005)

- a. The President's Letter of Instruction to COMs exempts U.S. Government employees on the staff of an international organization (IO) from COM operational authority and security responsibility. This reflects the

practical reality that such personnel are working for the IO, on an IO mission, rather than for the U.S. Government or on a U.S. Government mission. They also may live and work in remote locations outside the embassy, its compound, and the general “official American community.” The COM may not even be aware that such personnel are in country.

- b. Typically it is the IO and not the U.S. Government that is responsible for providing security, administrative, and other support for U.S. Government employees on the IO staff. Post must specifically agree to any day-to-day responsibility (e.g., administrative support) for U.S. Government employees on the staff of IOs, after vetting with the Department (M/R) to ensure that provision of such support is in accordance with relevant law and policy.
- c. Diplomatic Security (DS) programs such as residential security and local guards are generally provided only for post-owned/leased housing and official facilities. Employees assigned to an IO who neither work nor live in post-controlled spaces would not be included in these programs. The Secretary of State’s overall security responsibilities under Section 103 of the Diplomatic Security Act, however, do not exempt U.S. Government employees serving with an IO. Thus, the DS Regional Security Officer (RSO) is available to assist where necessary and appropriate (e.g. for security briefings and as a resource to recommend residential security countermeasures appropriate for the area’s threat levels).

2 FAH-2 H-116 COM RESPONSIBILITY FOR SECURITY

(CT:PMO-1; 11-29-2005)

2 FAH-2 H-116.1 For Direct-Hire, Temporary, FMA, TDY, Locally Employed, PSC, and PSA Staff

(CT:PMO-1; 11-29-2005)

- a. Security for all categories of U.S. Government personnel working in U.S. Government workspace is provided in accordance with security standards based upon the type of facility. However, residential security is provided under the Diplomatic Security Act to those U.S. Government personnel “on official duty abroad” and to their “accompanying” dependents. Whether the employee was hired locally or assigned to the post is the determining factor, rather than employment category. For example, DS may provide security for a PSC who was hired in the U.S. and granted post housing but not for a locally hired PSC’s residence.
- b. Certain U.S. Government personnel, including some of the above

categories, may be assigned abroad to work in host government facilities or reside in areas outside post housing pools. They may not be able to benefit from a U.S. Mission's established security programs. In this instance, a specific decision process by post should be used to ensure adequate security arrangements are addressed prior to COM approval.

- c. Pursuant to an exchange of letters in 2003 between the Secretary of State and the Chairman of the Broadcasting Board of Governors (BBG), full responsibility for the security of Voice of America (VOA) journalists overseas rests with the BBG, the journalist's direct supervisors, and the correspondents themselves. The VOA directs its correspondents to notify the Mission before traveling to post, and to receive a security briefing upon arrival at post. In all other respects, VOA correspondents are treated no differently than any other American journalist.

2 FAH-2 H-116.2 Authority and Responsibility for Residential Security for Certain Personnel

(CT:PMO-1; 11-29-2005)

- a. The COM at each mission is responsible for determining the appropriate levels of security, security equipment and support commensurate with established threat levels. So that the COM may fulfill this responsibility, personnel assigned to posts overseas must coordinate with those responsible for the mission's residential housing program. This allows the COM to effectively and efficiently administer residential security, health and safety, and functionality requirements, as well as assure inter-agency equity.
- b. Some U.S. Government personnel and agencies do not participate in the mission's housing program (e.g., because the place of duty is prohibitively distant from the embassy residential program). Non-participation in the residential program is the exception, not the rule, and must be supported by the Interagency Housing Board (IAHB) and approved by the COM. In cases where U.S. Government personnel and agencies do not coordinate properly with post prior to arrival, COMs must assert their COM authority to promptly resolve these situations in accordance with the requirements of security (see 15 FAM 200).
- c. When individuals do not reside in mission residential housing pool quarters, the tenant's agency funds the residential security requirements as established by the security office at post.
- d. The ability to fund security requirements is, of course, a serious consideration when overseas staffing increases are proposed. Without resources, most COMs will not permit increases. However, as a condition of NSDD-38 approval, a COM should require that the requesting agency pay all directly attributable costs associated with the proposed staffing

(commonly referred to as start-up and make-ready costs), including residential security and RSO travel costs. If the requesting agency refuses to fund the necessary security measures and support, the COM should disapprove the staffing increase and refuse authorization to proceed to post. Even in cases when staffing and staff housing have not been sufficiently or properly coordinated, the COM is still responsible for the security of the U.S. Government personnel who arrive at post.

