

~~ADMINISTRATIVE - INTERNAL USE ONLY~~(b) (2)
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REVISION SUMMARY: 17 September 2001 (0554)

This regulation supersedes AR 20-9, dated 5 January 1998.

AR 20-9 is revised to reflect the new organizational title of Human Resource (HR), and organizational title changes in paragraphs b and e(2)(b).

This regulation reflects the Agency's organizational restructure that resulted from the DCI's decision, effective 4 June 2001, to abolish the Directorate of Administration, and establish the Mission Support Offices.

Boldfaced text in this regulation indicates revisions .

This regulation was written by the Policy Team, Human Resources Strategy & Planning Staff, HRM Policy @ DA.

9. RESTRICTIONS ON EMPLOYMENT OF RELATIVES

SYNOPSIS. This regulation contains restrictions on the appointment, employment, promotion, or advancement of relatives, including employee couples.

- a. **AUTHORITY.** The authority for the policy prescribed by this regulation is derived from 5 U.S.C. 3110, 42 U.S.C. 2000e, and 50 U.S.C. 403j and E.O. 12674, which when read in tandem oblige employees not only to avoid nepotism or favoritism, but also to conduct themselves in such a way as to avoid giving rise to even the appearance of favoritism and nepotism.
- b. **POLICY.** It is the policy of the Agency to preclude nepotism in the administration of its **human resource** programs. Agency employees are cautioned to avoid any action, however well-intentioned, that might jeopardize the job of the related applicant or employee. At the same time, in recognition of the fact that related employees (including husbands and wives

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who are both Agency employees) are a valuable resource in whom the Agency has invested much time, effort, and money, this policy does not prevent the assignment of related employees to the same field location. Such assignments must meet certain conditions as specified in this regulation.

c. DEFINITIONS

- (1) **PUBLIC OFFICIAL.** An officer, a member of the uniformed services, an employee, and any other individual in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the Agency.
- (2) **RELATIVE.** An individual who is related to the public official as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
- (3) **EMPLOYEE COUPLE.** As specifically used in this regulation—a husband and wife who are Agency employees and who have been, are, or expect to be assigned to the domestic or foreign field.
- (4) **CHAIN OF COMMAND.** The line of supervisory personnel that runs from a public official to the head of an agency.
- (5) **DOMESTIC OR FOREIGN FIELD.** As specifically used in this regulation—Agency installations, both domestic and foreign, outside the headquarters complex and its outlying buildings.

d. RESTRICTIONS

- (1) A public official may not advocate a relative for appointment, employment, promotion, or advancement in or to a civilian position in the Agency or over which the public official exercises jurisdiction or control in the Agency or in any other agency. A public official who recommends a relative or refers a relative for consideration for appointment, employment, promotion, or advancement by a public official standing lower in the chain of command is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.
- (2) A public official may not appoint, employ, promote, or advance in or to a civilian position in the Agency or over which the public official exercises jurisdiction or control in the Agency or in any other agency:
 - (a) Any relative.
 - (b) The relative of another public official of the first official's agency or of a public official who exercises jurisdiction or control over the first official's agency if that other public official has advocated the appointment, employment, promotion, or advancement of the relative.

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- (3) An individual appointed, employed, promoted, or advanced in violation of paragraph (1) or (2) above is not entitled to pay, and money may not be paid from the U.S. Treasury as pay to an individual so appointed, employed, promoted, or advanced.

e. ASSIGNMENT OF EMPLOYEE COUPLES AND OTHER RELATED INDIVIDUALS

- (1) An employee couple may be assigned to the same domestic or foreign field location if selection of the couple and approval of the assignment are made by an official or officials senior to both members of the employee couple. The official(s) approving the assignment will ensure that one member of the employee couple: is not the direct supervisor of the other member; is not in a position to write or review the other's Performance Appraisal Reports (PARs) or under any circumstances the PAR of the junior spouse's rating officer; or otherwise participate in any way in any evaluation of the other's performance; and cannot recommend the other member for promotion, within grade increase, or other benefit or favorable personnel action. The official(s) approving the assignment will also ensure there is effective management and supervision, including accountability to a higher level, of both employees.
- (2) If one member of an employee couple is a Chief of Station, Chief of Base, Chief of Facility (or equivalent), FBIS Bureau Chief, or FBIS Unit Chief, the employee couple may be assigned to the same domestic or foreign field location if the appropriate Head of Career Service, in consultation with the General Counsel and the Office of Equal Employment Opportunity, as appropriate, approves the assignments in advance. In considering whether to approve such assignments, the Head of Career Service shall ensure that the assignments would be in the best interests of the Agency and the field installation, would be in accordance with Agency policy concerning equal employment opportunity and affirmative action, and would not violate the Federal antinepotism statute (5 U.S.C. 3110) or this regulation. Among the factors to be considered in the approval process shall be:
- (a) The size of the field installation.
 - (b) Whether different directorate or mission support office tasking is available so that the PARs of the employee couple could be written by different directorates or mission support offices.
 - (c) Whether the assignments are necessary for operational reasons; for example, in denied areas to provide cover or operational assistance.
 - (d) Whether a chain of command could be established so that the spouse could work outside the field installation managed by the senior spouse.
 - (e) The past performance of the employees.
- (3) Heads of Career Services may institute specific safeguards regarding the assignment of employee couples, as warranted by particular circumstances within their Career Services, to avoid favoritism, nepotism, or other employment impropriety and to avoid the appearance of favoritism, nepotism, or other employment impropriety.

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- (4) If during the assignments circumstances change, then the Head of Career Service may revoke the assignments or institute specific safeguards to avoid favoritism, nepotism, or other employment impropriety and to avoid the appearance of favoritism, nepotism, or other employment impropriety.
 - (5) An employee couple may not be assigned to the same division or branch in the headquarters complex and its outlying buildings if their assignments would result in one member of the couple being able to advocate the appointment, employment, promotion, or advancement of the other.
 - (6) The provisions of paragraphs (1) through (5) above shall also apply to the assignment of other related individuals.
- f. EXCEPTIONS.** Relatives may be employed temporarily without regard to the above restrictions to meet needs resulting from an emergency posing an immediate threat to life or property. Employment under these conditions normally will not exceed one month but may be extended for a second month if the emergency need still exists.
- g. PENALTY**
- (1) The penalty for violating the restrictions of this regulation normally is loss of the improperly appointed, employed, promoted, or advanced employee's position and may include the recovery of improperly paid compensation from that employee. It shall also be incumbent upon senior Agency management to report such behavior to the Office of Inspector General.
 - (2) Agency officials who violate the restrictions of this regulation may be subject to appropriate disciplinary measures as set forth in HR 20-6.