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UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

JUN 14 2004

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MEMORANDUM FOR Doris Brown
Human Resources Manager
International Trade Administration

FROM:

 Deborah A. Jefferson
Director for Human
Resources Management

SUBJECT: Agency Head Review of Memorandum of Understanding (MOU)
between the American Foreign Service Association and the
U.S. and Foreign Commercial Service

In accordance with DAO 202-711 and DAO 202-900, the subject MOU and attachment are approved.

cc: Nancy Kripner, USFCS



**Memorandum of Understanding Between The American Foreign Service
Association and the U.S. and Foreign Commercial Service**

In accordance with the Foreign Service Act; Article VIII, Section 3 of the Collective Bargaining Agreement (CBA); and the Foreign Service Labor Relation Board Decision and Order on Negotiability Issues, dated October 8, 2003, the American Foreign Service Association (AFSA) and the U.S. & Foreign Commercial Service (FCS) have completed and met all their bargaining obligations over the FCS' Assignment and Tours of Duty Policy.

The Parties recognize that there was a disagreement over Section 6.03, Directed Assignments, and Section 8.08, Foreign Commercial Service Assignments Process. The parties also recognize that on October 18, 2002, the FCS asserted, by memorandum, that AFSA's counterproposals to Sections 6.03 and 8.08 of the Assignments and Tours of Duty Policy were non-negotiable. The parties further recognize that on November 1, 2002, AFSA filed a Petition for Review of Negotiability Issue Proposals with the Foreign Service Labor Relations Board (FSLRB), Case No. FS-NG-16, regarding its proposals on these two sections. Lastly, the parties recognize that on October 8, 2003, the FSLRB issued its final decision stating that AFSA's proposals were outside of the duty to bargain and excessively interfered with FCS management's right to assign employees and fill positions from any appropriate source.

In the interest of labor-management cooperation and the efficiency of the Service, AFSA and FCS agree that the Assignments and Tours of Duty Policy (attached) will be implemented in its entirety, including management's changes to Sections 6.03 and 8.08, as originally proposed by management.

Charles A. Ford
Vice-President
American Foreign Service Association

5/4/04
Date

Rhonda Keenum
Assistant Secretary and Director General
U. S. and Foreign Commercial Service

5/4/04
Date



FOREIGN SERVICE PERSONNEL MANAGEMENT MANUAL
Subchapter 100-1
Assignments and Tours of Duty

Section 1. Purpose. This sets policy for assignments and tours of duty under the Foreign Service personnel system and specifically for career and career-candidate members of the Foreign Commercial Service. Assignments and tours of duty for limited non-career employees are managed at the operating unit level, subject to approval of the Office of the Secretary of Commerce where required. This supercedes Subchapter 100-1 (dated March 1995) of the Foreign Service Personnel Management Manual (DAO 202-900), Foreign Commercial Service (FCS) Operations Bulletin 92-74, Functions of the U.S. and Foreign Commercial Service (US&FCS) Overseas Assignment Panel, and FCS Operations Bulletin 93-53, Open Assignments Process.

Section 2. Authority. The Foreign Service Act of 1980 (22 USC 3901 et. seq.) is the basic legislation pertaining to the Foreign Service personnel system. Section 202(a)(3) of the Act establishes the authority of the Secretary of Commerce to use the Foreign Service personnel system. Legislative authority for Foreign Service assignments is contained in Section 502, Assignments to Foreign Service positions; Section 503, Assignment to Agencies, International Organizations, and Other Bodies; and Section 504, Service in the United States and Abroad. Executive Order 12363, of May 21, 1982, authorizes the Secretary to use the Foreign Service system in all components of the International Trade Administration.

Section 3. Coverage. This subchapter applies to all Foreign Service employees of the Department except foreign national employees, family members of government employees employed under Section 311 of the Act, and Americans residing abroad who are hired for service at a particular post.

Section 4. Delegated Authorities.

