



[Billing code: 4710-15]

DEPARTMENT OF STATE

22 CFR Part 11

[Public Notice: 9324]

RIN 1400-AD59

Appointment of Foreign Service Officers

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State amends provisions in the Code of Federal Regulations related to the appointment of Foreign Service Officers. The revised rules will be substantially the same as, and will supplement, Department of State guidance currently in the Foreign Affairs Manual, which is also available to the public.

DATES: This rule will be effective on [*insert date 30 days from publication in the Federal Register*].

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Office of the Legal Adviser, who may be reached at (202) 647-2318.

SUPPLEMENTARY INFORMATION: Pursuant to Section 206 of the Foreign Service Act of 1980 (the Act), codified at 22 U.S.C. 3926, the

Secretary of State may prescribe regulations to carry out functions under the Act. The Secretary has done so in the Department's Foreign Affairs Manual (FAM).

The FAM is the formal written document for recording, maintaining, and issuing Department directives, which are written communications establishing and prescribing the organizations, policies, or procedures that provide an official basis of Department operation.

The Foreign Service includes personnel not only from the Department, but U.S. Agency for International Development, and certain offices within the Departments of Commerce and Agriculture, among others. FSOs may be recruited both from current federal personnel (for example, from the civil service) and from the general public. Recruitment from current federal service is covered by the FAM.

The procedures relating to recruitment of FSOs from the general public are covered by rules published in the CFR, in part 11. However, since many of the policies and procedures dealing with the latter appointments are the same as those used to appoint current federal personnel to the Foreign Service, the provisions of part 11 and the FAM must be consistent. Therefore, where part 11 uses the same procedures as the FAM, it refers to the relevant FAM provisions.

Other than a minor amendment in 2002 (*see* 67 FR 46108), part 11 has remained as it was drafted 31 years ago; whereas, the relevant provisions of the FAM were updated in 2013. This rulemaking harmonizes the two authorities. The Department believes that a revised part 11, together with the FAM, provide comprehensive guidance for both internal stakeholders and interested members of the general public on the appointment of Foreign Service Officers.

The Department's revision of part 11 is part of its Retrospective Review conducted pursuant to Executive Order 13563.

Regulatory Findings

Administrative Procedure Act

The revision to part 11 of 22 CFR relates to the Department's organization, procedure, or practice and is not subject to the notice-and-comment procedures of 5 U.S.C. 553(b).

Regulatory Flexibility Act/Executive Order 13272: Small Business

The Department certifies that this rulemaking is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 13272, section 3(b).

The Congressional Review Act

This rulemaking is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking.

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing or adopting any rule that may result in an annual expenditure of \$100 million or more by state, local, or tribal governments, or by the private sector. This rulemaking will not result in any such expenditure nor will it significantly or uniquely affect small governments.

Executive Orders 12372 and 13132: Federalism

This rulemaking will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Orders 12866 and 13563: Regulatory Review

Although the Department of State is generally exempt from the provisions of Executive Order 12866, it has reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in these Executive Orders, and has determined that the benefits of this

rulemaking justify any costs. The Department cannot identify any cost to the public associated with this rulemaking. The Department does not consider this rulemaking to be a significant regulatory action within the scope of section 3 of Executive Order 12866. The Department considers this rule to be part of its Retrospective Review conducted pursuant to Executive Order 13563.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

The Paperwork Reduction Act of 1995

The Department of State has determined that this rulemaking does not affect any existing collection of information under the Paperwork Reduction

Act, nor does it create new information collections. The Department invites public comment on whether the Foreign Service Office Test Registration (OMB Control Number 1405-0008) burden estimates should be modified as a result of the notification requirements in Section 11.20(d)(2)(i)(B).

List of Subjects in 22 CFR Part 11

Foreign service, Foreign officials, Government employees.

Accordingly, revise 22 CFR part 11 to read as follows:

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

Sec.

