

# **3 FAM 4900 SPECIAL EMPLOYMENT REQUIREMENTS**

## **3 FAM 4910 FITNESS FOR DUTY REQUIREMENTS FOR LAW ENFORCEMENT/SECURITY PERSONNEL IN THE BUREAU OF DIPLOMATIC SECURITY (DS)**

*(CT:PER-600; 04-11-2008)  
(Office of Origin: DS/DSS)*

### **3 FAM 4911 OVERVIEW**

#### **3 FAM 4911.1 Purpose**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. The purpose of this policy is to establish consistent procedures for ordering and implementing fitness-for-duty evaluations of direct-hire special agents and U.S. citizen personnel in the Bureau of Diplomatic Security (DS) whose duties require use of special protective equipment (SPE).
- b. It is not the intention of this policy to interfere with a supervisor's ability to recommend or suggest personal counseling to a subordinate, nor is this policy intended to alter or replace confidential counseling provided by the Department. Rather, this policy is intended to provide a mechanism for the assessment of an employee's mental, emotional, and neuro-cognitive ability to perform law enforcement and security duties requiring the use of SPE when the employee's conduct, behavior, and circumstances indicate to a reasonable person that continued service by the employee may:

- (1) Pose a threat to public safety;
- (2) Jeopardize the safety of other employees;
- (3) Jeopardize the safety of the particular employee; or
- (4) Interfere with the Department's ability to fulfill its mission.

This policy is not intended to replace or be used in lieu of any suitability investigation or any investigation concerning possible misconduct. Issues concerning suitability or misconduct should be investigated independently.

- c. The decision to order a fitness-for-duty evaluation (FFDE), as well as whether to change the duties of a special agent or other personnel whose duties require use of SPE, is for the Director of the Diplomatic Security Service (DS/DSS) or his or her designee to make after an evaluation.
- d. The FFDE is a consultation from the Office of Medical Services (MED) to the DSS Director for the purpose of assisting in this decision.
- e. The purpose of this subchapter is to set forth procedures and standards governing when and how a special agent or other personnel employed by the Department whose duties require use of SPE may be ordered to undergo an FFDE and potentially be removed from duties requiring SPE.

### **3 FAM 4911.2 Authorities**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

The regulations in this subchapter are governed by the following authorities:

- (1) The Foreign Service Act of 1980, as amended, 22 U.S.C. 3901 et seq.;
- (2) State Department Basic Authorities Act, Public Law 84-885, section 37; 22 U.S.C. 2709 [regarding Special Agent authorities];
- (3) 12 FAM Exhibit 023, Department of State Deadly Force and Firearms Policy;
- (4) 16 FAM 410, Responsibility for Health Care;
- (5) 1 FAM 013.2, Responsibilities of Chiefs of U.S. Missions;

- (6) 2 FAM 113.1, subparagraph c(2), [regarding chief of mission and principal officer];
- (7) The Rehabilitation Act of 1973 (Public Law 93-112), 29 U.S.C. 791 et seq.;
- (8) U.S. Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1630.

### **3 FAM 4911.3 Definitions Applicable to This Subchapter**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

**Deadly force:** As defined in 12 FAM Exhibit 023.

**Director:** The Principal Deputy Assistant Secretary for Diplomatic Security and Director of the Diplomatic Security Service (DS/DSS), as defined in 1 FAM 262. The DSS Director can designate another official to perform any responsibility or function under this policy.

**Employee:** An individual employed by the Bureau of Diplomatic Security (DS) whose duties require the use of special protective equipment (SPE).

**Fitness for duty:** The mental, emotional, and neuro-cognitive stability required of employees who utilize SPE and are required to make decisions whether to use deadly force in fulfilling law enforcement and security responsibilities.

**MED:** The Office of Medical Services (MED), to include the Mental Health Service of the Office of Medical Services, whose functions are described in 1 FAM 232.2.

**Fitness-for-duty evaluation (FFDE):** A comprehensive examination performed by MED to evaluate the mental, emotional and/or neuro-cognitive stability of personnel who utilize special protective equipment and who are involved in law enforcement and security functions.