01. Subject to statutory requirements, the requirements of DAO 202-250, Delegation of Authority for Personnel Management, and the limitations of this subchapter, the Assistant Secretary and Director General of the U.S. and Foreign Commercial Services (Director General) or equivalent management official may assign a Foreign Service employee for duty:

- a. to an established Foreign Service position abroad or to a designated Foreign Service position in the United States;
- b. to a non-Foreign Service position in the United States, subject to required clearances;
- c. to another agency, international organizational, international commission or international

body;

- d. to a domestic, international trade or other conference, congress, or gathering;
- e. for special instruction, training, or orientation at or with a public or private organization;
- f. to a state or local government, a public or private non-profit organization (including an educational institution in the United States, or in any territory or possession of the United States and the Commonwealth of Puerto Rico); and,
- g. subject to the approval of the Director, Office of Human Resources Management, to a member or office of the Congress of the United States, or to a private sector company through an established executive interchange program.

02. The Human Resources Manager, Office of Foreign Service Human Resources, is authorized to manage and process all assignments under the Foreign Service personnel system, regardless of the Foreign Service employee's assigned organization, consistent with the provisions of this policy.

Section 5. Definitions.

01. A *career member* of the Foreign Commercial Service is a Foreign Service employee who has met the Commissioning and Tenure requirements of the Service and has been appointed as a career member by the President or the Secretary under sections 302 and 303 of the Foreign Service Act of 1980.

02. A *career-candidate member* of the Service is an employee who, after passing an established competitive examination process, holds an appointment of limited duration as a career-candidate (not to exceed five years) under section 306 of the Foreign Service Act of 1980. During this period, the employee may be recommended for a career appointment by a Commissioning and Tenure Board, established under section 306(b) of the Act to evaluate the fitness and aptitude of the career-candidate for the work of the Service.

.03 A *limited non-career member* of the Service is an employee with special skills who has been hired for the needs of the Service to fill a specific overseas position, for a specific time limitation not to exceed five years.

Section 6. Assignment Policies.

01. Worldwide Availability. Foreign Service career and career-candidate members are required

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to accept assignments on a worldwide basis as a condition of their employment and can be assigned to any domestic or overseas position for which they are qualified, at the discretion of the Service. All assignments shall be in conformance with anti-discrimination laws and no member will be assigned to a position at a post in a particular geographic area on the basis of race, color, national origin, sex, age, religion or sexual orientation.

02. Assignment Process. Members of the Foreign Commercial Service are assigned to positions in the Service through an established process (see Section 8 of this subchapter). All Foreign Commercial Service positions available for assignment are advertised. Career and career-candidate members of the Foreign Commercial Service have an opportunity to bid, through established bidding procedures, on advertised vacancies for onward assignment in the Service. An Assignments Panel is established for the purpose of reviewing the bids and qualifications of members for assignment to domestic and overseas positions, and for making recommendations on assignments to the Director General. The Director General makes all assignments of Foreign Commercial Service members, under delegated authority from the Secretary of Commerce. Recommendations made by the Assignments Panel will not diminish the authority delegated to officials under Section 4 of this subchapter. Other organizations authorized to use the Foreign Service personnel system shall establish selection procedures for the purpose of making assignments.

03. Directed Assignments. The Director General may direct the assignment of any career or career-candidate member to any Foreign Service position for which he or she is qualified. All first-tour career-candidates are direct-assigned to their first tour of duty. Under special circumstances, where no other option is available, a career or career-candidate member can be assigned to a non-advertised, non-Foreign Service position.

04. Tandem Assignments. When a Foreign Commercial Service member's spouse is also a member of the Foreign Commercial Service, or a United States Government employee subject to assignment by another Federal agency, an effort will be made to assign both individuals to the same post, or to posts near each other. If the assignment of both individuals is not feasible, one member may request leave without pay (LWOP) in order to accompany the other to post. LWOP will not be granted to a career-candidate of the Foreign Commercial Service if by granting it, it prevents the candidate from meeting the length of service requirement for consideration for tenure. Members of the same family cannot be assigned in a supervisory-subordinate relationship, nor can either rate or review the other's performance, or be assigned to a position in violation of the provisions of DAO 202-310, Employment of Relatives. Where employment of relatives may occur in the same work unit, approval will be sought from the Foreign Commercial Service Human Resources Manager.