- 11.10 Links to relevant provisions of the Foreign Affairs Manual.
- 11.20 Entry-level Foreign Service Officer career candidate appointments.
- 11.30 Mid-level Foreign Service Officer career candidate appointments.
- [Reserved]
- 11.40 Senior Foreign Service Officer career candidate appointments.
- [Reserved]
- 11.50 Foreign Service specialist career candidate appointments.
- 11.60 Limited non-career appointments.

AUTHORITY: 22 U.S.C. 2651a, 3926, 3941.

§11.10 Links to relevant provisions of the Foreign Affairs Manual.

(a) The Foreign Affairs Manual (FAM) is the formal written document for recording, maintaining, and issuing Department of State (Department) directives that address personnel and other matters. It is the primary authority for appointment of current Department employees to the Foreign Service. This part is the primary authority for the appointment of

non-employees to the Foreign Service. The FAM provides Department procedures and policies that are not repeated in this part. It is an important resource for understanding the provisions of this part.

(b) The two FAM volumes relevant to this part are Volume 3, Personnel, and Volume 16, Medical. FAM provisions are cited by volume followed by chapter or subchapter – for example, Chapter 210 of Volume 16 would be cited 16 FAM 210. All of the relevant FAM provisions are on the Department’s public website. The links for the relevant FAM provisions are as follows:

<p>3 FAM 2215 3 FAM 2216.2 3 FAM 2216.3 3 FAM 2217 3 FAM 2218</p>	<p>http://www.state.gov/documents/organization/84854.pdf</p>
<p>3 FAM 2245</p>	<p>http://www.state.gov/documents/organization/84851.pdf</p>
<p>3 FAM 2250 3 FAM 2251.3</p>	<p>http://www.state.gov/documents/organization/84850.pdf</p>
<p>3 FAM 2290</p>	<p>http://www.state.gov/documents/organization/84846.pdf</p>
<p>16 FAM 210</p>	<p>http://www.state.gov/documents/organization/89692.pdf</p>

§11.20 Entry-level Foreign Service Officer career candidate appointments.

(a) *General considerations*—(1) *Authority*. Pursuant to section 302 of the Foreign Service Act of 1980 (hereinafter referred to as “the Act”), all Foreign Service Officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service Officer unless that person is a citizen of the United States, is twenty-one, and is world-wide available. Pursuant to section 306 of the Act, such appointment is initially a career-candidate appointment. The tenuring of Foreign Service Officer career candidates is governed by the provisions of 3 FAM 2245.

(2) *Veterans' preference*. Pursuant to section 301 of the Act, the fact that an applicant for appointment as a Foreign Service Officer candidate is a veteran or disabled veteran, as defined in 5 U.S.C. 2108, must be considered as an affirmative factor in making such appointments.

(3) *Policy*. Appointment as an Entry Level Foreign Service Officer career candidate of class 6, 5, or 4 is governed by these regulations. Successful applicants will be appointed as career candidates for a period not to exceed 5 years. Under precepts of the Commissioning and Tenure Board,

career candidates may be granted tenure and recommended for appointment as career Foreign Service Officers. Those who are not granted tenure prior to the expiration of their career-candidate appointments will be separated from the Foreign Service. Separated candidates who originally were employees of an agency and who accepted a limited appointment to the Foreign Service with the consent of the head of the agency in which they were employed will be entitled to reemployment rights in their former agency in accordance with section 310 of the Act.

(b) *The Foreign Service Officer Test (FSOT)*. The following regulations apply to the FSOT:

(1) *Purpose*. The FSOT is designed to enable the Board of Examiners for the Foreign Service to test the applicant's knowledge, skills, and abilities, including writing skills that are necessary to the work of a Foreign Service Officer.

(2) *Eligibility*. Before each FSOT, the Board of Examiners will establish a closing date for the receipt of applications for designation to take the test. No person will be designated to take the test who has not, as of that closing date, filed a complete application with the Board. To be designated to take the FSOT, an applicant, as of the date of the test, must be a citizen of the United States and at least 20 years of age.