**Special protective equipment (SPE):** Department-issued specialized equipment required for law enforcement and security duties including, but not limited to, firearms, other lethal weapons, and less than lethal weapons.

### **3 FAM 4912 RESPONSIBLE PARTIES**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. The DSS Director will determine:
  - (1) Whether an employee should be ordered to undergo a fitness-for-duty evaluation (FFDE);
  - (2) If an employee should be removed from duties requiring the use of special protective equipment (SPE) pending an order for an FFDE;
  - (3) Whether, based on the results of the FFDE, the employee should:
    - (a) Be reinstated to duties requiring the use of SPE;
    - (b) Continue to be temporarily assigned to duties not requiring the use of SPE pending subsequent evaluations; or
    - (c) Permanently be removed from duties requiring the use of SPE; and
  - (4) Whether any such change in the employee's duties requires curtailment of assignment.
- b. Normally, the employee's immediate supervisor, through the chain of command, submits the initial referrals for a possible FFDE. However, other individuals should also notify appropriate authorities that an employee's conduct, behavior, and/or circumstances may warrant an assessment of the employee's mental, emotional, and/or neuro-cognitive fitness.
- c. In appropriate circumstances, such as when an employee's conduct may immediately or directly threaten the safety of himself, herself or others, the supervisor (including the chief of mission at a post abroad) may immediately relieve the employee of duty and require the employee to surrender his or her SPE pending a decision by the DSS Director on whether to order a FFDE. Whenever such action is taken, the supervisor's referral to the DSS Director must detail fully the circumstances and justification.
- d. The Bureau of Diplomatic Security (DS) must fund all necessary costs associated with transportation for the sole purpose of bringing an

employee to and from the location of an FFDE and must arrange such travel through DS, not Office of Medical Services (MED) channels. As defined in 3 FAM 3710, medical travel must not be used solely to provide for an FFDE.

- e. MED will develop the necessary clinical procedures and protocols to conduct FFDEs consistent with the appropriate standards for such specialized examinations. These evaluations will include, but not be limited to, the following
  - (1) A physical examination and appropriate laboratory testing (to include toxicology) performed by a licensed physician;
  - (2) Diagnostic mental health interview(s);
  - (3) Psychological testing;
  - (4) Collateral interviews, as appropriate to the specific case; and
  - (5) Review of related documents, which may include any materials related to an ongoing investigation(s), employee performance evaluations, or other relevant materials.
- f. MED is responsible for scheduling, administering, and arranging all FFDEs, in accordance with this policy. MED must maintain all test results and records associated with the FFDE and ensure that appropriate reports are written and submitted in accordance with this policy and applicable procedures. After completion of these recommendations, MED is responsible for the arrangement and conduct of any subsequent FFDEs relating to the original order.

## **3 FAM 4913 ORDERING A FITNESS-FOR-DUTY (FFDE) EVALUATION**

### **3 FAM 4913.1 Criteria**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. To assist in determining the continuing mental, emotional, and neuro-cognitive fitness of personnel whose duties require the use of special protective equipment (SPE), all supervisory employees should be alert to any indication that an employee may not be emotionally, mentally or

neuro-cognitively fit. Such indications of different factors are listed below. **The mere presence of any one factor or combination of factors may not be sufficient to order the evaluation.** However, such presence should not be ignored and may lead to the ordering of an evaluation.

