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4011 .....	1005, 1008
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4061 .....	1105
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## FOREIGN COMMERCIAL SERVICE

For authority of Secretary of Commerce to establish a Foreign Commercial Service in Department of Commerce, see section 1-104 of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 991, as amended, set out as a note under section 2171 of Title 19, Customs Duties.

## SUBCHAPTER I—GENERAL PROVISIONS

## § 3901. Congressional findings and objectives

(a) The Congress finds that—

(1) a career foreign service, characterized by excellence and professionalism, is essential in the national interest to assist the President and the Secretary of State in conducting the foreign affairs of the United States;

(2) the scope and complexity of the foreign affairs of the Nation have heightened the need for a professional foreign service that will serve the foreign affairs interests of the United States in an integrated fashion and that can provide a resource of qualified personnel for the President, the Secretary of State, and the agencies concerned with foreign affairs;

(3) the Foreign Service of the United States, established under the Act of May 24, 1924 (commonly known as the Rogers Act) and continued by the Foreign Service Act of 1946, must be preserved, strengthened, and improved in order to carry out its mission effectively in response to the complex challenges of modern diplomacy and international relations;

(4) the members of the Foreign Service should be representative of the American people, aware of the principles and history of the United States and informed of current concerns and trends in American life, knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world; and

(5) the Foreign Service should be operated on the basis of merit principles.

(b) The objective of this chapter is to strengthen and improve the Foreign Service of the United States by—

(1) assuring, in accordance with merit principles, admission through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance;

(2) fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage (A) entry into and advancement in the Foreign Service by persons from all segments of American society, and (B) equal opportunity and fair and equitable treatment for all without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition;

(3) providing for more efficient, economical, and equitable personnel administration through a simplified structure of Foreign Service personnel categories and salaries;

(4) establishing a statutory basis for participation by the members of the Foreign Service, through their elected representatives, in the formulation of personnel policies and procedures which affect their conditions of employment, and maintaining a fair and effective system for the resolution of individual grievances that will ensure the fullest measure of due process for the members of the Foreign Service;

(5) minimizing the impact of the hardships, disruptions, and other unusual conditions of service abroad upon the members of the Foreign Service, and mitigating the special impact of such conditions upon their families;

(6) providing salaries, allowances, and benefits that will permit the Foreign Service to attract and retain qualified personnel as well as a system of incentive payments and awards to encourage and reward outstanding performance;

(7) establishing a Senior Foreign Service which is characterized by strong policy formulation capabilities, outstanding executive leadership qualities, and highly developed functional, foreign language, and area expertise;

(8) improving Foreign Service managerial flexibility and effectiveness;

(9) increasing efficiency and economy by promoting maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between the Foreign Service person-

nel system and other personnel systems of the Government; and

(10) otherwise enabling the Foreign Service to serve effectively the interests of the United States and to provide the highest caliber of representation in the conduct of foreign affairs.

(Pub. L. 96-465, title I, § 101, Oct. 17, 1980, 94 Stat. 2074.)

#### REFERENCES IN TEXT

Act of May 24, 1924 (commonly known as the Rogers Act), referred to in subsec. (a)(3), is act May 24, 1924, ch. 182, 43 Stat. 140, as amended, which was classified generally to section 1 et seq. of this title and was repealed in large part by section 1131 of title XI of act Aug. 13, 1946, ch. 957, 60 Stat. 1037, known as the Foreign Service Act of 1946, which generally revised the laws relating to the administration of the Foreign Service (see below). For complete classification of Act May 24, 1924 to the Code, see Tables.

The Foreign Service Act of 1946, referred to in subsec. (a)(3), is act Aug. 13, 1946, ch. 957, titles I to X, 60 Stat. 999, as amended, which was classified principally to chapter 14 (§ 801 et seq.) of this title, and was repealed by Pub. L. 96-465, title II, § 2205(1), Oct. 17, 1980, 94 Stat. 2159, the Foreign Service Act of 1980, as part of the general revision of the laws relating to the administration of the Foreign Service. For complete classification of the 1946 Act to the Code prior to its repeal, see Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, known as the Foreign Service Act of 1980, which is classified principally to this chapter (§ 3901 et seq.). For complete classification of this Act to the Code, see Short Title note set out below and Tables.

#### EFFECTIVE DATE

Section 2403 of Pub. L. 96-465, as amended by Pub. L. 99-93, title I, § 119(b), Aug. 16, 1985, 99 Stat. 412, provided that:

“(a) Except as otherwise provided, this Act [see Short Title note set out below] shall take effect on February 15, 1981.