(3) *When and where given.* The FSOT will be given periodically, in designated cities in the United States and at selected locales abroad, on dates established by the Board of Examiners and publicly announced on careers.state.gov.

(4) *Scoring.* The several parts of the FSOT will be weighted and graded according to standards established by the Board of Examiners. The Board of Examiners may adjust the passing score of the FSOT to reflect the projected hiring needs of the Foreign Service.

(c) *Qualifications Evaluation Panel (QEP).* The following regulations apply to the QEP:

(1) *Purpose.* Each QEP is designed to enable the Board of Examiners for the Foreign Service to review each candidate's file and evaluate it against established precepts of successful Foreign Service Officer performance. The QEPs rank order candidates within each career track.

(2) *Panels.* QEPs are career track specific and are staffed by panelists approved by the Board of Examiners from a roster of qualified active duty and retired Foreign Service Officers. At least one of the panelists will be from the same career track as those in the candidate pool.

(3) *Eligibility.* Candidates whose score on the FSOT is at or above the passing level set by the Board of Examiners will be invited to submit their

responses to Personal Narrative Questions. The questions, linked to the Foreign Service performance precepts, are designed to elicit specific examples of past performance where the candidate demonstrated the requisite precept.

(4) *When administered.* The Board of Examiners holds one session of QEPs following each FSOT.

(5) *Scoring.* Panelists will score files according to standards established by the Board of Examiners. The candidacy of anyone whose score is at or above the passing level set by the Board of Examiners will continue. The candidacy of anyone whose score is below the passing level will be ended and may not be considered again until the candidate has passed a new FSOT, at minimum of a year later. The Board of Examiners sets the passing score for each QEP based on the projected hiring needs of the Foreign Service. All candidates exempt from the FSOT, except Mustang applicants, are also exempt from review by a QEP.

(i) The Board of Examiners may authorize QEPs to give special consideration in the selection of candidates to certain factors, e.g., demonstrating language ability, which the Board will publicly announce on careers.state.gov.

(ii) The Board of Examiners may choose to verify accounts given by candidates in their personal narratives.

(d) *Foreign Service Oral Assessment (FSOA)*. The following regulations apply to the FSOA:

(1) *Purpose*. The FSOA is designed to enable the Board of Examiners for the Foreign Service to test the candidate's ability to demonstrate the qualities or dimensions that are essential to the successful performance of Foreign Service work. The FSOA for the Entry Level Foreign Service Officer Career Candidate Program will consist of an assessment procedure publicly announced by the Board of Examiners on careers.state.gov. The process is generally referred to as the Foreign Service Oral Assessment or FSOA.

(2) *Eligibility*—(i) *Through the FSOT and QEP review*. (A) Candidates who pass the FSOT and whose score on the QEP review is at or above the passing level set by the Board of Examiners will be invited to take the FSOA.

(B) Candidates must schedule the FSOA within 12 months of receiving their invitation to take the FSOA unless they receive an extension of time. Candidates may request an extension of up to an additional 12 months. Active duty military have unrestricted time to take an FSOA if they notify

the Board of Examiners of their active duty status. Failure to take the FSOA within 12 months of the invitation will result in the cancellation of the candidacy, unless the candidate has requested and obtained an extension of eligibility. The candidacy of anyone for whom the scheduling period is extended by the Board due to being outside of the United States will automatically be terminated if the candidate fails to notify his or her registrar of the change in status within three months of returning to the United States. The candidate must schedule an FSOA, but if a candidate fails to appear for a scheduled FSOA, the candidacy is automatically terminated. The Director of the Office of Recruitment, Examination, and Employment in the Bureau of Human Resources, or his/her designee, will consider requests to reschedule on a case-by-case basis if a candidate so requests prior to his/her scheduled FSOA.

