

3 FAM 4320

DISCIPLINARY ACTION — COMMON PRACTICES

(TL:PER-486; 10-28-2003)
(Office of Origin: HR/ER/CSD)

3 FAM 4321 POLICY

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

Disciplinary procedures will be carried out in a fair, timely, and equitable manner.

3 FAM 4322 INVESTIGATION AND REPORTING OF INCIDENTS AND ALLEGATIONS

3 FAM 4322.1 Management Official

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

A supervisor or other management official who is aware of incidents or allegations that may serve as grounds for disciplinary action against an employee is responsible for taking action on, or reporting to the appropriate proposing official, such incidents, or allegations.

3 FAM 4322.2 Chiefs of Mission

(TL:PER-486; 10-28-2003)

(State Only)

(Applies to Foreign Service Only)

Incidents or allegations which could serve as grounds for disciplinary action and/or criminal prosecution against a chief of mission (or official in a position of comparable importance) will immediately be referred to the Office of Inspector General (OIG), or the Bureau of Diplomatic Security (DS), or comparable offices in other foreign affairs agencies. In exceptional circumstances, the Under Secretary for Management for State (Assistant Administrator for Management for USAID or other responsible official in other) may designate an individual or individuals to conduct the investigation.

3 FAM 4322.3 Administrative Inquiry

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. A management official who has personal knowledge or receives a report or allegation of conduct that could serve as grounds for disciplinary action and/or criminal prosecution must initially determine whether he, she, or another management official should be the investigating official, or whether the matter should be referred to the OIG, DS or comparable office in the other foreign affairs agencies for further action. If the management official determines that the observed or alleged misconduct is relatively minor, such as leave abuse or failure to perform assigned duties; that official, or another management official may handle the administrative inquiry. If, however, the matter is more complex or serious (such as possible abuse of official position, possible ethical violations, or possible criminal conduct), the management official should refer the matter to the OIG, DS or comparable office in the other foreign affairs agencies for further action. If a DOS management official has doubts about how to proceed, he or she should contact the Office of Employee Relations in the Bureau of Human Resources (HR/ER) or Labor and Employee Relations and Performance Management Division for USAID or comparable office in the other foreign affairs agencies.

b. The OIG may receive allegations that employee conduct is in violation of laws, rules, or regulations, or involves mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, and may conduct an administrative inquiry concerning the allegations. See 2 FAM 030 for reporting allegations to the OIG.

c. The Bureau of Diplomatic Security or comparable office of the other foreign affairs agencies may receive allegations that employee conduct raises suitability questions, involves unauthorized disclosure and compromise of classified and/or sensitive security information, or involves a violation of laws, rules or regulations within its jurisdiction, and may conduct an administrative inquiry concerning the allegations.

d. As a general rule, an investigating official should give the employee appropriate notice that an administrative inquiry has been opened, unless such notice might compromise the inquiry.

e. If an investigating official requests the employee to provide any personal information for inclusion in the report of administrative inquiry or other document containing the employee's name or other identifying factor (such as, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history), the Privacy Act of 1974 (5 U.S.C. 552a(e)(3)(A)-(D)) generally requires that the employee be informed in writing of:

- (1) The authority that authorizes the solicitation of the information;
- (2) Whether disclosure of such information is mandatory or voluntary;
- (3) The principal purpose or purposes for which the information is intended to be used;
- (4) The routine uses which may be made of the information; and
- (5) The effects on him or her, if any, of not providing all or any part of the requested information.

NOTE: The OIG and/or DS, or comparable offices in the other Foreign Affairs Agencies may claim exemption from certain requirements of the Privacy Act for certain of their records under 22 CFR 171.32 to protect properly classified information and to assure the effective completion of the investigative and judicial process.

f. Questions about application of the Privacy Act should be directed to the Office of the Assistant Legal Adviser for Legislation and Management (L/LM) for State, Office of General Counsel (GC) for USAID or comparable office in the other foreign affairs agencies.

g. The investigating official should inform the employee of his or her right to have a representative present during all personal interviews conducted with him or her as part of an administrative inquiry and that he or she may authorize a representative to act on his or her behalf (see 3 FAM 4325).

h. If an employee who is to be personally interviewed is a member of a collective bargaining unit for which a union has exclusive representation rights, and the employee reasonably believes that the interview may result in disciplinary action against him or her, the investigating official shall give the employee the opportunity to be represented by the exclusive representative if the employee so requests. This right is known as the Weingarten right. When an employee invokes the Weingarten right, the investigating official will allow a reasonable period of time for a union representative to attend the interview.

i. If an employee is interviewed concerning matters for which he or she could be criminally prosecuted, the investigating official will inform the employee of the employee's rights under Federal law.