- b. While there is a great variety and range of acceptable behavior among employees, dramatic or sudden changes in any particular employee's customary behavior may increase concern. Supervisors should bear in mind that the basis for a referral for a fitness-for-duty evaluation (FFDE) must be both **objective and reasonable**. The indications may include, but are not limited to, these factors:
- (1) One or more personnel complaints, whether internally or externally originated, particularly complaints of the use of unnecessary or excessive force, or any conduct indicating an inability to exercise self-control and self-discipline;
  - (2) An abrupt and negative change in the employee's ability to perform law enforcement functions;
  - (3) Irrational verbal conduct or behaviors, including delusions and hallucinations;
  - (4) Suicidal statements or behaviors, or personal expressions of mental instability;
  - (5) Unexplained and excessive tiredness or hyperactivity;
  - (6) Dramatic change in eating patterns resulting in sudden weight loss or gain, or diagnosis of a life-threatening eating disorder;
  - (7) Change in behavioral pattern to include inattention to personal hygiene and health;
  - (8) Inappropriate use of alcohol, medications, or other drugs, including symptoms of illegal drug use;
  - (9) Impatience or impulsiveness, especially with a loss of temper;
  - (10) A pattern of conduct indicating a possible inability or decrease in ability to defuse tense situations, or a tendency to escalate such situations or create confrontations;
  - (11) Unexplained and inappropriate excessive lateness or absenteeism;
  - (12) An indication that the employee is experiencing neuro-cognitive

problems that would hinder his or her ability to utilize SPE safely (e.g., dizziness, inability to balance, memory or other cognitive difficulties); and

- (13) Any other factor or combination of factors that causes a supervisor reasonably to suspect that an FFDE may be necessary.

### **3 FAM 4913.2 Reporting Requirements**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. Any Department employee who observes circumstances indicating that an employee lacks the emotional, mental, or neuro-cognitive fitness necessary to utilize special protective equipment (SPE) should notify that employee's supervisor. Any supervisor observing such circumstances or receiving information indicating that a fitness-for-duty evaluation (FFDE) may be warranted, applying the criteria listed in 3 FAM 4913.1, should first meet with the employee, if doing so will not aggravate the situation. A supervisor is legally entitled to ask the employee directly about his or her medical or mental health if the supervisor has a reasonable belief, based on specific evidence, that the employee poses a direct threat to himself, herself or others. If the meeting does not relieve the supervisor's concerns or no meeting is conducted, the involved supervisor must prepare a written report of the circumstances to the DSS Director.
- b. If the Office of Medical Services (MED) acquires protected health information on an employee indicating that an FFDE may be warranted, applying the criteria listed in 3 FAM 4913.1, MED should disclose such information directly to the DSS Director in a manner consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rule (see 45 CFR 160 and 164). The HIPAA Privacy Rule permits disclosures of protected health information to the extent "necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public." (See 45 CFR 164.512(j)(1)(A).) It also permits disclosures of protected health information "to authorized Federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879." (See 45 CFR 164.512(k)(3).)

### **3 FAM 4913.3 Relief from Duty/Surrender of Special Protective Equipment (SPE) Pending Order**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. In appropriate circumstances, such as when an employee's conduct immediately or directly threatens the safety of himself, herself or others, the supervisor (including the chief of mission at a post abroad) may immediately relieve the employee of duties requiring the use of special protective equipment (SPE) and require the employee to surrender his or her SPE pending a decision by the DSS Director of whether or not to order a fitness-for-duty evaluation (FFDE). Whenever such action is taken, the supervisor's referral to the DSS Director must fully detail the circumstances and justification.
- b. If there is no immediate or direct threat to the safety of the employee or others, the supervisor should await guidance from the DSS Director before requiring the employee to surrender his or her SPE. The DSS Director, in consultation with the employee's supervisor, may order the employee to surrender his or her SPE, relieve the employee from duty, or reassign him or her as necessary before making a final decision regarding the FFDE.
- c. If the employee's supervisor is not a Federal law enforcement agent (e.g., chief of mission at a post abroad), the supervisor must ensure that the SPE is adequately secured and only handled by persons authorized to carry SPE.

### **3 FAM 4913.4 Order for the Evaluation**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. In the exercise of his or her discretion and with or without additional investigation, the DSS Director may determine that a fitness-for-duty evaluation (FFDE) is or is not warranted. If the DSS Director determines that additional investigation is required, the Professional Responsibility Division (DS/ICI/PR) will conduct an additional investigation and provide a Report of Investigation (ROI).
- b. If the DSS Director orders an FFDE, the employee will immediately be

relieved from all duties requiring the use of special protective equipment (SPE); the employee must provide all SPE to his or her supervisor. An FFDE will be scheduled for the earliest opportunity.

