3 FAM 4130 STANDARDS FOR APPOINTMENT AND CONTINUED EMPLOYMENT

(TL:PER-477; 08-08-2003)
(Office of Origin: DIR)

3 FAM 4131 Applicability

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)
This regulation applies to applicants for employment in and to employees of the Foreign Service.

3 FAM 4132 PURPOSE

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

a. This regulation provides guidelines for:

—Deciding on an applicant's suitability for appointment in the Foreign Service;

—Taking disciplinary action on an employee; and

—Deciding on an employee's continued employment in the Foreign Service.

b. The key provisions of this regulation include:

(1) The general considerations of the connection between:

—Conduct respecting effective performance in the position applied for or in which employed;

—Efficiency of the Service; and

—The national security or foreign relations of the United States (see section 3 FAM 4135);

(2) An illustrative list of the kinds of conduct which could be grounds for disciplinary action or separation for cause (see section 3 FAM 4137) or disqualification of an applicant for employment;

(3) Factors that could be mitigating or aggravating conditions in judging the seriousness of an offense and in determining the action to be taken based on the offense (see section 3 FAM 4136); and

(4) An explanation of certain kinds of conduct (see section 3 FAM 4138).

3 FAM 4133 AUTHORITY

3 FAM 4133.1 General

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

—5 U.S.C. 301

—22 U.S.C. 2651a and 3905

3 FAM 4133.2 USAID

(TL:PER-303; 11-8-95)
(USAID Only)
(Applies to Foreign Service Employees)

Department of State Delegation of Authority No. 104, as amended, and 22 U.S.C. 2381(a) authorize the Administrator to exercise the authorities described in section 3 FAM 4133.1.

3 FAM 4133.3 USIA

(TL:PER-303; 11-8-95)
(USIA Only)
(Applies to Foreign Service Employees)

5 U.S.C. 302, Reorganization Plan 8 of 1953, and Public Law 90-494 empower the Director to exercise the authorities described in section 3 FAM 4133.1.

3 FAM 4134 SUITABILITY FOR CONTINUED EMPLOYMENT

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA/Commerce/Foreign Service Corps-USDA)
(Applies to Foreign Service and Civil Service Employees)

Foreign Service employees of the agencies (except for Foreign Service national employees and non-U.S. citizen consular agents) also should be aware of and familiar with the contents of 3 FAM 4130, Suitability Guidelines for Appointment and Continued Employment. Civil Service employees of the agencies who are or are being assigned or detailed overseas should also be aware of and familiar with the contents of 5 CFR part 731.

3 FAM 4135 ACTION AGAINST APPLICANTS OR EMPLOYEES

3 FAM 4135.1 Applicant

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The agencies may disqualify an applicant for any of the reasons in section 3 FAM 4138.

3 FAM 4135.2 Employees

(TL:PER-477; 08-08-2003)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

a. The agencies may discipline or separate an employee when such action will promote the efficiency of the Service for any of the reasons stated in section 4138 or as provided in:

State	3 FAM 4100
USAID	Handbook 30, chapters 5 or 6
USIA	MOA V-B 770, MOA V-B 560A (Exhibit)

b. In making determinations under this paragraph, the agencies shall consider, among other factors, those enumerated in section 3 FAM 4137.

3 FAM 4136 GENERAL CONSIDERATIONS

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

In making suitability determinations, agencies will give primary consideration to determining whether the conduct of the individual may reasonably be expected to:

—Interfere with or prevent effective performance in the position applied for or employed in;

—Interfere with or prevent effective performance by the agencies of their duties and responsibilities; or

—Affect adversely the national security or foreign relations of the United States.

3 FAM 4137 EVALUATION FACTORS TO CONSIDER

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

When evaluating suitability agencies should consider:

(1) Whether the individual's conduct is such that it can reasonably be expected to interfere with or prevent effective performance in the position employed in or being considered for;

(2) Whether the individual's conduct is such that it can reasonably be expected to interfere with effectively carrying out the policies and programs of the U.S. Government, including the responsibility to present a favorable impression abroad of the United States;

(3) Whether the individual's conduct is such that it can reasonably be expected to affect so adversely other employees as to prevent the efficient performance of their duties and responsibilities;

(4) The notoriety of the individual's conduct;

(5) The conditions of service applicable to an employee and the position, function or service in which an individual may serve or is serving, including its representational nature;

(6) The sensitivity of the position and the security clearance required;

(7) The nature, seriousness, frequency, and recency of the conduct and the age of the individual at the time of the conduct;

(8) Contributing social or environmental conditions, including the voluntariness of the individual's conduct;

(9) The absence, presence, or sufficiency of rehabilitation or efforts toward rehabilitation. The individual's voluntariness and candor in discussing a matter of proper concern with appropriate authorities shall be considered in evaluating the sincerity of the individual's efforts toward rehabilitation. For details of the agencies' rehabilitation policies concerning alcohol and drug abuse, see 3 FAM 1900;

(10) Whether the conduct occurred abroad or in the United States, at a post of assignment or in a third country, and during working hours or while off-duty; and

(11) Any other relevant circumstances pertaining to the conduct or any other relevant consideration which the employee or the agency may wish to offer.