- e. The applicable residential security standards and guidance should be provided to personnel not residing in the mission's residential housing pool quarters, in-country agency representatives, and parent agencies. The personnel and agencies should be advised that all applicable standards must be met immediately or exceptions sought. The parent agency of those personnel should also be advised to pay the costs associated with meeting and maintaining those standards. The COM remains responsible for the security of these employees regardless of the level of cooperation or coordination by the resident and agency.

2 FAH-2 H-116.3 SECURITY FOR COMMERCIAL CONTRACTORS

(CT:PMO-1; 11-29-2005)

- a. Commercial firm employees working within a U.S. Mission facility overseas receive incidentally the benefits of the measures undertaken to protect the facility and post may have consular responsibilities for these individuals if they are U.S. citizens. However, post is not required to provide security for commercial firm employees as it does for U.S. Government employees, unless a specific contractual provision approved by the U.S. Mission states otherwise.
- b. Commercial firms with contracts to provide services to U.S. Government agencies at U.S. Missions abroad may register their American personnel with the Embassy consular section.
- c. All commercial contractors performing work at U.S. Government facilities must be vetted through the regional security officer (RSO).
- d. Commercial firms are generally responsible for the provision of their own security equipment, and training in its use.
- e. Posts may, under exceptional circumstances, provide to the employees of commercial firms security awareness information similar to that received by U.S. Government employees. Such circumstances could apply at posts with high terrorism or criminal threat or other post specific threat. However, anti-terrorism and security training is the responsibility of the commercial firm and this allocation of responsibility should be written into contracts.

- f. Commercial firms may also receive security-related information through an affiliation with the Department's Overseas Security Advisory Council (OSAC) in Washington, DC. U.S. incorporated or affiliated commercial contracting firms can join OSAC by applying via the OSAC web site. OSAC has also formed individual OSAC Country Councils to enable resident U.S. private sector organizations to exchange security related information. COMs should check to see if their post has formed an OSAC Country Council and, if so, encourage all U.S. private sector organizations to join.

2 FAH-2 H-116.4 Department of Defense

(CT:PMO-1; 11-29-2005)

- a. Because of the increasing number of terrorist attacks directed toward U.S. military facilities and personnel abroad (especially in the Arabian Peninsula), the Secretaries of State and Defense co-signed a Memorandum of Understanding (MOU) effective December 16, 1997, governing security responsibility for Department of Defense (DoD) elements and personnel in foreign areas. The State/DoD MOU is being implemented worldwide through individual country agreements (MOA) between the COM and the area military commander (COCOM), sometimes referred to as Geographic Combatant Commanders (GCCs). Each country's MOA assigns security responsibility for all DoD elements/personnel in country to either the COM or the COCOM, thereby eliminating "gray areas" that have led to confusion over security responsibility for some DoD elements or personnel. All messages with DoD Country clearance and staffing requests and COM authorization and approvals must clearly define who has responsibility for security – COM or COCOM.
- b. The MOU reinforces COM authority by more clearly defining how it applies over certain DoD elements. When the Department cannot provide adequate security and DoD does not assume responsibility for security, COMs should initiate an NSDD-38 review to determine whether to withdraw these personnel from harm's way. All countries must have a MOA signed by the COM and COCOM. Meanwhile, it is important for all COMs to identify DoD elements under their authority. The full text of the MOU, the Secretary's guidance on extending the MOU, and information regarding annual updates is shown herein (<http://arpsdir.a.state.gov/mou/mou.html>). COMs are required to provide the updated MOA annually to the Office of Rightsizing (M/R).
- c. The Foreign Assistance Act of 1961, as amended (Public Law 87-195, Section 515 (22 U.S.C. 2321i)), provides that the President may assign members of the U. S. Armed Forces to a foreign country to perform security assistance functions. Those assigned to a foreign country under

that section shall serve under the direction and supervision of the COM to that country.

(1) In order to carry out responsibilities for the management of International Security Assistance Programs conducted under part II of the Foreign Assistance Act, part V of subchapter II of that act, and the Arms Export Control Act, the President may assign members of the Armed Forces of the United States to a foreign country to perform one or more of the following functions:

- equipment and services case management
- training management
- program monitoring
- evaluation and planning of the host government's military capabilities and requirements
- administrative support
- promoting rationalization, standardization, -- interoperability, and other defense cooperation measures among members of the North Atlantic Treaty Organization and with the armed forces of Japan, Australia, and New Zealand
- liaison functions exclusive of advisory and training assistance

d. The following is a partial list of Security Assistance Organizations under COM authority. As you will see, they can go by a variety of names. You may want to take a quick look at your post's elements to make certain none were overlooked or misreported in your DoD elements submissions.