- c. The employee shall receive a written order for the FFDE. Such order should include:
  - (1) A brief description of the reasons why the FFDE has been ordered;
  - (2) The specific date, time, and place of the FFDE;
  - (3) Arrangement of any necessary travel to the FFDE location;
  - (4) The name and title of the individual conducting the FFDE;
  - (5) A directive to cooperate with the FFDE, including any requests by the individual conducting the FFDE and/or his or her staff and to answer completely and honestly any questions posed during the course of the FFDE; and
  - (6) A notice that the FFDE is being conducted for use by the Department.
- d. The order will also state that refusal to comply with the order to submit to a FFDE or any of its parts, or with the reasonable requests of the individual(s) conducting the FFDE, may be deemed insubordination and may be grounds for referral for consideration of the full range of administrative disciplinary action, up to and including termination from Federal service. Statements made to the individual conducting the FFDE may only be used in a criminal or civil proceeding against the employee in accordance with applicable law and regulation.
- e. Prior to beginning the FFDE in the Office of Medical Services (MED), the employee will be asked to sign an informed consent form that reiterates the scope and purpose of the evaluation, the nature of the procedures to be performed, and all related confidentiality limitations. MED will not conduct an FFDE without the employee's signature on the informed consent form. An individual who has been ordered to submit to an FFDE and willfully fails to sign an informed consent form may be referred for consideration of administrative disciplinary action, up to and including termination from Federal service.

### **3 FAM 4913.5 Requirements for the Individuals Conducting the Fitness-for-Duty Evaluation (FFDE)**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

The Office of Medical Services (MED) will designate the individual(s) authorized to conduct the fitness-for-duty evaluation (FFDE). The individual(s) must be a licensed physician and/or a licensed psychologist with appropriate training and experience in the opinion of MED to conduct an FFDE.

### **3 FAM 4913.6 Scope of Individual(s) Conducting the Fitness-for-Duty Evaluation (FFDE) Report**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. The Office of Medical Services (MED) will provide to the DSS Director the report of the fitness-for-duty evaluation (FFDE). The report will include only information regarding the employee which, in the opinion of the individual(s) performing the FFDE, is necessary to document the presence or absence of mental disorder(s) or defect(s), personality traits, characteristics, or other conditions that would interfere with the performance of duties requiring use of special protective equipment (SPE). The content of the written report should cover only the presence or absence of these functional, job-related limitations, with any pertinent conditions or problems expected to affect the employee's duties.
- b. The report should contain a clear opinion on whether the employee is:
  - (1) Presently fit for unrestricted law enforcement and/or security duties requiring the use of SPE. If the employee is found fit for duty, the individual(s) conducting the FFDE should assume that duty will be unrestricted;
  - (2) Temporarily unfit for duties that require SPE pending a proposed course of action, possibly to include a follow-up FFDE; or
  - (3) Unfit for duties requiring SPE with little likelihood of remediation.
- c. If information deemed necessary for review by the individual(s)

performing the FFDE cannot be obtained, any recommendations might include the comment that the FFDE is based on available data and could be affected by specific additional information requested but not obtained by the individual(s) performing the FFDE. Furthermore, the person(s) performing the FFDE may include a disclaimer that indicates the need to reconsider the FFDE conclusion(s) if it is determined that the employee provided information that proved misleading, deceptive, incomplete, distorted, or untrue.

- d. If the employee is temporarily unfit for duties requiring SPE, recommendations should be offered regarding counseling, modified job assignment, mentoring, training, or other remedies by which the employee can be helped to regain his or her fitness for duty, to include a schedule for follow-up evaluation prior to return to duty. Any intervention recommendations should take into consideration available resources so as to avoid creating an untenable position for the employee or the Department to the extent possible. If the employee is found unfit for duties requiring SPE with a poor prognosis for recovery or after remediation efforts have failed, the opinion should include the view of the individual(s) performing the FFDE that further efforts to correct the condition will likely be ineffective. Reasoning should be clearly documented for all conclusions.