3 FAM 4138 STANDARDS OF CONDUCT

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

To maintain the efficiency of the Service, the following, while not all inclusive, may constitute grounds for taking disciplinary or separation action against an employee, or disqualifying an applicant after due consideration of the factors in section 3 FAM 4137:

(1) Misconduct of applicants in prior employment;

(2) Misconduct, either in itself or as a result of attendant circumstances, impeding or preventing the performance of duties, or conduct contrary to the customs, mores, or laws of the local community, as communicated to employees by the agency or post in writing to the extent practicable;

(3) Criminal, dishonest, or disgraceful conduct (see section 3 FAM 4139.14);

(4) An intentional and material false statement, deception, or fraud in the examination or appointment process in response to a proper inquiry;

(5) Refusal to furnish testimony or information to proper authority in response to specific and relevant inquiry concerning the individual's job performance, conduct, or such other matters as:

(a) Qualifications for the position, function, or service under consideration or held, or

(b) Qualification for a security clearance;

(6) Repeated or habitual use to excess of intoxicating beverages affecting the ability to perform the duties and responsibilities of the employee's position (see section 4102.10, Explanation of Certain Issues);

(7) Trafficking in or abuse of narcotics, drugs, or any substance listed under the Controlled Substance Act (21 U.S.C. 812); and/or trafficking in or abuse of narcotics, drugs, or other controlled substance in violation of the law of the country or jurisdiction in which the individual was or is located at the time of the offense (see section 3 FAM 4139.6);

(8) Reasonable doubt as to the loyalty to the U.S. Government of the individual involved;

(9) Conduct which furnishes substantial reason to believe that the individual may be or is being subject to coercion, improper influence, or pressure which is reasonably likely to cause the individual to act contrary to the national security or foreign relations of the United States;

(10) Conduct which, in the opinion of competent medical authority, is evidence of an unstable personality, impaired judgment, or emotional disorder, furnishing substantial reason to believe that the individual is unsuited for the Service or the position for which the individual is applying or is unsuited for the Service or the position in which the individual is serving; or

(11) Conduct which clearly shows poor judgment or lack of discretion which may reasonably affect an individual or the agency's ability to carry out its responsibilities or mission.

3 FAM 4139 EXPLANATION OF CERTAIN ISSUES

3 FAM 4139.1 Sexual Activity

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The agencies recognize that, in our society, there are considerable differences of opinion in matters of sexual conduct, and that there are some matters which are of no concern to the U.S. Government. However, serious suitability concerns are raised by sexual activity by an individual which reasonably may be expected to hamper the effective fulfillment by the agencies of any of their duties and responsibilities, or which may impair the individual's position performance by reason of, for example, the possibility of blackmail, coercion, or improper influence. The standards of conduct enumerated in section 3 FAM 4138 are of particular relevance in determining whether the conduct in question threatens the mission of the employing agency or the individual's effectiveness.

3 FAM 4139.2 Dishonesty

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Any intentional false statement or misrepresentation concerning a material fact on any official form, such as pay or leave records, travel vouchers, reimbursement of expenses, eligibility for allowances, etc., may result in disciplinary action or separation. A material fact is defined as a fact requiring serious consideration by reason of having a certain or probable bearing in the proper determination of an applicant's suitability for appointment, or an employee's suitability for continued service. In addition, any other activity or conduct, such as theft, forgery, lying, misuse of Government property, and the like, which clearly indicates that the individual is dishonest or unreliable may result in non-selection, disciplinary action, or separation, whether criminally prosecuted or not, if such activity or conduct falls also within the specific terms of sections 3 FAM 4137 or 3 FAM 4138.