- DSA - Defense Supply Advisor (India)
- JUSMAG - Joint U.S. Military Advisory Group (Philippines, Thailand, Korea)
- KUSLO - Kenya-U.S. Liaison Office
- MAAG - Military Assistance Advisory Group (Peru, Portugal)
- MAP - Military Assistance Program (Jordan)
- MDAO - Mutual Defense Assistance Office (Japan)
- MILGP - Military Group (Argentina, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Venezuela)
- MLO - Military Liaison Office (Belize, Brazil, Eastern Caribbean, Haiti, Jamaica, Trinidad and Tobago)
- ODC - Office of Defense Cooperation (Belgium, Botswana, Denmark, France, Germany, Greece, Italy, Morocco, Netherlands,

Niger, Norway, Paraguay, Portugal, Spain, Tunisia, Turkey, United Kingdom, Uruguay)

- ODR - Office of Defense Representative (Costa Rica, Pakistan)
- OMC - Office of Military Cooperation (Bahrain, Egypt, Kuwait, Oman, Yemen)
- USDRO - U.S. Defense Representative Office (Panama)
- USLO - U.S. Liaison Office (Djibouti, Qatar, United Arab Emirates)
- USMTM - U.S. Military Training Mission (Saudi Arabia)

2 FAH-2 H-117 LAW ENFORCEMENT STAFFING

(CT:PMO-1; 11-29-2005)

- a. On November 14, 1996, the agency heads for the Departments of State, Treasury, and Justice signed an MOU that defines the authorities of the COMs in relation to law enforcement personnel abroad. The MOU also sets forth internal policies for their departments, and outlines agreed principles with respect to the coordination of the law enforcement activities.
- b. Section 801 of the FY1988/1989 Foreign Relations Authorization Act requires the assignment of at least two Drug Enforcement Agency (DEA) agents to any U.S. Mission in which a DEA office is established.

2 FAH-2 H-118 AGENCY FOR INTERNATIONAL DEVELOPMENT, REGIONAL INSPECTOR GENERAL (AID/RIG) STAFFING

(CT:PMO-1; 11-29-2005)

The FY1989 Foreign Operations Appropriations Bill exempted AID/RIGs from the Secretary's statutory authority to set staffing levels. This does not affect the COM's authorities as derived from the President. AID/RIGs still fall under NSDD-38, except that COMs may not use NSDD-38 to relocate AID/RIGs or to interfere with the AID Inspector General's investigative responsibilities.

2 FAH-2 H-119 UNASSIGNED

2 FAH-2 EXHIBIT H112.3
PORTIONS OF THE 1986 DIPLOMATIC
SECURITY ACT; PUBLIC LAW 99-399 (22
U.S.C. 4801, et seq.), AS AMENDED

(CT:PMO-1; 11-29-2005)

22 U.S.C. 4802. RESPONSIBILITY OF SECRETARY OF STATE

(a) SECURITY FUNCTIONS

(1) The Secretary of State shall develop and implement (in consultation with the heads of other Federal agencies having personnel or missions abroad where appropriate and within the scope of the resources available) policies and programs, including funding levels and standards, to provide for the security of United States Government operations of a diplomatic nature and foreign government operations of a diplomatic nature in the United States. Such policies and programs shall include --

(A) protection of all United States Government personnel on official duty abroad (other than Voice of America correspondents on official assignment and those personnel under the command of United States area military commander) and their accompanying dependents;

(B) establishment and operation of security functions at all United States Government missions abroad (other than facilities or installations subject to the control of a United States area military commander);

(C) establishment and operation of security functions at all Department of State facilities in the United States; and

(D) protection of foreign missions, international organizations, and foreign officials and other foreign persons in the United States, as authorized by law. . . .

(b) OVERSEAS EVACUATIONS—

The Secretary of State shall develop and implement policies and programs to provide for the safe and efficient evacuation of United States Government personnel, dependents, and private United States citizens when their lives are Endangered. Such policies shall include measures to identify high risk areas where evacuation may be necessary and, where appropriate, providing staff to United States Government missions abroad to assist in those evacuations. In carrying out these responsibilities, the Secretary shall --

- (1) develop a model contingency plan for evacuation of personnel, dependents, and United States citizens from foreign countries;
- (2) develop a mechanism whereby United States citizens can voluntarily request to be placed on a list in order to be contacted in the event of an evacuation, or which, in the event of an evacuation, can maintain information on the location of United States citizens in high risk areas submitted by their relatives;
- (3) assess the transportation and communications resources in the area being evacuated and determine the logistic support needed for the evacuation; and
- (4) develop a plan for coordinating communications between embassy staff, Department of State personnel, and families of United States citizens abroad regarding the whereabouts of those citizens.