(ii) *Through the Mustang Program.* Career employees of the Department of State in classes FS-6 and above or grades GS-5 and above who are at least 21 years of age and who have at least three years of service with the Department may be selected by the Board of Examiners for admission to the FSOA for Entry Level Career Candidates under the Department's Mustang Program. Mustang candidates must meet all program requirements and submit all application material to be considered for the

Mustang Program. See the procedures set forth in 3 FAM 2216.2-4 (Foreign Service Officer Oral Assessment (FSOA)).

(iii) *Through a mid-level conversion program.* Employees of the Department of State in grade GS-13 and above are eligible to apply to enter the Foreign Service through a mid-level conversion program (see 3 FAM 2216.3-2) whenever held.

(iv) *Through other programs.* (A) Under programs established pursuant to section 105(d)(1) of the Act, which addresses diversity within the Foreign Service.

(B) Under any other special entry programs created by the Department to meet specific needs of the Foreign Service.

(3) *When and where given.* The FSOA will be held intermittently in Washington, DC, and may be held in selected cities in the United States or abroad as necessary, as publicly announced.

(4) *Assessment panel.* (i) The FSOA will be given by a panel of assessors approved by the Board of Examiners from a roster of active duty and/or retired Foreign Service Officers.

(ii) Service as an assessor shall be limited to a maximum of 5 years, unless a further period is specifically authorized by the Board. Normally assessment panels shall be chaired by a career officer of the Foreign Service,

trained in personnel testing and evaluation. Determinations of duly constituted panels of assessors are final unless modified by specific action of the Board of Examiners.

(5) *Scoring.* Candidates taking the FSOA will be scored numerically according to standards established and publicly announced by the Board of Examiners, in places such as careers.state.gov. The candidacy of anyone whose score is at or above the passing level set by the Board will be continued. The candidacy of anyone whose score is below the passing level will be terminated.

(e) *Background investigation.* Candidates who pass the FSOA and elect to continue the hiring process will be subject to a background investigation. The background investigation must be conducted to determine the candidate's eligibility for a security clearance and serves as the basis for determining suitability for appointment to the Foreign Service (see 3 FAM 2212.1 (Security Investigation)).

(f) *Medical examination—(1) Eligibility.* Candidates who pass the oral assessment and elect to continue the hiring process must undergo a medical examination. See the procedures in of 16 FAM 210 (Medical Clearances).

(2) [Reserved]

(g) *Suitability Review Panel*. Generally after the medical clearance has been issued and the background investigation is received, the candidate's entire file (excluding any medical records) is reviewed and evaluated by the Suitability Review Panel to determine the candidate's suitability for the Foreign Service. See the procedures in 3 FAM 2215 (Suitability Review). The candidacy of any candidate who is determined by the Suitability Review Panel to be unsuitable for appointment shall be terminated and the candidate so informed. According to procedures established by the Board of Examiners, a candidate may appeal this decision to the Board of Examiners Staff Director or designee whose decision will be final. The Bureau of Diplomatic Security (DS) will re-submit applicants to the Suitability Review Panel if they are found to have falsified information in the application process or are found to have disqualifying factors.

(h) *Certification for appointment*—(1) *Eligibility*. (i) A candidate will not be certified as eligible for appointment as a Foreign Service Officer Career Candidate unless that candidate is at least 21 years of age and a citizen of the United States.

(ii) Except for preference eligible individuals, career candidate appointments must be made before the candidate's 60th birthday. Preference eligible individuals must be appointed before their 65th birthday. The

maximum age for appointment under this program is based on the requirement that all career candidates must be able to:

(A) Complete at least two full tours of duty, exclusive of orientation and training;

(B) Complete the requisite eligibility period for tenure consideration; and

(C) Complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(iii) A candidate may be certified as eligible for direct appointment to classes FS-6, FS-5 or FS-4 based on established, publicly available, criteria.