05. Appeals. If a member objects to an assignment because it would impose undue hardship, the member may request reconsideration through an appeal process (see Section 9 of this subchapter). A member may only appeal an assignment to a position, not the fact that he or she was not assigned to a particular position.

Section 7. Tours of Duty

01. Under authority delegated from the Secretary of Commerce, domestic and overseas tours of duty for Foreign Commercial Service members are established by the Assistant Secretary and Director General. For assignment purposes, a "tour of duty" is defined as the amount of continuous time a member serves on an assignment, or in consecutive assignments, in a given country. Continuous time served in consecutive assignments to separate positions or posts in the same country is combined to form one tour of duty.

a. For the needs of the Service, or for a member to meet his/her conditions of employment, time may be added to or subtracted from a standard tour of duty at the time of assignment.

b. Career Foreign Commercial Service members are expected to serve abroad for substantial portions of their careers. Consistent with the needs of the Service, and in accordance with Chapter 5 of the Foreign Service Act of 1980, the Director General shall seek to assign a career member to duty in the United States at least once during each 15 years the employee is a member of the Service.

02. Domestic Tours. A standard tour of duty for an assignment in the United States is normally two years in length. Members may serve up to three consecutive two-year assignments in the U.S., for a combined tour of duty of six years. In addition, a member can bid to receive up to two one-year extensions during a tour of duty in the U.S., for a maximum tour of duty of eight years in accordance with Section 504 of the Foreign Service Act of 1980. Domestic extensions beyond the maximum 8 years must be approved by the Secretary.

a. Employees serving on non-career limited appointments cannot be assigned to positions in the United States.

b. New employees entering the Foreign Commercial Service as career-candidates, who do not have at least one year of experience as a trade specialist in a U.S. Export Assistance Center (USEAC) within the preceding five years, will begin a two-year domestic assignment within their first seven years of service. This applies to all career-candidates beginning with those hired or converted from the 1994 Rank Order Register.

c. A member of the Service on assignment in the United States continues to be subject to the

policies, regulations, and procedures that apply to all Foreign Service employees.

03. Overseas Tours of Duty. A standard overseas tour of duty is normally three or four years in length. Certain hardship tours are two years in length. The maximum amount of continuous time a member can serve on any tour of duty overseas is normally five years.

a. For career-candidates: the initial tour of duty is two years in length, with the possibility of extensions in one-year increments up to the five-year maximum tour of duty overseas.

b. For non-career limited appointments: the initial tour of duty is two years. For the needs of the Service, a limited appointment may be extended in one-year increments, concurrent with the employee's appointment, up to the statutory maximum of five years as set forth in Section 309 of the Foreign Service Act of 1980. A limited appointment may not be extended beyond five years or renewed.

c. Based on special hardship or security considerations, as necessary, the Director General may adjust a member's tour of duty.

04. Extensions of Tours of Duty. The Director General may administratively extend a member's tour of duty up to six months. A member may request a single administrative extension of no more than six months. When applicable, a member may also bid to extend a tour of duty in an assignment, in one-year increments, through established bidding procedures. A member may not extend, or seek to extend, beyond the five-year maximum continuous tour of duty in a given country overseas, without approval of the Director General. A limited non-career member may not extend beyond his or her five-year maximum limited appointment.