3 FAM 4139.3 Freedom of Expression

(TL:PER-303; 11-8-95
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The agencies do not presume to impinge upon any of their employee's right of expression, but the individual as an employee is obliged to protect or to refrain from unauthorized dissemination of certain types of information which the employee acquires through official duties, such as classified information, privileged financial, commercial, and other business information, and information about individuals protected by 5 U.S.C. 552a (the Privacy Act of 1974). An employee may be held accountable for unintentional as well as deliberate and unauthorized public expressions whether written or spoken, which, by violating the confidentiality of privileged information, impede the efficiency of the Service. Such efficiency may be impeded because information appearing insignificant from a security point of view is highly sensitive by virtue of the source or manner in which it was acquired; or because creation of a poor reputation for discretion and security consciousness seriously impairs the trust and confidence the Service normally enjoys with foreign governments and individuals with whom it must deal in candor and mutual confidence. The Department's procedures for the expression of dissenting views on official matters are contained in 5 FAM, and for the agencies the prerequisites for public speeches or writing for publication are found in uniform State/USAID/USIA regulations in section 3 FAM 1900 Appendix A.

3 FAM 4139.4 Medical Standards

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Suitability considerations may also coincide with medical standards and criteria in certain respects, such as when the conduct substantially evidences emotional disorder or impaired judgment. Alcohol and drug abuse are ordinarily matters of medical concern, although they may also present suitability or security problems (see sections 3 FAM 4139.5 and 3 FAM 4139.6). As a general policy, conduct which has such medical aspects will be handled under medical standards, but may also be handled under suitability or security standards if medical handling is not deemed sufficient. However, priority consideration should be given in each case to handling such matters medically rather than in a disciplinary mode.

3 FAM 4139.5 Habitual Use of Intoxicating Beverages to Excess

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The moderate use of alcohol is generally accepted in our society and is legal in most jurisdictions. The moderate social usage of alcohol is generally known to have little significant relationship to a person's ability to perform effectively and it has no apparent effect upon the Service's ability to effectively conduct its responsibilities. Alcohol abuse by an individual is considered to be primarily a medical problem and should ordinarily and generally be handled in that fashion. However, it may be a suitability or security problem, as when the individual fails to perform duties effectively or, while under the influence of alcohol, indiscreetly discusses sensitive or privileged information. To the extent that the individual seeks rehabilitation and the medical authorities regard the prognosis as favorable, the agencies will handle such problems under the medical program. Should the individual fail to respond to a medical rehabilitation program, as determined by the Office of Medical Services (M/DGP/MED), consideration may be given to the appropriateness of a disability retirement with the understanding that alcoholism as a primary diagnosis is not a cause for the finding of a disability, or the case may be handled as a disciplinary or separation matter. Security precautions for the alcoholic individual may include denying access to sensitive information, pending rehabilitation. Alcohol abuse on the part of an applicant, in the absence of evidence of rehabilitation, will result in denial of appointment. For further details of the agencies' policy on alcohol abuse, see uniform State/USAID/USIA regulations in 3 FAM 1900 Appendix A.

3 FAM 4139.6 Abuse of Narcotics, Drugs, or Other Controlled Substances

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

a. Unlike the moderate use of alcohol, drug abuse is not generally an accepted form of behavior in our society and in most jurisdictions is illegal. For this reason, employment may be denied or terminated for those who illegally use drugs, narcotics, or other controlled substances, including marihuana, LSD, or others that are common and readily obtainable. The agencies are aware that the application of criminal law to the possession of marihuana is in a state of flux, and consideration, therefore, will be given to the actual status of the law in determining whether any action is warranted.

b. An employee who becomes involved with drugs should seek medical help. As with alcoholism, the abuse of drugs is considered primarily a medical problem and is handled as such. As with alcohol abuse, security precautions for the drug-abusing employee may include denying access to sensitive information, pending successful rehabilitation. Should the employee decline or fail to abide by a medical rehabilitation program, the case may be handled as a disciplinary or separation action. For applicants, indications of drug abuse, without evidence of cessation or rehabilitation, will be grounds for denial of appointment.

c. In the case of abuse of drugs, the evidence of rehabilitation must be evaluated by the Department's Medical Director. Trafficking in or abuse of narcotics, drugs, or any substance listed under the Controlled Substance Act (21 U.S.C. 812.), whether or not for profit, is forbidden and will subject the employee to disciplinary action or separation. For further details on the agencies' policy on drug abuse, see 3 FAM 2110, 3 FAH-1 H-2110, and chapter 3 FAM 1900.)

3 FAM 4139.7 Loyalty and Security

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

a. The loyalty and security standards and criteria are contained in:

State	3 FAM 2220 and 12 FAM
USAID	Handbook 6, chapter 1
USIA	MOA VIII 200

b. Security criteria, particularly as they relate to the individual's integrity, reliability, or trustworthiness, often coincide with the more general suitability criteria. To the extent that they do, the Department will normally choose to resolve cases under suitability criteria and procedures rather than under security regulations. However, this policy does not preclude action under 12 FAM when deemed appropriate. Indeed, employees will at all times remain subject to continuing evaluation by supervisory and security personnel to ensure that continued security clearance eligibility is clearly consistent with the interests of national security.