(iv) Employees who receive a career candidate appointment, i.e., who are untenured, have five years to obtain tenure. These career-candidate appointments, including the appointment of an individual who is the employee of any agency, may not exceed five years in duration, and may not be renewed or be extended beyond five years. A candidate denied tenure under 3 FAM 2250 may not be reappointed as a career candidate to become a generalist.

(2) *Career-track rank-order registers.* The Board of Examiners maintains separate rank-order registers for career candidates in

administrative, consular, economic, public diplomacy and political career tracks within the Department of State. Appointments from each career-track register will be made in rank order according to hiring needs.

(3) *Special programs.* Mustang candidates who are career employees of the Department of State and who have satisfactorily completed all aspects of the assessment process will be certified by the Board of Examiners for placement on the Hiring Register to compete for a hiring opportunity as a Foreign Service Officer. Mustang candidates who have previously passed the FSOT/QEP will continue in the career track they selected when registering for the FSOT and be placed on the appropriate career track register.

(4) *Foreign language requirement.* A candidate may be certified for appointment to classes FS-6, FS-5, or FS-4 without first having passed an examination in a foreign language, but the appointment will be subject to the condition that the newly appointed career candidate may not be appointed as a career Foreign Service Officer unless, within a specified period of time, proficiency in a foreign language is achieved.

(i) *Termination of eligibility—(1) Time limit.* Candidates who have qualified but have not been appointed because of lack of openings will be removed from the rank-order register 18 months after the date of placement

on the rank-order register. Time spent in civilian Federal Government service abroad (to a maximum of 2 years of such service), including Peace Corps volunteer service, spouses of Foreign Service officers, or in active regular or reserve military service (no maximum), will not be counted as part of the 18-month eligibility period.

(2) *Extension.* The Board of Examiners may extend the eligibility period when such extension is, in its discretion, justified by the needs of the Foreign Service.

(3) *Postponement of entrance on duty.* Postponement of entrance on duty because of civilian Federal Government service abroad (to a maximum of 2 years of such service), including Peace Corps volunteer service, or as spouse of a Foreign Service Officer, or active regular or reserve military service (to a maximum of the limit of such required service), may be authorized by the Board.

(j) *Travel expenses.* The travel and other personal expenses of candidates incurred in connection with the written and oral examination will not be borne by the Government. However, the participating foreign affairs departments may issue round-trip invitational travel orders to bring candidates to Washington, DC, at government expense, when it is

determined by the agencies that this is necessary in the interest of the Foreign Service.

§11.30 Mid-level Foreign Service Officer career candidate appointments. [Reserved]

§11.40 Senior Foreign Service Officer career candidate appointments. [Reserved]

§11.50 Foreign Service specialist career candidate appointments.

(a) *General considerations.* (1) Pursuant to section 303 of the Act, the Secretary may appoint individuals to the Foreign Service (other than those who are in the personnel categories specified in section 302(a) of the Act). Pursuant to section 306 of the Act, such appointment is initially a career candidate appointment. Section 303 governs the appointment by the Department of State of Foreign Service specialist career candidates to classes FS-1 and all classes below. Specialist candidates comprise all candidates for career appointment in all career tracks other than generalist career tracks (i.e., management, consular, economic, political, and public diplomacy). The tenuring of specialist career candidates is governed by the procedures in 3 FAM 2250.

(2) Veterans' preference shall apply to the selection and appointment of Foreign Service specialist career candidates. Veterans' preference is an

affirmative factor once the candidate has been qualified for the position. As soon as veterans go on the Hiring Register, they may apply for additional points to increase their rank order standing.

(b) *Specialist career candidate appointments--(1) Certification of need.*

(i) Candidates for appointment as specialist career candidates must be world-wide available and must have a professional or a functional skill for which there is a continuing need in the Foreign Service. No applicant shall be appointed for which there is no certified need established at a specific class level. Either the Director General may determine in advance which specialties are routinely or frequently in shortage or need periodic recruitment through publicly posted vacancy announcements, or the Director General may certify that there is a need for an applicant in a specific specialist category and at a specific class.

