

## SUBCHAPTER III—APPOINTMENTS

## § 3941. General provisions

## (a) Citizenship requirement

Only citizens of the United States may be appointed to the Service, other than for service abroad as a consular agent or as a foreign national employee.

## (b) Examinations

The Secretary shall prescribe, as appropriate, written, oral, physical, foreign language, and other examinations for appointment to the Service (other than as a chief of mission or ambassador at large).

## (c) Veteran or disabled veteran

The fact that an applicant for appointment as a Foreign Service officer candidate is a veteran or disabled veteran shall be considered an affirmative factor in making such appointments. As used in this subsection, the term “veteran or disabled veteran” means an individual who is a preference eligible under subparagraph (A), (B), or (C) of section 2108(3) of title 5.

## (d) Career and noncareer appointments

(1) Members of the Service serving under career appointments are career members of the Service. Members of the Service serving under limited appointments are either career candidates or noncareer members of the Service.

(2) Chiefs of mission, ambassadors at large, and ministers serve at the pleasure of the President.

(3) An appointment as a Foreign Service officer is a career appointment. Foreign Service employees serving as career candidates or career members of the Service shall not represent to the income tax authorities of the District of Columbia or any other State or locality that they are exempt from income taxation on the basis of holding a Presidential appointment subject to Senate confirmation or that they are exempt on the basis of serving in an appointment whose tenure is at the pleasure of the President.

(Pub. L. 96-465, title I, § 301, Oct. 17, 1980, 94 Stat. 2083; Pub. L. 100-204, title I, § 179(a), Dec. 22, 1987, 101 Stat. 1362.)

## Editorial Notes

## AMENDMENTS

1987—Subsec. (d)(3). Pub. L. 100-204 inserted sentence at end relating to exemption from income taxation.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-204, title I, § 179(b), Dec. 22, 1987, 101 Stat. 1363, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to tax years beginning after December 31, 1987.”

## STUDY OF FOREIGN SERVICE EXAMINATION

Pub. L. 101-246, title I, § 153(g), Feb. 16, 1990, 104 Stat. 44, required the Secretary of State to enter into a contract with a private organization for a comprehensive review and evaluation of the Foreign Service examination related to cultural, racial, ethnic, and sexual bias issues, and no later than 18 months after Feb. 16, 1990, submit a report to Congress containing the findings of

the review and evaluation, together with the comments of the Secretary and measures which the Secretary has initiated to respond to any adverse findings of such review.

## § 3942. Appointments by the President

(a)(1) The President may, by and with the advice and consent of the Senate, appoint an individual as a chief of mission, as an ambassador at large, as an ambassador, as a minister, as a career member of the Senior Foreign Service, or as a Foreign Service officer.

(2)(A) The President may, by and with the advice and consent of the Senate, confer the personal rank of career ambassador upon a career member of the Senior Foreign Service in recognition of especially distinguished service over a sustained period.

(B)(i) Subject to the requirement of clause (ii), the President may confer the personal rank of ambassador or minister on an individual in connection with a special mission for the President of a temporary nature not exceeding six months in duration.

(ii) The President may confer such personal rank only if, prior to such conferral, he transmits to the Committee on Foreign Relations of the Senate a written report setting forth—

(I) the necessity for conferring such rank,

(II) the dates during which such rank will be held,

(III) the justification for not submitting the proposed conferral of personal rank to the Senate as a nomination for advice and consent to appointment, and

(IV) all relevant information concerning any potential conflict of interest which the proposed recipient of such personal rank may have with regard to the special mission.

Such report shall be transmitted not less than 30 days prior to conferral of the personal rank of ambassador or minister except in cases where the President certifies in his report that urgent circumstances require the immediate conferral of such rank.

(C) An individual upon whom a personal rank is conferred under subparagraph (A) or (B) shall not receive any additional compensation solely by virtue of such personal rank.

(3) Except as provided in paragraph (2)(B) of this subsection or in clause 3, section 2, article II of the Constitution (relating to recess appointments), an individual may not be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, without the advice and consent of the Senate.

(b) If a member of the Service is appointed to any position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, the period of service in that position by the member shall be regarded as an assignment under subchapter V and the member shall not, by virtue of the acceptance of such assignment, lose his or her status as a member of the Service. A member of the Senior Foreign Service who accepts such an assignment may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV, and to receive the leave to which such member

is entitled under subchapter I of chapter 63, title 5, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.

(Pub. L. 96-465, title I, § 302, Oct. 17, 1980, 94 Stat. 2084; Pub. L. 100-204, title I, § 177(b), Dec. 22, 1987, 101 Stat. 1362; Pub. L. 102-138, title I, §§ 141, 142(a), Oct. 28, 1991, 105 Stat. 667.)

### Editorial Notes

#### AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102-138, § 141, inserted “as an ambassador,” after “ambassador at large.”.