“(b) Personnel actions may be taken on and after the effective date of this Act on the basis of any then current Foreign Service evaluation cycle as if this Act [see Short Title note set out below] had been in effect at the beginning of that cycle.

“(c) Repealed. Pub. L. 99-93, title I, § 119(b), Aug. 16, 1985, 99 Stat. 412, eff. Oct. 1, 1985]

“(d)(1) Section 812 of this Act [section 4052 of this title], and the repeal of sections 631 and 632 of the Foreign Service Act of 1946 [sections 1001 and 1002 of this title] and section 625(k) of the Foreign Assistance Act of 1961 [section 2385(k) of this title], shall be effective as of the date of enactment of this Act [Oct. 17, 1980].

“(2) For purposes of implementing section 2101 [section 4151 of this title], sections 402(a) and 403 [sections 3962(a) and 3963 of this title] shall be effective as of the date of enactment of this Act [Oct. 17, 1980].

“(e)(1) The provisions of chapter 8 of title I [subchapter VIII of this chapter] regarding the rights of former spouses to any annuity under section 814(a) [section 4054(a) of this title] shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of an individual who separates from the Service after such date.

“(2) Except to the extent provided in section 2109 [section 4159 of this title], the provisions of such chapter [subchapter VIII of this chapter] regarding the rights of former spouses to receive survivor annuities under chapter 8 [subchapter VIII of this chapter] shall apply in the case of any individual who after the effective date of this Act becomes a former spouse of a participant or former participant in the Foreign Service Retirement and Disability System.”

#### SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110-50, § 1, July 30, 2007, 121 Stat. 261, provided that: “This Act [amending section 4064 of this title] may be cited as the ‘Passport Backlog Reduction Act of 2007.’”

#### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-382, § 1, Nov. 13, 1998, 112 Stat. 3406, provided that: “This Act [amending sections 4044 to 4046, 4052, 4071a, and 4071d of this title and enacting provisions set out as a note under section 4044 of this title] may be cited as the ‘Department of State Special Agents Retirement Act of 1998.’”

#### SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-335, title IV, § 401(a), June 6, 1986, 100 Stat. 609, provided that: “This title [enacting sections 4068 and 4071 to 4071k of this title, amending sections 4041 to 4049, 4054 to 4056, 4058, 4060, 4061, 4063, 4064, 4066, and 4067 of this title, and enacting provisions set out as a note under section 4046 of this title] may be cited as the ‘Foreign Service Pension System Act of 1986.’”

#### SHORT TITLE

Section 1 of Pub. L. 96-465 provided that: “This Act [enacting this chapter, sections 2697 to 2704 of this title, and sections 3597, 5927, and 5928 of Title 5, Government Organization and Employees, amending sections 285a, 287, 287e, 287n, 290a, 290g-1, 1928, 2021, 2024, 2056, 2385, 2389, 2391, 2454, 2504, 2506, 2512 to 2514, 2582, 2588, 2605, 2684, 3503 and 4223 of this title, sections 3323, 5102, 5301, 5303, 5304, 5313, 5522, 5523, 5541, 5595, 5596, 5724, 5727, 5924, 5925, 6301, 6304, 6305, 7103, 8332, and 8501 of Title 5, and Reorg. Plan No. 2 of 1939 set out in the Appendix to Title 5, sections 1765a and 1766c of Title 7, Agriculture, section 2002 of Title 10, Armed Forces, section 906 of Title 20, Education, sections 104, 170, 912, and 2055 of Title 26, Internal Revenue Code, section 822a of former Title 31, Money and Finance, section 405a of Title 37, Pay and Allowances of the Uniformed Services, former section 235 of Title 38, Veterans’ Benefits, and section 5055 of Title 42, The Public Health and Welfare, repealing subchapters I to X of chapter 14 (§ 801 et seq.) of this title and sections 1221 to 1234, 2679a, 2680a, and 2693 of this title, enacting provisions set out as notes under this section and section 2651 of this title, and repealing provisions set out as notes under sections 801, 808, 811a, 886, 889, 912, 913, 936, 1002, 1076, 1079d, 1229, and 2384 of this title] may be cited as the ‘Foreign Service Act of 1980.’”

#### EXECUTIVE ORDER NO. 11636

Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901, as amended by Ex. Ord. No. 12027, Dec. 5, 1977, 42 F.R. 61851; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12128, Apr. 4, 1979, 44 F.R. 20625, which related to employee-management relations in the Foreign Service of the United States, was revoked by Ex. Ord. No. 12292, § 10(j), Feb. 23, 1981, 46 F.R. 13967, set out below.