## **3 FAM 4914 RESPONSE TO FITNESS-FOR-DUTY EVALUATION (FFDE) REPORT**

### **3 FAM 4914.1 Personnel Allowed to Access Fitness-for-Duty Evaluation (FFDE) Report**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

Dissemination of all fitness-for-duty evaluation (FFDE) reports will be strictly limited in order to provide the employee with the maximum amount of confidentiality possible, while allowing Department personnel (e.g., Office of Medical Services (MED), Bureau of Diplomatic Security (DS), and the Bureau of Human Resources (HR)) access to the necessary information to make informed decisions regarding public safety, the safety of other employees, the safety of the particular employee, and the Department's ability to fulfill its mission.

### **3 FAM 4914.2 Decisions Based on Fitness-for-Duty Evaluation (FFDE) Report**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

Once in receipt of the fitness-for-duty evaluation (FFDE) report, the DSS Director will decide whether the employee should be reinstated to duties requiring the use of special protective equipment (SPE), continue to be temporarily assigned to duties not requiring the use of SPE pending subsequent FFDEs, or be permanently removed from duties requiring the use of SPE. In addition, the DSS Director will decide whether any such change in the employee's duties requires curtailment or whether the employee can stay at, or return to, his or her post of assignment.

### **3 FAM 4914.3 Permanent/Long-Term Restriction from Duties Requiring Special Protective Equipment (SPE) Use**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

- a. When the DSS Director determines that an employee is to be permanently removed or requires a long-term restriction from duties requiring special protective equipment (SPE), an evaluation will be made by the Department (i.e., Bureau of Diplomatic Security (DS), Office of Medical Services (MED), and Bureau of Human Resources (HR)) to determine if the employee can continue to be employed in a productive capacity by the Department.
- b. If a decision is made that the employee cannot continue to be employed in a productive capacity, the Department (i.e., Bureau of Human Resources (HR)) will take appropriate steps to separate the employee from his or her position of record. Any separation action will be conducted in accordance with established procedures and Federal law, including but not limited to, the Rehabilitation Act of 1973.

### **3 FAM 4914.4 Impact on Disciplinary and Other Proceedings**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

A fitness-for-duty evaluation (FFDE) is not a substitute for supervision or a mode of discipline and should never be used in a punitive fashion. An FFDE is independent and separate from any disciplinary proceedings, suitability investigation, or other process. In a disciplinary action, the Bureau of Diplomatic Security (DS) will only disclose the FFDE report with the employee's written consent or as required by law.

### **3 FAM 4915 RECORD-KEEPING REQUIREMENTS**

#### **3 FAM 4915.1 General**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

A fitness-for-duty evaluation (FFDE) is a forensic evaluation of mental, emotional and neuro-cognitive stability, whereby the client is the Department. All records and reports generated in the service of an FFDE are maintained under the authority and management of DS/DSS, to include any working files generated and kept in the Office of Medical Services (MED), as a matter of operational necessity, convenience, or courtesy. MED must retain working files for a period of seven years.

#### **3 FAM 4915.2 Confidentiality and Disclosure**

*(CT:PER-600; 04-11-2008)*

*(State Only)*

*(Applies to Foreign and Civil Service Employees)*

The disclosure of information relating to a fitness-for-duty evaluation (FFDE), including requests for information by employees or members of the public, is administered by the Bureau of Diplomatic Security (DS), subject to all applicable laws and regulations governing disclosure of personally identifiable information, including but not limited to the Privacy Act of 1974.

Within the systems of records published by the Department pursuant to the Privacy Act, all records generated in the course of initiating, conducting, and reporting FFDEs will be treated as security records, not medical records. For more information, see the Department's Freedom of Information Act (FOIA) Web site.

## **3 FAM 4916 THROUGH 4919 UNASSIGNED**