Subsec. (b). Pub. L. 102-138, § 142(a), substituted “may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV, and to receive the leave to which such member is entitled under subchapter I of chapter 63, title 5, as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President” for “shall receive the salary and leave (if any) of the position to which the member is appointed by the President and shall not be eligible for performance pay under subchapter IV of this chapter”.

1987—Subsec. (b). Pub. L. 100-204 substituted “shall receive the salary and leave (if any) of the position to which the member is appointed by the President and shall not be eligible for performance pay under subchapter IV of this chapter.” for “may elect to continue to receive the salary of his or her salary class, to remain eligible for performance pay under subchapter IV of this chapter, and to receive the leave to which such member is entitled under subchapter I of chapter 63 of title 5 as a member of the Senior Foreign Service, in lieu of receiving the salary and leave (if any) of the position to which the member is appointed by the President.”

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-204, title I, § 177(c), Dec. 22, 1987, 101 Stat. 1362, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 3961 of this title] shall not apply to the salary of any individual serving under a Presidential appointment under section 302 of the Foreign Service Act of 1980 [this section] immediately before the date of the enactment of this Act [Dec. 22, 1987] during the period such individual continues to serve in such position.”

### Executive Documents

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (a)(1) delegated to Secretary of State, see section 1 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

#### EXECUTIVE ORDER NO. 10062

Ex. Ord. No. 10062, June 6, 1949, 14 F.R. 2695, as amended by act Aug. 10, 1949, ch. 412, § 12(a), 63 Stat. 591; Ex. Ord. No. 10144, July 21, 1950, 15 F.R. 4705, eff. June 6, 1949, which established the position of United States High Commissioner for Germany, was revoked by Ex. Ord. No. 10608, May 5, 1955, 20 F.R. 3093, set out below.

#### EX. ORD. NO. 10608. UNITED STATES AUTHORITY AND FUNCTIONS IN GERMANY

Ex. Ord. No. 10608, May 5, 1955, 20 F.R. 3093, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by the Constitution and the statutes, including the Foreign Serv-

ice Act of 1980 (94 Stat. 2071), as amended [this chapter], and as President of the United States and Commander in Chief of the armed forces of the United States, it is ordered as follows:

1. Executive Order No. 10062 of June 6, 1949, and Executive Order No. 10144 of July 21, 1950, amending that order, are hereby revoked, and the position of United States High Commissioner for Germany, established by that order, is hereby abolished.

2. The Chief of the United States Diplomatic Mission to the Federal Republic of Germany, hereinafter referred to as the Chief of Mission, shall have supreme authority, except as otherwise provided herein, with respect to all responsibilities, duties, and governmental functions of the United States in all Germany. The Chief of Mission shall exercise his authority under the supervision of the Secretary of State and subject to ultimate direction by the President.

3. The United States Military Commander having area responsibility in Germany, hereinafter referred to as the Commander, shall have authority with respect to all military responsibilities, duties, and functions of the United States in all Germany, including the command, security, and stationing of United States forces in Germany, the assertion and exercise of their rights and discharge of their obligations therein, and emergency measures which he may consider essential for their protection or the accomplishment of his mission. The Commander may delegate the authority conferred upon him. If action by the Commander or any representative of the Commander, pursuant to the authority herein conferred, affects the foreign policy of the United States or involves relations or negotiations with non-military German authorities, such action shall be taken only after consultation with and agreement by the Chief of Mission or pursuant to procedures previously agreed to between the Chief of Mission and the Commander or his representative. Either the Chief of Mission or the Commander may raise with the other any question which he believes requires such consultation. If agreement is not reached between them, any differences may be referred to the Department of State and the Department of Defense for resolution.

4. The Chief of Mission and the Commander or his designated representatives shall, to the fullest extent consistent with their respective missions, render assistance and support to each other in carrying out the agreements and policies of the United States.

5. With regard to the custody, care, and execution of sentences and disposition (including pardon, clemency, parole, or release) of war criminals confined or hereafter to be confined in Germany as a result of conviction by military tribunals (A) the Chief of Mission shall share the four-power responsibility in the case of persons convicted by the International Military Tribunal, (B) the Chief of Mission shall exercise responsibility in the case of persons convicted by military tribunals established by the United States Military Governor pursuant to Control Council Law No. 10, and (C) the Commander shall exercise responsibility in the case of persons convicted by other military tribunals established by United States Military Commanders in Germany and elsewhere. The Commanders shall, on request of the Chief of Mission, take necessary measures for carrying into execution any sentences adjudged against such persons in category (B) as to whom the Chief of Mission has responsibility and control. Transfer of custody of persons in categories (B) and (C) to the Federal Republic of Germany as provided in the Convention on the Settlement of Matters Arising Out of the War and Occupation shall terminate the responsibility of the Chief of Mission and the Commander with respect to 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.)

**Editorial Notes**

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.

**Statutory Notes and Related Subsidiaries**

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, and the reasons for their continued employment, and the risks associated with the retention of these employees."

**Executive Documents**

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 individuals who are not career members of the Service.