(ii) Candidates who receive a career candidate appointment, i.e., who are untenured, have four years with the possibility of five years (see 3 FAM 2251.3) to obtain tenure. These appointments, including the appointment of an individual who is the employee of any agency, may not exceed five years in duration, and may not be renewed or be extended beyond five years. A specialist candidate denied tenure under 3 FAM 2250 generally may not be reappointed as a career candidate in the same career track.

(2) *Eligibility.* An applicant must be a citizen of the United States and at least 20 years of age. The minimum age for appointment as a career candidate is 21. Except for preference eligible candidates, all career candidate appointments shall be made before the candidate's 60th birthday. Preference eligible candidates may be appointed up to their 65th birthday. The maximum age for appointment under the program is based on the requirement that all career candidates shall be able to:

(i) Complete at least two full tours of duty, exclusive of orientation and training,

(ii) Complete the requisite eligibility period for tenure consideration, and

(iii) Complete the requisite eligibility period to receive retirement benefits, prior to reaching the mandatory retirement age of 65 prescribed by the Act.

(3) *Screening.* (i) Specialist career candidates will be screened initially on the basis of education and experience.

(ii) Based on a job analysis, the Board of Examiners, in coordination with any bureau responsible for the specialty, will establish the knowledge, skills, and abilities required to perform successfully the tasks and duties of Foreign Service specialists in that functional field. Assessors working for

the Board of Examiners will screen applications under those approved criteria and select those who meet the requirements to invite to an oral assessment.

(4) *Oral assessment.* Candidates are selected through the initial screening process. The oral assessment will be given by a panel of assessors, at least one of whom will be a career Foreign Service employee proficient in the functional field for which the candidate is being tested. The assessment may include a writing sample. Candidates taking the oral assessment will be scored numerically according to standards set by the Board of Examiners. The candidacy of anyone whose score is at or above the passing level set by the Board will be continued. The candidacy of anyone whose score is below the passing level will be terminated. The candidate may only reapply after the first anniversary date of the original application.

(5) *Background investigation.* Specialist candidates who pass the oral assessment and elect to continue the hiring process will be subject to a background investigation. The background investigation must be conducted to determine the candidate's eligibility for a security clearance and serves as the basis for determining suitability for appointment to the Foreign Service (see 3 FAM 2212.1-1 (Security Investigation)).

(6) *Medical examination.* Candidates who pass the oral assessment and elect to continue the hiring process must undergo a medical examination. See the procedures in 16 FAM 210 (Medical Clearances).

(7) *Suitability Review Panel.* After the medical examination clearance has been issued and the background investigation is received, the candidate's entire file (excluding any medical records) is reviewed and evaluated by a Suitability Review Panel to determine the candidate's suitability for the Foreign Service. See the procedures in 3 FAM 2215 (Suitability Review). According to procedures established by the Board of Examiners, a candidate may appeal this decision to the Board of Examiners Staff Director or designee, whose decision will be final. DS will re-submit applicants to the Suitability Review Panel if they are found to have falsified information on their application or are found to have disqualifying factors.

§ 11.60 Limited non-career appointments.

Consistent with section 303 of the Act (22 U.S.C. 3943), the Secretary of State may also appoint Civil Service employees and other individuals to the Foreign Service, and, consistent with section 309 of the Act (22 U.S.C. 3949), such appointments may include limited non-career appointments (LNAs). After meeting the job specific requirements, candidates must meet

applicable medical, security, and suitability requirements. Limited non-career appointments are covered under 3 FAM 2290.

Dated: September 11, 2015.

Arnold A. Chacon,
Director General of the Foreign
Service and Director of Human
Resources.

[FR Doc. 2015-27026 Filed:
10/22/2015 08:45 am;
Publication Date: 10/23/2015]