(c) OVERSIGHT OF POSTS ABROAD

The Secretary of State shall--

- (1) have full responsibility for the coordination of all United States Government personnel assigned to diplomatic or consular posts or other United States missions abroad pursuant to United States Government authorization (except for facilities, installations, or personnel under the command of a United States area military commander); and
- (2) establish appropriate overseas staffing levels for all such posts or missions for all Federal agencies with activities abroad (except for personnel and activities under the command of a United States area military commander or regional inspector general offices under the jurisdiction of the Inspector General, Agency for International Development).

(d) FEDERAL AGENCY—

As used in this subchapter and subchapter III of this chapter, the term “Federal agency” includes any department or agency of the United States Government.

22 U.S.C. 4805. COOPERATION OF OTHER FEDERAL AGENCIES

- (a) Assistance. – In order to facilitate fulfillment of the responsibilities described in section 4802(a) of this title, other Federal agencies shall cooperate (through agreements) to the maximum extent possible with the Secretary of State. Such agencies may, with or without reimbursement, provide assistance to the Secretary, perform security inspections, provide logistical support relating to

the differing missions and facilities of other Federal agencies, and perform other overseas security functions as may be authorized by the Secretary. Specifically, the Secretary may agree to delegate operational control of overseas security functions of other Federal agencies to the heads of such agencies, subject to the Secretary's authority as set forth in section 4802(a) of this title. The agency head receiving such delegated authority shall be responsible to the Secretary in the exercise of the delegated operational control.

- (b) Other Agencies. – Nothing contained in this chapter shall be construed to limit or impair the authority or responsibility of any other Federal, State, or local agency with respect to law enforcement, domestic security operations, or intelligence activities as defined in Executive Order 12333. . . .

22 U.S.C. 4831. ACCOUNTABILITY REVIEW BOARDS

(a) IN GENERAL

(1) CONVENING A BOARD

Except as provided in paragraph (2), in any case of serious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad, and in any case of a serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission abroad, which is covered by the provisions of this chapter (other than a facility or installation subject to the control of a United States area military commander), the Secretary of State shall convene an Accountability Review Board (in this subchapter referred to as the "Board"). The Secretary shall not convene a Board where the Secretary determines that a case clearly involves only causes unrelated to security.

(2) DEPARTMENT OF DEFENSE FACILITIES AND PERSONNEL

The Secretary of State is not required to convene a Board in the case of an incident described in paragraph (1) that involves any facility, installation, or personnel of the Department of Defense with respect to which the Secretary has delegated operational control of overseas security functions to the Secretary of Defense pursuant to section 4805 of this title. In any such case, the Secretary of Defense shall conduct an appropriate inquiry. The Secretary of Defense shall report the findings and recommendations of such inquiry, and the action taken with respect to such recommendations, to the Secretary of State and Congress. . . .

22 U.S.C. 4833. PROCEDURES.

(a) EVIDENCE—

(1) UNITED STATES GOVERNMENT PERSONNEL AND
CONTRACTORS

- (A) With respect to any individual described in subparagraph (B), a Board may --
- (i) administer oaths and affirmations;
 - (ii) require that depositions be given and interrogatories answered; and
 - (iii) require the attendance and presentation of testimony and evidence by such individual.

Failure of any such individual to comply with a request of the Board shall be ground for disciplinary action by the head of the Federal agency in which such an individual is employed or serves, or in the case of a contractor, debarment.

- (B) The individuals referred to in subparagraph (A) are –
- (i) employees as defined by section 2105 of Title 5 (including members of the Foreign Service);
 - (ii) members of the uniformed services as defined by section 101(3) of Title 37;
 - (iii) employees of instrumentalities of the United States; and
 - (iv) individuals employed by any person or entity under contract with agencies or instrumentalities of the United States Government to provide services, equipment, or personnel.

(2) OTHER PERSONS

With respect to a person who is not described in paragraph (1)(B), a Board may administer oaths and affirmations and require that depositions be given and interrogatories answered.

22 U.S.C. 4834. FINDINGS AND RECOMMENDATIONS BY A BOARD

(a) FINDINGS—

A Board convened in any case shall examine the facts and circumstances surrounding the serious injury, loss of life, or significant destruction of property at or related to a United States Government mission abroad or surrounding the serious breach of security involving intelligence activities of a foreign government directed at a United States Government mission

abroad (as the case may be) and shall make written findings determining--

- (1) the extent to which the incident or incidents with respect to which the Board convened was security related;
- (2) whether the security systems and security procedures at that mission were adequate;
- (3) whether the security systems and security procedures were properly implemented;
- (4) the impact of intelligence and information availability; and
- (5) such other facts and circumstances which may be relevant to the appropriate security management of United States missions abroad.