3 FAM 4139.8 Criminal Conduct

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Conduct which violates criminal laws, whether in the United States or abroad, will subject the employee to possible disciplinary action or separation. The fact that Foreign Service employees serving abroad may

enjoy certain privileges and immunities—no matter how these may vary by category or from country to country—the Service imposes an added obligation that each employee scrupulously refrain from activities which, but for diplomatic privilege or courtesy, would subject the employee to local criminal sanctions.

3 FAM 4139.9 Financial Responsibility

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Standards and guidelines concerning financial obligations and conflicts of interest for the agencies are provided in uniform State/USAID/USIA regulations, section 4150. Employees are expected to deal responsibly with creditors. In the event of a dispute between an employee and alleged creditor, this section does not require the agency to determine the validity or amount of the disputed debt. Under existing law, an agency may be required in cases of alimony or child support or of any U.S. court judgment to garnishee the compensation of an employee or to take disciplinary action for irresponsible behavior. Disciplinary action may be warranted where an employee's failure to pay financial obligations will result in embarrassment and/or discredit to the agency or Government.

3 FAM 4139.10 The Employee's Obligation to Account for Conduct or Other Matters Directly Affecting Employment

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

An employee is obliged to account for his or her own conduct, whether on or off the job, related to the employee's responsibilities and performance of duties, and to answer any questions asked by authorized officials relating to such conduct. If authorized officials believe that answers would implicate the employee in a criminal matter, the employee will be advised of his or her right to remain silent, and of the right of legal counsel. Whether or not the employee agrees to account for his or her own conduct, any matter involving possible criminal conduct by an employee will be referred to the Department of Justice. If the Department of Justice declines prosecution in favor of administrative action by the agency, the employee may be re-interviewed concerning his or her own conduct. The employee will be advised that nothing stated in the interview may be used against the employee in any subsequent criminal proceeding. If an employee at this time refuses to account for conduct affecting his or her own responsibilities or performance of duty, the refusal itself may be considered a basis for disciplinary action or separation.

3 FAM 4139.11 The Individual's Obligation to Furnish Information on Fitness

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The individual is obliged to provide or authorize others to provide information relevant to a determination of general suitability or security qualifications. Refusal, upon notice of the purpose of the inquiry, may warrant denial of appointment or action leading to disciplinary action or separation upon showing that the inquiry has been authorized.

3 FAM 4139.12 Employee Representative

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

The employee will be advised of the right to a representative of his or her own choosing at every stage, including initial questioning. The employee and representative(s) who are under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the employee's case. The employee has a right to have his or her own representative present at any meeting when the employee is asked by authorized officials to provide information regarding the employee's own conduct, or information relevant to a question of the employee's suitability or security qualifications, or any other information pertaining to another person which the employee reasonably believes may result in disciplinary action against him or herself. Any representative must have an appropriate security clearance in order to have access to or use of classified information.

3 FAM 4139.13 Allegations or Complaints About Employees

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Supervisors or rating officers or other employees with firsthand knowledge, learning of any conduct covered by the provisions of this subchapter, or other applicable regulations, are obliged to bring the matter to the attention of appropriate agency officials. The principal officer of the employee's parent agency at a post abroad, the Director General of the Department, Director, Office of Human Resources (HR) in USAID, or the

Director Office of Human Resources in USIA may request or conduct any additional investigation deemed appropriate to clarify, confirm, or refute a complaint or allegation. Information deemed sufficiently accurate, complete, and serious enough to warrant further consideration will be referred to the appropriate authority for action.

3 FAM 4139.14 Notoriously Disgraceful Conduct

(TL:PER-303; 11-8-95)
(Uniform State/USAID/USIA)
(Applies to Foreign Service Employees)

Notoriously disgraceful conduct is that conduct which, were it to become widely known, would embarrass, discredit, or subject to opprobrium the perpetrator, the Foreign Service, and the United States. Examples of such conduct include but are not limited to the frequenting of prostitutes, engaging in public or promiscuous sexual relations, spousal abuse, neglect or abuse of children, manufacturing or distributing pornography, entering into debts the employee could not pay, or making use of one's position or immunity to profit or to provide favor to another (see also 5 CFR, Part 2635) or to create the impression of gaining or giving improper favor. Disqualification of a candidate or discipline of an employee, including separation for cause, is warranted when the potential for opprobrium or contempt should the conduct become public knowledge could be reasonably expected to affect adversely the person's ability to perform his or her own job or the agency's ability to carry out its responsibilities. Evaluators must be carefully to avoid letting personal disapproval of such conduct influence their decisions.