05. Curtailments of Tours of Duty. A curtailment is the shortening of a member's tour of duty from the assigned tour by any length of time, including the immediate departure from a post. For the needs of the Service, including a loss of confidence that a member's continued assignment to a position serves the best interest of the Foreign Commercial Service and the Department, the Director General may curtail a member from an existing tour. A member of the Service may request consideration toward curtailing an assignment for health and/or compassionate reasons.

a. If a Chief of Mission loses confidence that a member's continued assignment at post serves the best interest of the post, the Chief of Mission may ask the Director General to involuntarily curtail a member's tour of duty. Procedures for involuntarily curtailing a member's tour are outlined in 3 FAM 2440. In the event that a member is curtailed without an onward assignment, the member may serve on a detail of up to one year, until further action is taken or an onward assignment can be determined.

b. For the needs of the Service, including an event where a member is unable to assume a position that he or she has been assigned to, the Director General may rescind an assignment.

06. If an overseas tour of duty is shortened to less than 24 months solely for the convenience of the employee, or if the employee voluntarily separates from the Service before 24 months at post, the employee is liable for repayment of any rest and recuperation (R&R) travel, including travel by dependents, that has been taken at government expense.

Section 8. Foreign Commercial Service Assignments Process

01. Onward assignments for Foreign Commercial Service members are determined through a bidding-and-paneling process that culminates with the assignments being made by the Director General, under delegated authority from the Secretary of Commerce. The objective of the process is to assign members to positions for which they are qualified, in reasonable anticipation of vacancies, in a manner that is responsive to the needs of the Service and takes into account the career needs and personal preferences of the members.

02. The Career Development and Assignments Staff (CDAS) manages the bidding-and-paneling process. The Senior Advisor for Career Development and Assignments is responsible for maintaining the integrity of the assignment process and procedures.

03. Assignments Panels. The Director General establishes and chairs a Foreign Commercial Service Assignments Panel for the purpose of reviewing bids and qualifications for initial and onward assignment of Foreign Commercial Service members to overseas and domestic positions. The Assignments Panel is a voting committee composed of career senior-level Commercial Service and ITA managers. It meets in scheduled sessions to review member bids and qualifications in order to make assignment recommendations to the Director General who, under delegated authorities, makes the assignments.

a. For the purpose of assigning Foreign Service employees, there are seven permanent members of the Commercial Service Assignment Panel:

The Director General of the U.S. and Foreign Commercial Service (Chair, approves and makes assignments)

The Deputy Director General of the U.S. and Foreign Commercial Service (voting member, Chair in the absence of the Director General)

The Deputy Assistant Secretary for International Operations (voting member)

The Deputy Assistant Secretary for Domestic Operations (voting member only where domestic positions-related issues are under consideration)

The Senior Advisor for Career Development and Assignments (voting member)

Career Employee Designate of the Assistant Secretary for Trade Development (voting member)

Career Employee Designate of the Assistant Secretary for Market Access and Compliance (voting member)

b. The Director General chairs the Assignments Panel meetings in order to consider recommendations and make assignments. As noted above, five panel members have full-voting authority to make recommendations on assignments. The Deputy Assistant Secretary for Domestic Operations, who attends meetings as a panel member, votes only when domestic position-related issues are under consideration by the panel. Career-employee designates, one representing the Assistant Secretary for Trade Development, and the other the Assistant Secretary for Market Access Compliance, are also voting members of the Assignments Panel.

04. In line with the overall objective of the assignment process, the Assignments Panel makes specific recommendations to the Director General on an appropriate assignment for each member under consideration on a panel agenda. Assignment Panel recommendations are based upon a majority vote. The Director General may disagree with a recommendation and ask the Panel for further review or an alternative recommendation or may choose to accept a recommendation and make the assignment.

05. Open Assignments Cycle. An annual "Open Assignments Cycle" is initiated by advertising all positions due to be filled during the calendar year of the cycle and all language-designated positions due to be filled during the following calendar year. To be considered for onward assignment by the Assignments Panel, a member must bid on a specific position when it is advertised as available for bid. In order to bid on a position, a member must be eligible to transfer to the new post and, at the same time, be able to meet the language and/or language training requirement of the position. Most rotational onward assignments to overseas and domestic positions for Foreign Commercial Service members are made at scheduled Assignments Panel meetings during an Open Assignments Cycle. An "on-cycle" member is any member due for an onward assignment whose current tour of duty ends during the calendar year of an Open Assignment Cycle. In any given Open Assignments Cycle, when all on-cycle members have been assigned, that Open Assignments Cycle ends.

