

such persons to the extent that the responsibility of the United States for them is thereupon terminated pursuant to the provisions of the said Convention.

6. If major differences arise over matters affecting the United States Forces in Germany, such differences may be referred to the Department of State and the Department of Defense for resolution.

7. This order shall become effective on the date that the Convention on Relations between the Three Powers and the Federal Republic of Germany and related Conventions, as amended, come into force.

#### EXECUTIVE ORDER NO. 11970

Ex. Ord. No. 11970, Feb. 5, 1977, 42 F.R. 7919, establishing the Presidential Advisory Board on Ambassadorial Appointments, was revoked by Ex. Ord. No. 12299, Mar. 17, 1981, 46 F.R. 17751.

Term of the Presidential Advisory Board on Ambassadorial Appointments extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

#### § 3943. Appointments by the Secretary

The Secretary may appoint the members of the Service (other than the members of the Service who are in the personnel categories specified in section 3942(a) of this title) in accordance with this chapter and such regulations as the Secretary may prescribe.

(Pub. L. 96-465, title I, § 303, Oct. 17, 1980, 94 Stat. 2085.)

#### REFERENCES IN TEXT

This chapter, referred to in text, 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 under section 3901 of this title and Tables.

#### PROHIBITION ON CERTAIN EMPLOYMENT AT UNITED STATES DIPLOMATIC AND CONSULAR MISSIONS IN COMMUNIST COUNTRIES

Pub. L. 100-204, title I, § 157, Dec. 22, 1987, 101 Stat. 1354, provided that:

"(a) PROHIBITION.—After September 30, 1990, no national of a Communist country may be employed as a foreign national employee in any area of a United States diplomatic or consular facility in any Communist country where classified materials are maintained.

"(b) DEFINITION.—As used in this section, the term 'Communist country' means a country listed in section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)].

"(c) ADDITIONAL FUNDS FOR HIRING UNITED STATES CITIZENS.—The Congress expresses its willingness to provide additional funds to the Department of State for the expenses of employing United States nationals to replace the individuals dismissed by reason of subsection (a).

"(d) REPORT AND REQUEST FOR FUNDS.—As a part of the Department of State's authorization request for fiscal years 1990 and 1991, the Secretary of State, in consultation with the heads of all relevant agencies, shall submit—

"(1) a report, which shall include—

"(A) a feasibility study of the implementation of this section; and

"(B) an analysis of the impact of the implementation of this section on the budget of the Department of State; and

"(2) a request for funds necessary for the implementation of this section pursuant to the findings and conclusions specified in the report under paragraph (1).

"(e) WAIVER.—The President may waive this section—

"(1) if funds are not specifically authorized and appropriated to carry out this section; or

"(2) the President determines that it is in the national security interest of the United States to continue to employ foreign service nationals. The President shall notify the appropriate committees of Congress each time he makes the waiver conferred on him by this section."

#### SOVIET EMPLOYEES AT UNITED STATES DIPLOMATIC AND CONSULAR MISSIONS IN THE SOVIET UNION

Pub. L. 99-93, title I, § 136, Aug. 16, 1985, 99 Stat. 421, provided that:

"(a) LIMITATION.—To the maximum extent practicable, citizens of the Soviet Union shall not be employed as foreign national employees at United States diplomatic or consular missions in the Soviet Union after September 30, 1986.

"(b) REPORT.—Should the President determine that the implementation of subsection (a) poses undue practical or administrative difficulties, he is requested to submit a report to the Congress describing the number and type of Soviet foreign national employees he wishes to retain at or in proximity to United States diplomatic and consular posts in the Soviet Union, the anticipated duration of their continued employment, the reasons for their continued employment, and the risks associated with the retention of these employees."

#### EMPLOYMENT OF SOVIET NATIONALS AT U.S. DIPLOMATIC AND CONSULAR MISSIONS IN SOVIET UNION

Determination of President of the United States, No. 92-4, Oct. 24, 1991, 56 F.R. 56567, provided:

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3 of the United States Code and section 136 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Public Law 99-93) ("the Act") [set out as a note above], I hereby determine that implementation of section 136(a) of the Act poses undue practical and administrative difficulties. Consistent with this determination, you are authorized to employ Soviet nationals in nonsensitive areas of the New Embassy Compound in Moscow under strict monitoring by cleared Americans. Further, I delegate to you the responsibility vested in me by section 136(b) of the Act to report to the Congress on circumstances relevant to this determination. Such responsibility may be redelegated within the Department of State.