#### EX. ORD. NO. 12292. CONFORMANCE OF EXISTING EXECUTIVE ORDERS TO CHANGES RESULTING FROM THE FOREIGN SERVICE ACT OF 1980

Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Foreign Service Act of 1980 (94 Stat. 2071; 22 U.S.C. 3901 et seq.), and in order to conform existing Executive Orders to changes resulting from that Act, it is hereby ordered as follows:

SECTION 1. Section 1(k) of Executive Order No. 9154, as amended, is amended by inserting immediately before the period at the end thereof a comma and the words “or under authority of section 303 of the Foreign Service Act of 1980 (22 U.S.C. 3943)”.

SEC. 2. Section 1 of Executive Order No. 10471 is amended as follows:

(a) strike out “section 202(c) of the Annual and Sick Leave Act of 1951, as added by the act of July 2, 1953, Public Law 102, 83rd Congress” and insert in lieu thereof “section 6305(b) of title 5 of the United States Code”;

(b) strike out “said section 202(c)(2)” and insert in lieu thereof “said section 6305(b)”;

(c) strike out “section 411 of the Foreign Service Act of 1946” and insert in lieu thereof “section 401 of the Foreign Service Act of 1980 (22 U.S.C. 3961)”.

SEC. 3. Section 2 of Executive Order No. 10624, as amended, is amended as follows:

(a) In clause (1), strike out “Title II of the Overseas Differentials and Allowances Act” and insert in lieu thereof “subchapter III of chapter 59 of title 5 of the United States Code”;

(b) Clause (2) is amended to read as follows: “so much of the authority vested in the Secretary of State by chapter 9 of Title I of the Foreign Service Act of 1980 [22 U.S.C. 4081 et seq.], as relates to allowances and benefits under the said chapter 9 of title I;”

SEC. 4. Executive Order No. 10903 is amended as follows:

(a) In the preamble, strike out “section 303 of the Foreign Service Act of 1946 (22 U.S.C. 843).”;

(b) In section 1(a) strike out “section 111(3) of the Overseas Differentials and Allowances Act (74 Stat. 792)” and insert in lieu thereof “section 5921(3) of title 5, United States Code.”;

(c) In Section 1(b):

(1) strike out “Title II of the Overseas Differentials and Allowances Act” and insert in lieu thereof “subchapter III of chapter 59 of title 5 of the United States Code.”;

(2) strike out “202, 203, and 221(4)(B) of that Act” and insert in lieu thereof “5922(b), 5922(c), and 5924(4)(B) of that title”;

(3) strike out “Title II of the Act” and insert in lieu thereof “said subchapter”.

(d) In Section 1(c), strike out “section 22 of the Administrative Expenses Act of 1946 (added by section 311(a) of the Overseas Differentials and Allowances Act)” and insert in lieu thereof “section 5913 of title 5 of the United States Code”.

(e) In Section 1(e):

(1) strike out “235(a)(2)” and insert in lieu thereof “235(2)”;

(2) strike out “section 901 of the Foreign Service Act of 1946, as amended” and insert in lieu thereof “section 905 of the Foreign Service Act of 1980 (22 U.S.C. 4085)”.

(f) strike out paragraphs (d) and (f) of Section 1 and redesignate paragraphs (e) and (g) thereof as paragraphs (d) and (e), respectively.

SEC. 5. Executive Order No. 11034 is amended by striking out in Section 5(c) after “provided by section” all that follows in that sentence and inserting in lieu thereof “310 of the Foreign Service Act of 1980 (22 U.S.C. 3950).”.

SEC. 6. Executive Order No. 11219 is amended as follows:

(a) Section 1 is amended by striking out “officer or employee” and inserting in lieu thereof “member”;

(b) Section 1(b) is amended by inserting after “as amended,” “the Foreign Service Act of 1980,” [this chapter] and by striking out “that Act” and inserting in lieu thereof “the latter Act”;

(c) Section 5 is amended by striking out “an officer or employee in” and inserting in lieu thereof “a member of” and by inserting after “as amended,” “the Foreign Service Act of 1980,” [this chapter] and by striking out “that Act” and inserting in lieu thereof “the latter Act”.

SEC. 7. Executive Order No. 12137 is amended as follows:

(a) Section 1-111 is amended by striking out “1946, as amended” and inserting in lieu thereof “1980” [this chapter].

(b) Section 1-401 is amended by striking out “528 of the Foreign Service Act of 1946 (22 U.S.C. 928)” and inserting in lieu thereof, “310 of the Foreign Service Act of 1980 (22 U.S.C. 3950)”.

SEC. 8. Executive Order No. 12163 is amended as follows:

(a) Section 1-201(a)(14) is revoked.