(b) PROGRAM RECOMMENDATIONS—

A Board shall submit its findings (which may be classified to the extent deemed necessary by the Board) to the Secretary of State, together with recommendations as appropriate to improve the security and efficiency of any program or operation which the Board has reviewed.

(c) PERSONNEL RECOMMENDATIONS

Whenever a Board finds reasonable cause to believe that an individual described in section 4833(a)(1)(B) of this title has breached the duty of the individual, the Board shall --

- (1) notify the individual concerned;
- (2) transmit the finding of reasonable cause, together with all information relevant to such finding, to the head of the appropriate Federal agency or instrumentality, and
- (3) recommend that such agency or instrumentality initiate an appropriate investigatory or disciplinary action.

In determining whether an individual has breached a duty of that individual, the Board shall take into account any standard of conduct, law, rule, regulation, contract, or order which is pertinent to the performance of the duties of that individual.

(d) REPORTS

(1) PROGRAM RECOMMENDATIONS—

In any case in which a Board transmits recommendations to the Secretary of State under subsection (b) of this section, the Secretary shall, not later than 90 days after the receipt of such recommendations, submit a report to the Congress on each such

recommendation and the action taken with respect to that recommendation.

(2) PERSONNEL RECOMMENDATIONS—

In any case in which a Board transmits a finding of reasonable cause under subsection (c) of this section, the head of the Federal agency or instrumentality receiving the information shall review the evidence and recommendations and shall, not later than 30 days after the receipt of that finding, transmit to the Congress a report specifying --

- (A) the nature of the case and a summary of the evidence transmitted by the Board; and
- (B) the decision by the Federal agency or instrumentality to take disciplinary or other appropriate action against that individual or the reasons for deciding not to take disciplinary or other action with respect to that individual.

2 FAH-2 EXHIBIT H-114 CHIEF OF MISSION (COM) RESPONSIBILITY FOR COUNTRY CLEARANCE

(CT:PMO-1; 11-29-2005)

- a. Chiefs of Mission (COMs) have the authority and responsibility to grant or refuse country clearance for travelers to their Missions, whether from the U.S. or another post overseas.

President Bush’s Letter of Instruction specifically states, in part:

“You have full responsibility for the direction, coordination, and supervision of all United States Government Executive Branch employees [in country/representing the U.S. at international organization] (except for elements and personnel under the command of a U.S. area military commander [i.e., a geographic combatant commander] or employees on the staff of an international organization). . .

All United States Government personnel (other than those elements and personnel in country under the command of a U.S. area military commander or on the staff of an international organization) must obtain country clearance before [entering (country)/visiting (international organization)] on official business. You may refuse country clearance or may place conditions or restrictions on visiting personnel as you determine necessary.”

- b. COMs are under no obligation to approve visits if exigent circumstances make it inappropriate or to permit the completion of a visit by personnel who have failed to obtain prior country clearance. See 2 FAH-2 114.6 for country clearance procedures for non-Executive Branch requests. COMs may terminate any TDY as appropriate. In addition:
- COMs may limit or expand the purpose or scope of a TDY visit
 - COMs may specify prerequisites for a visit to post; e.g., require specific security training and preparedness, require specific consultations with Washington offices, require country pre-briefs or orientation, require reimbursement for costs incurred by the mission in relation to the TDY
 - Country clearance requests should provide adequate information regarding the purpose and details of planned activities
 - Country clearance requests should be received in a timely fashion
 - Requests should be reviewed for security and program oversight

implications

- Reviewing officials are encouraged to study each request in sufficient detail to ensure that further consultations are not needed
 - Should more information be needed, reviewing officials are urged to consult staff at post, the requesting agency, or the relevant desk or substantive bureaus in the Department
 - Reviewing officials should be aware that there is no blanket requirement that country clearance cables originating with an agency other than State receive Department clearance before transmittal to post, although informal consultations may occur (Procedures for addressing information issues in certain highly classified or sensitive law enforcement or counter-terrorism contexts are set forth in the 1996 State-Justice-Treasury MOU and the 1991 State-FBI MOU, and in periodic cables sent to post about the use of the Roger Channel)
 - Posts may find it useful to maintain a central log of, or otherwise document actions taken on, country clearance requests, and ensure that other post officers, and Washington bureaus and agencies, are aware of country clearance requirements
- c. Successful management of the country clearance process ensures that all official visits are essential to the Mission's needs and that the Mission can adequately support and protect any official visitor.