3 FAM 4323 EXCLUSION FROM PREMISES/CURTAILMENT

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. At any time during the course of an administrative inquiry or disciplinary action, a management official may decide to exclude the employee from all or a part of the official premises based on a reasonable belief that the employee's continued presence in the workplace may pose a threat to the employee or to others, result in loss of or damage to U. S. Government property, or otherwise jeopardize legitimate U. S. Government interests.

b. Except as provided in 3 FAM 4360, if an employee is excluded from all or part of the official premises, he or she will be removed from duty status and placed on non-duty status with pay or (or if he or she requests, annual or sick leave for which he or she qualifies) unless the agency chooses to assign the employee work in an appropriate restricted work location, either in the employee's regular position or by assignment or detail to other duties.

c. An employee who is excluded from all or part of the workplace, removed from duty status, placed on non-duty status with pay, and/or assigned to work in a restricted work location, will be so notified in writing. When any of these actions is taken, the agency will proceed with the processing of disciplinary action on an expedited basis.

d. At any time during processing under 3 FAM 4300, an employee's assignment may be curtailed in accordance with 3 FAM 2440. Involuntary curtailment is not a disciplinary action, and shall not be substituted for disciplinary action.

3 FAM 4324 ACTION AFTER ADMINISTRATIVE INQUIRY

3 FAM 4324.1 Administrative Inquiry Conducted by Management Official

3 FAM 4324.1-1 Options

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

After an administrative inquiry conducted by a management official, that official or another appropriate management official shall carefully consider the evidence, including any mitigating factors, and decide whether to:

- (1) Close the case;
- (2) Admonish the employee; and/or
- (3) Recommend to the appropriate personnel official that disciplinary action be taken.

3 FAM 4324.1-2 Case Closure

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

a. If the management official decides to close the case, he or she will retain the documents relating to the administrative inquiry under appropriate safeguards for one year, and then will destroy them.

b. If the employee has been notified that an administrative inquiry has been opened, the management official will notify the employee of the decision to close the case in a timely manner.

3 FAM 4324.1-3 Decision to Admonish

(TL:PER-486; 10-28-2003)
(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)
(Applies to Foreign Service Only)

If the management official decides to admonish the employee, he or she shall maintain all documents relating to such action as provided in 3 FAM 4332.

3 FAM 4324.1-4 Recommendation for Disciplinary Action

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. If the management official recommends disciplinary action, the management official will prepare a report of the administrative inquiry which includes:

- (1) Details of the administrative inquiry;
- (2) Relevant documents; and
- (3) The reasons for deciding to recommend disciplinary action.

b. The management official shall transmit the report of the administrative inquiry to the appropriate proposing official as described in 3 FAM 4341, 3 FAM 4351, or 3 FAM 4363. If the management official's duty station is outside of the United States, he or she shall transmit a summary of the administrative inquiry and recommendation by an appropriate restricted personnel telegraphic channel and shall pouch the full report and supporting documents to the proposing official.

3 FAM 4324.2 Administrative Inquiry by OIG or Bureau of Diplomatic Security

3 FAM 4324.2-1 Options

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

The OIG, DS or comparable offices in the other foreign affairs agencies may recommend that appropriate administrative action be taken against an employee, based on an administrative inquiry.

3 FAM 4324.2-2 Transmission of Report of Investigation

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

When recommending appropriate administrative action against an employee based on an administrative inquiry, the OIG, DS, or comparable office in the other foreign affairs agencies should forward the report of investigation as follows:

| Agency | Forward to |
|-------------|---|
| State | Director General of the Foreign Service |
| USAID | Director, Office of Human Resources (M/HR/OD) or Inspector General (for OIG employees) |
| BBG | Director of Personnel M/P |
| Agriculture | Foreign Agriculture Service, Compliance Review Staff APHIS, Deputy Administrator, International Services |
| Commerce | Director General or equivalent official or designee |

3 FAM 4324.3 Action by Proposing Official

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. Before proposing disciplinary action, the proposing official will review prior similar cases within the agency, in order to foster equity and consistency in the imposition of discipline.

b. In addition, the proposing official should consult the table of offenses and penalties in 3 FAM 4376.