You are authorized and directed to report this determination to the Congress and to publish it in the Federal Register.

GEORGE BUSH.

#### § 3944. Chiefs of Mission

(a) **Qualifications; preference for career members; political contributions as factor in appointment; demonstrated competency report**

(1) An individual appointed or assigned to be a chief of mission should possess clearly demonstrated competence to perform the duties of a chief of mission, including, to the maximum extent practicable, a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of that country and its people.

(2) Given the qualifications specified in paragraph (1), positions as chief of mission should normally be accorded to career members of the Service, though circumstances will warrant appointments from time to time of qualified indi-

viduals who are not career members of the Service.

(3) Contributions to political campaigns should not be a factor in the appointment of an individual as a chief of mission.

(4) The President shall provide the Committee on Foreign Relations of the Senate, with each nomination for an appointment as a chief of mission, a report on the demonstrated competence of that nominee to perform the duties of the position in which he or she is to serve.

**(b) Furnishing of information by Secretary; political campaign contributions report**

(1) In order to assist the President in selecting qualified candidates for appointment or assignment as chiefs of mission, the Secretary of State shall from time to time furnish the President with the names of career members of the Service who are qualified to serve as chiefs of mission, together with pertinent information about such members.

(2) Each individual nominated by the President to be a chief of mission, ambassador at large, or minister shall, at the time of nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such individual and by members of his or her immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination. The report shall be verified by the oath of the nominee, taken before any individual authorized to administer oaths. The chairman of the Committee on Foreign Relations of the Senate shall have each such report printed in the Congressional Record. As used in this paragraph, the term "contribution" has the same meaning given such term by section 30101(8) of title 52, and the term "immediate family" means the spouse of the nominee, and any child, parent, grandparent, brother, or sister of the nominee and the spouses of any of them.

(Pub. L. 96-465, title I, § 304, Oct. 17, 1980, 94 Stat. 2085; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title II, § 208(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-422.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-113 struck out subsec. (c) which read as follows: "Within 6 months after assuming the position, the chief of mission to a foreign country shall submit, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, a report describing his or her own foreign language competence and the foreign language competence of the mission staff in the principal language or other dialect of that country."

**§ 3945. Senior Foreign Service**

**(a) Salary class**

Appointment to the Senior Foreign Service shall be to a salary class established under section 3962 of this title, and not to a position.

**(b) Limited appointment**

An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under

limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that (1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation, and (2) members of the Senior Foreign Service serving under limited appointments with reemployment rights under section 3950 of this title as career appointees in the Senior Executive Service shall be considered to be career members of the Senior Foreign Service for purposes of this subsection.

**(c) Appointments by Secretary of Commerce**

(1) Appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and application of the limitation in subsection (b).

(2) Except as provided in paragraph (3), no more than one individual (other than an individual with reemployment rights under section 3950 of this title as a career appointee in the Senior Executive Service) may serve under a limited appointment in the Senior Foreign Service in the Department of Commerce at any time.

(3) The Secretary of Commerce may appoint an individual to a limited appointment in the Senior Foreign Service for a specific position abroad if—

(A) no career member of the Service who has the necessary qualifications is available to serve in the position; and

(B) the individual appointed has unique qualifications for the specific position.

**(d) Recertification process**

The Secretary shall by regulation establish a recertification process for members of the Senior Foreign Service that is equivalent to the recertification process for the Senior Executive Service under section 3393a of title 5.<sup>1</sup>

(Pub. L. 96-465, title I, § 305, Oct. 17, 1980, 94 Stat. 2086; Pub. L. 99-93, title I, § 119(a), Aug. 16, 1985, 99 Stat. 412; Pub. L. 101-194, title V, § 506(c)(1), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101-280, § 6(d)(3), May 4, 1990, 104 Stat. 160.)

REFERENCES IN TEXT

Section 3393a of title 5, referred to in subsec. (d), was repealed by Pub. L. 107-296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101-280 made technical correction to Pub. L. 101-194. See 1989 Amendment note below.

1989—Subsec. (d). Pub. L. 101-194, as amended by Pub. L. 101-280, added subsec. (d).

1985—Subsec. (c). Pub. L. 99-93 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-93, title I, § 119(c), Aug. 16, 1985, 99 Stat. 412, provided that: "The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under section 3901 of this title] shall take effect on October 1, 1985."

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