(b) Section 1-201(b) is amended by inserting “and” after “602(q),” and by striking out “and 625(k)(1)”;

(c) Section 1-602(a) is amended by striking out “625(d)(1)” each time it appears and inserting in lieu thereof “625(d)”.

(d) Section 1-602(b) is amended by striking out “section 528 of the Foreign Service Act of 1946” and inserting in lieu thereof “section 310 of the Foreign Service Act of 1980 (22 U.S.C. 3950)”.

(e) Section 1-603 is amended by striking out after “allowances”, all that follows through “Foreign Service Act of 1946 (22 U.S.C. 801 et seq.),” and inserting in lieu thereof “authorized for a chief of mission as defined in section 102(a)(3) of the Foreign Service Act of 1980 (22 U.S.C. 3902(a)(3)).”.

SEC. 9. Executive Order No. 12228 is amended as follows:

(a) Section 1-102(c)(1) is amended by striking out “Section 911(9) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1136(9))” and inserting in lieu thereof “Section 901(6) of the Foreign Service Act of 1980 (22 U.S.C. 4081(6))”;

(b) Section 1-103 is amended by striking out “Foreign Service Act of 1946, as amended” and inserting in lieu thereof “Foreign Service Act of 1980” [this chapter].

SEC. 10. The following are hereby revoked:

(a) Executive Order No. 9452 of June 26, 1944;

(b) Executive Order No. 9799 of November 8, 1946;

(c) Executive Order No. 9837 of March 27, 1947;

(d) Executive Order No. 9932 of February 27, 1948;

(e) Executive Order No. 10249 of June 4, 1951;

(f) Section 2 of Executive Order No. 10477 of August 1, 1953 [22 U.S.C. 1472 note];

(g) Executive Order No. 10897 of December 2, 1960;

(h) Part III of Executive Order No. 11264 of December 31, 1965, as amended [22 U.S.C. 3930 note];

(i) Sections 1, 3, and 5 of Executive Order No. 11434 of November 8, 1968;

(j) Executive Order No. 11636 of December 17, 1971;

(k) Executive Order No. 12066 of June 29, 1978;

(l) Executive Order No. 12145 of July 18, 1979;

(m) Section 1-104(b) of Executive Order No. 12188 of January 2, 1980 [19 U.S.C. 2171 note].

SEC. 11. This Order shall be effective as of February 15, 1981.

RONALD REAGAN.

EX. ORD. NO. 12293. ADMINISTRATION OF FOREIGN SERVICE

Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, as amended by Ex. Ord. No. 12363, May 21, 1982, 47 F.R. 22497; Ex. Ord. No. 12388, Oct. 14, 1982, 47 F.R. 46245; Ex. Ord. No. 12536, Oct. 9, 1985, 50 F.R. 41477; Ex. Ord. No. 13118, §10(4), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 13325, Jan. 23, 2004, 69 F.R. 4217; Ex. Ord. No. 13374, Mar. 14, 2005, 70 F.R. 12961, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Foreign Service Act of 1980 (94 Stat. 2071, 22 U.S.C. 3901 et seq.), Section 202 of the Revised Statutes (22 U.S.C. 2656), and Section 301 of Title 3 of the United States Code, and in order to provide for the administration of the Foreign Service of the United States, it is hereby ordered as follows:

SECTION 1. There are hereby delegated to the Secretary of State those functions vested in the President by Sections 205, 401(a), 502(c), 613, and 801 of the Foreign Service Act of 1980, hereinafter referred to as the Act (22 U.S.C. 3925, 3942(a)(1), 3892(c) [3982(c)], 4013, and 4041).

SEC. 2. The Secretary of State shall, in accord with Section 205 of the Act (22 U.S.C. 3925), consult with the Secretary of Agriculture, the Secretary of Commerce, the Director of the United States Information Agency, the Administrator of the United States Agency for International Development, the Director of the Office of Personnel Management, and the Director of the Office of Management and Budget, in order to ensure

compatibility between the Foreign Service personnel system and other government personnel systems.

SEC. 3. The Secretary of State shall make recommendations to the President through the Director of the Office of Management and Budget whenever action is appropriate under Section 827 of the Act (22 U.S.C. 4067) to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System.

SEC. 4. Pursuant to section 402 of the Foreign Service Act [of 1980] (22 U.S.C. 3962), and subject to any restrictions therein, there are established the following salary classes with titles for the Senior Foreign Service, at the following ranges of basic rates of pay:

(a) Career Minister

Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 100 percent of the rate payable for level II of the Executive Schedule.

(b) Minister-Counselor

Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 107 percent of the rate payable for level III of the Executive Schedule.