3 FAM 4324.4 Report of Administrative Inquiry or Investigation Not Kept in Performance File

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

All documents related to an administrative inquiry shall be kept separate from the employee's Official Performance File (OPF), except for the placement of a decision letter in the OPF, as provided in 3 FAM 4345, paragraph c; 3 FAM 4355, paragraph c; or 3 FAM 4368, paragraph d; or any notation made under 3 FAM 4326, paragraph c.

3 FAM 4325 REPRESENTATION

3 FAM 4325.1 Employees in a Recognized Bargaining Unit

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. An employee who is a member of a collective bargaining unit for which a union has exclusive representation rights may request representation by the exclusive representative during any administrative inquiry which the employee reasonably believes may result in disciplinary action and in subsequent processing under 3 FAM 4300. In such cases, the exclusive representative will be given a reasonable opportunity to attend any interview with the employee.

b. Subject to 3 FAM 4325.3, a bargaining unit employee may also be represented by an attorney or any other representative of his or her own choosing.

3 FAM 4325.2 Employees not in a Bargaining Unit

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

Subject to 3 FAM 4325.3, an employee who is not in a collective bargaining unit for which a union has exclusive representation rights is entitled to be represented by an attorney or other representative of his or her choosing during any administrative inquiry which may result in disciplinary action and in subsequent processing under 3 FAM 4300.

3 FAM 4325.3 Restrictions on Representatives

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. The agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position, or an employee of the agency whose release from his or her official position would give rise to unreasonable costs or whose priority work assignments preclude his or her release.

b. Any representative who has not received an appropriate security clearance may not receive classified information or be present when classified information is presented or heard, at any stage of disciplinary proceedings. The agency will use its best endeavors to expedite the processing of a security clearance for a representative when necessary to ensure a fair hearing on a proposal for disciplinary action.

c. If a representative is disallowed or denied a necessary security clearance, the agency shall notify the employee in writing, and provide the employee reasonable time to secure another representative. In the case of disallowance, the written notice shall fully state the reason for disallowance.

3 FAM 4326 RESIGNATION OR RETIREMENT

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. An employee may submit his or her resignation or submit an application for retirement while a disciplinary action is being processed under 3 FAM 4300. Prior to the effective date of any resignation or retirement, the agency will notify the employee of any notation required under 3 FAM 4326, paragraph c.

b. The agency may decide whether to approve a retirement applied for under 3 FAM 4326, paragraph a.

c. If the employee resigns or retires after receiving notice that disciplinary action has been proposed or decided, the Form, SF-50 *Notification of Personnel Action* (DOS, BBG, Agriculture, Commerce, and USAID) shall contain a notation to that effect. The deciding official, or in a separation for cause case, the proposing official, may waive this requirement upon request of the employee, or pursuant to a settlement agreement between the agency and the employee.

3 FAM 4327 DEATH OR DISABILITY OF EMPLOYEE

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

If an employee dies or is separated for disability before a decision on a proposed disciplinary action is effected, the agency shall cancel such proposed action.

3 FAM 4328 GRIEVANCE AND OTHER RIGHTS

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. Nothing in 3 FAM 4300 precludes an employee from exercising any right provided by statute or regulation.

b. An employee may grieve a disciplinary action and may request the suspension of any disciplinary action while a grievance brought pursuant to Chapter 11 of the Act and 3 FAM 4400, is pending. The Foreign Service Grievance Board's final decision will be binding, except for any right to judicial review provided by law.

c. An employee aggrieved by a final decision of the Board may obtain judicial review thereof under Section 1110 of the Act.

3 FAM 4329 LIMITATIONS ON USE OF DISCIPLINARY ACTION

(TL:PER-486; 10-28-2003)

(Uniform State/USAID/BBG/Foreign Service Corps, USDA/Commerce)

(Applies to Foreign Service Only)

a. Policy differences voiced through the Dissent Channel (see section 105(b)(3) of the Act and 2 FAM 041), are not grounds for disciplinary action, for curtailment of a tour of duty under 3 FAM 2440, or for a decision to exclude an employee from all or part of the official premises under 3 FAM 4323.

b. Whistleblower protections extend to any employee who makes disclosures protected of what he or she reasonably believes to be a violation of any law, rule, or regulation; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety. A disciplinary action or other personnel action intended to punish an employee for whistleblowing may be investigated by the OIG or the Office of Special Counsel as a reprisal, a prohibited personnel practice under 5 U.S.C. 2302(b)(8)(A) and (B). A supervisor or other employee who is found to have committed a reprisal is subject to serious sanctions, including, but not limited to, removal, reduction in grade, and debarment from Federal employment.