

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)¹ of title 5;

(3) “chief of mission” means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 3982(c) of this title to be temporarily in charge of such a mission or office;

(4) “Department” means the Department of State, except that with reference to the exercise of functions under this chapter with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) “employee” (except as provided in section 4102(8) of this title) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) “function” includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) “Government” means the Government of the United States;

(8) “merit principles” means the principles set out in section 2301(b) of title 5;

(9) “principal officer” means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) “Secretary” means the Secretary of State, except that (subject to section 3921 of this title) with reference to the exercise of functions under this Act with respect to any

agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) “Service” or “Foreign Service” means the Foreign Service of the United States; and

(12) “United States”, when used in a geographic sense, means the several States and the District of Columbia.

(Pub. L. 96-465, title I, §102, Oct. 17, 1980, 94 Stat. 2075; Pub. L. 98-164, title I, §130(a), Nov. 22, 1983, 97 Stat. 1027.)

Editorial Notes

REFERENCES IN TEXT

Section 552(e) of title 5, referred to in par. (2), was redesignated section 552(f) of title 5 by section 1802(b) of Pub. L. 99-570.

AMENDMENTS

1983—Pub. L. 98-164 struck out “(a)” before “As used in this chapter”, and struck out subsec. (b) which provided that references to Foreign Service officers in any provision be deemed to refer to, with respect to the United States Information Agency, Foreign Service Information officers.

§ 3903. Members of Service

The following are the members of the Service:

(1) Chiefs of mission, appointed under section 3942(a)(1) of this title or assigned under section 3982(c) of this title.

(2) Ambassadors at large, appointed under section 3942(a)(1) of this title.

(3) Members of the Senior Foreign Service, appointed under section 3942(a)(1) or 3943 of this title, who are the corps of leaders and experts for the management of the Service and the performance of its functions.

(4) Foreign Service officers, appointed under section 3942(a)(1) of this title, who have general responsibility for carrying out the functions of the Service.

(5) Foreign Service personnel, United States citizens appointed under section 3943 of this title, who provide skills and services required for effective performance by the Service.

(6) Foreign national employees, foreign nationals appointed under section 3943 of this title, who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

(7) Consular agents, appointed under section 3943 of this title by the Secretary of State, who provide consular and related services as authorized by the Secretary of State at specified locations abroad where no Foreign Service posts are situated.

(Pub. L. 96-465, title I, §103, Oct. 17, 1980, 94 Stat. 2076.)

§ 3904. Functions of Service

Members of the Service shall, under the direction of the Secretary—

(1) represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplo-

¹ See References in Text note below.

matic Relations, the Vienna Convention on Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;

(2) provide guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States; and

(3) perform functions on behalf of any agency or other Government establishment (including any establishment in the legislative or judicial branch) requiring their services.

(Pub. L. 96-465, title I, §104, Oct. 17, 1980, 94 Stat. 2076.)

§ 3905. Personnel actions

(a) Merit principles; “personnel action” defined

(1) All personnel actions with respect to career members and career candidates in the Service (including applicants for career candidate appointments) shall be made in accordance with merit principles.

(2) For purposes of paragraph (1), the term “personnel action” means—

(A) any appointment, promotion, assignment (including assignment to any position or salary class), award of performance pay or special differential, within-class salary increase, separation, or performance evaluation, and

(B) any decision, recommendation, examination, or ranking provided for under this chapter which relates to any action referred to in subparagraph (A).

(b) Rules and regulations; discrimination; reprisals for disclosure of information; submission of reports, evaluations, or recommendations; freedom from prohibited personnel practices

The Secretary shall administer the provisions of this chapter and shall prescribe such regulations as may be necessary to ensure that members of the Service, as well as applicants for appointments in the Service—

(1) are free from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, geographic or educational affiliation within the United States, or political affiliation, as prohibited under section 2302(b)(1) of title 5;

(2) are free from reprisal for—

(A) a disclosure of information by a member or applicant which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency (including the Inspector General of the Department

of State and the Foreign Service) or another employee designated by the head of the agency to receive such disclosures, of information which the member or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(3) are free to submit to officials of the Service and the Department any report, evaluation, or recommendation, including the right to submit such report, evaluation, or recommendation through a separate dissent channel, whether or not the views expressed therein are in accord with approved policy, unless the report, evaluation, or recommendation was submitted with the knowledge that it was false or with willful disregard for its truth or falsity; and

(4) are free from any personnel practice prohibited by section 2302 of title 5.

(c) Withholding or disclosure of information to Congress

This section shall not be construed as authorizing the withholding of information from the Congress or the taking of any action against a member of the Service who discloses information to the Congress.

(d) Minority recruitment program

(1) The Secretary shall establish a minority recruitment program for the Service consistent with section 7201 of title 5.

(2) Omitted.

(e) Applicability to other judicial or statutory rights or remedies

This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 2000e-16 of title 42, prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 631 and 633a of title 29, prohibiting discrimination on the basis of age;

(3) section 206(d) of title 29, prohibiting discrimination on the basis of sex;

(4) sections 791 and 794a of title 29, prohibiting discrimination on the basis of handicapping condition; or

(5) any provision of law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(Pub. L. 96-465, title I, §105, Oct. 17, 1980, 94 Stat. 2077; Pub. L. 100-204, title I, §185(a), Dec. 22, 1987, 101 Stat. 1365; Pub. L. 101-246, title I, §153(d), Feb. 16, 1990, 104 Stat. 43.)

Editorial Notes

CODIFICATION

Subsec. (d)(2) of this section, which required the Secretary to transmit at least once annually to the Chairman of the Committee on Foreign Relations of the Sen-