(c) Counselor

Range from 100 percent of the minimum rate of basic pay for senior-level positions under 5 U.S.C. 5376 to 102 percent of the rate payable for level III of the Executive Schedule.

SEC. 5. There is hereby delegated to the Secretary of State, without further action by the President, the authority vested in the President by Section 2107 of the Act [22 U.S.C. 4157] to the extent necessary to implement the provisions of Section 2101 of the Act [22 U.S.C. 4151], relating to pay and benefits pending conversion.

SEC. 6. (a) Pursuant to Section 211 of the Act (22 U.S.C. 3931), there is established in the Department of State the Board of Examiners for the Foreign Service.

(b) The Board shall be appointed by, and in accordance with regulations prescribed by, the Secretary of State, except that not less than five shall be career members of the Foreign Service and not less than seven shall be appointed as follows.

(1) not less than five shall be appointed by the heads of the agencies utilizing the Foreign Service personnel system;

(2) not less than one shall be a representative appointed by the Director of the Office of Personnel Management; and

(3) not less than one shall be a representative appointed by the Secretary of Labor.

(c) The Secretary of State shall designate from among the members of the Board a Chairman who is a member of the Service.

(d) The Secretary of State shall provide all necessary administrative services and facilities for the Board.

SEC. 7. For the purpose of ensuring the accuracy of information used in the administration of the Foreign Service Retirement and Disability System, the Secretary of State may request from the Secretary of Defense and the Administrator of Veterans Affairs such information as the Secretary deems necessary. To the extent permitted by law: (a) The Secretary of Defense shall provide information on retired or retainer pay provided under Title 10, United States Code; and, (b) the Administrator of Veterans Affairs shall provide information on pensions or compensation provided under Title 38 of the United States Code. The Secretary, in consultation with the officials from whom information is requested, shall ensure that information made available under this Order is used only for the purpose authorized.

SEC. 8. The first seven Sections of this Order shall be effective as of February 15, 1981.

SEC. 9. (a) Pursuant to Section 210 of the Act there is established in the Department of State the Board of the Foreign Service (22 U.S.C. 3930).

(b) The Board shall be composed of the designated number of representatives of the heads of the following agencies:

(1) Department of State, four members, at least three of whom must be career members of the Senior Foreign Service;

(2) United States Information Agency, two members, one of whom must be a career member of the Senior Foreign Service;

(3) United States Agency for International Development, two members, one of whom must be a career member of the Senior Foreign Service;

(4) Department of Agriculture, two members, one of whom must be a career member of the Senior Foreign Service;

(5) Department of Commerce, two members, one of whom must be a career member of the Senior Foreign Service;

(6) Department of Labor, one member;

(7) Office of Personnel Management, one member;

(8) Office of Management and Budget, one member; and,

(9) Equal Employment Opportunity Commission, one member;

(c) The membership of the Board shall be selected from among officials who are knowledgeable in matters concerning the management of the Foreign Service. Except for the career members of the Senior Foreign Service from the Department of Agriculture, the Department of Commerce, the United States Information Agency, and the United States Agency for International Development, the members of the Board shall be selected from among those who have the rank of Assistant Secretary or higher or a position of comparable responsibility.

(d) The Secretary of State may from time to time request the heads of other agencies to designate representatives to participate in the functions of the Board on a regular or occasional basis.

(e) The Secretary of State shall provide all necessary administrative services and facilities for the Board.

SEC. 10. Pursuant to Section 202(a)(2)(B) and (a)(3)(B) of the Act (22 U.S.C. 3922(a)(2)(B), (a)(3)(B)), it is hereby determined to be necessary, in order to enable the Department of Agriculture and the Department of Commerce to carry out functions which require service abroad, for the respective Secretaries, in consultation with the Office of Personnel Management and the Office of Management and Budget, to be able to utilize the Foreign Service personnel system with respect to personnel of the following:

(a) The Animal and Plant Health Inspection Service of the Department of Agriculture, not to exceed 125 positions, without the prior approval of the Director of the Office of Personnel Management;

(b) The United States Travel and Tourism Administration, and the International Trade Administration of the Department of Commerce, not to exceed 30 positions without the prior approval of the Director of the Office of Personnel Management, and providing that assignments to such positions be administered consistent with policies of the Foreign Commercial Service established under Executive Order No. 12188 [19 U.S.C. 2171 note].

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of this title.]

### § 3902. Definitions

As used in this chapter, the term—

(1) “abroad” means all areas not included within the United States;

(2) “agency” means an agency as defined in section 552(e)<sup>1</sup> of title 5;

(3) “chief of mission” means the principal officer in charge of a diplomatic mission of the

<sup>1</sup> See References in Text note below.