06. Assignments Panel Agendas. During an Open Assignments Cycle, following the collection

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and qualification of bids, eligible bidders are placed on an Assignments Panel agenda for consideration at an appropriate Assignments Panel meeting. Agendas for Assignments Panel meetings are structured around the personal grades of on-cycle members. Organized by grade, panel agendas include all the positions bid by on-cycle members at each grade, as well as the bids of any other qualified bidders on those positions. In presenting the qualified bidders for an assignment to a specific position, bidders are listed alphabetically by personal grade, identifying each bidder's personal preference for the position, valid language test score, if applicable, and career status. Each bidder's assignment history, range of language ability, and career development interests are also provided. In determining an appropriate assignment for a Foreign Commercial Service member, the Assignments Panel may also take into consideration aspects of that member's previous work experience, job performance, training, career development needs (including service overseas, service in domestic positions and a fair proportion of hardship tours), and tandem needs.

Assignments Panel agenda items may include other actions for the needs of the Service, as well as directed assignments made by the Director General. The Assignments Panel may recommend and/or the Director General may directly assign any member to any position for which the member is qualified.

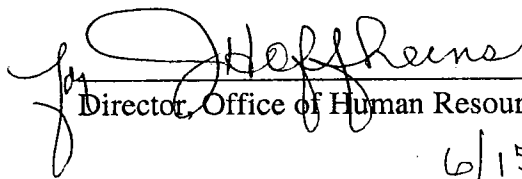
07. Assignment Panel Meetings. During an Open Assignments Cycle, Assignments Panel meetings are held to consider agendas structured around on-cycle CM and MC members first, followed by OC's, 01's, 02's 03's, 04's and 05's. The Assignments Panel will normally seek to assign positions to all at-grade on-cycle members before moving on to assign members at the next lowest grade. An on-cycle member should normally be assigned before an off-cycle member is assigned to a position that the on-cycle member has bid on. In most cases, an off-cycle member who is bidding on a position that is above or below his/her personal grade will not be assigned to that position until all on-cycle members at-grade for that position have been assigned.

08. Limited Non-Career Appointments. For the needs of the Service, following the completion of an Open Assignment Cycle, or between cycles, if there are no qualified career or career-candidate members available for assignment to an advertised overseas Foreign Commercial Service position (including a new position or an existing urgent vacancy), the position may be advertised to non-career candidates, including USEAC trade specialists, and filled with the appointment of a limited non-career member. Other organizational units may assign limited non-career employees to overseas positions within those units without regard to the career and career-candidate members of the Foreign Commercial Service. See Subchapter 100-2, DAO 202-900, on Limited Non-Career Appointments.

Section 9. Assignment Appeal Process

01. Foreign Service members are required to accept assignments on a worldwide basis as a condition of employment. If a member wishes to object to an assignment, within 5 working days of being assigned the member must submit a written appeal to the Director General for assignment reconsideration. A member may not appeal the fact that he or she was not assigned to a particular position. The Assignments Panel considers the appeal and makes a recommendation to the Director General to either consider alternative action including, if applicable, an alternative assignment, or to sustain the original assignment.

02. If an appealed assignment is sustained upon review, the member may request that the Director General forward the appeal to the Under Secretary of the International Trade Administration for final review. Upon review, the Under Secretary can return it to the Director General for alternative action, or deny the appeal. If the appeal is denied, the assignment is made. Should the member then refuse the assignment, appropriate disciplinary action may be taken pursuant to 3 FAM 4300.



Director, Office of Human Resources Management

6/15/04