

(Pub. L. 97-132, § 7, Dec. 29, 1981, 95 Stat. 1696.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (c), is Pub. L. 93-148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

§ 3427. Definitions

As used in this subchapter—

(1) the term “Multinational Force and Observers” means the Multinational Force and Observers established in accordance with the Protocol between Egypt and Israel signed on August 3, 1981, relating to the implementation of the security arrangements of the Treaty of Peace; and

(2) the term “Treaty of Peace” means the Treaty of Peace between the Arab Republic of Egypt and the State of Israel signed on March 26, 1979, including the Annexes thereto.

(Pub. L. 97-132, § 8, Dec. 29, 1981, 95 Stat. 1697.)

CHAPTER 50—INSTITUTE FOR SCIENTIFIC AND TECHNOLOGICAL COOPERATION

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§ 3501. Congressional statement of policy

As declared by Congress in the Foreign Assistant¹ Act of 1961 [22 U.S.C. 2151 et seq.], a principal objective of the foreign policy of the United States is the encouragement and sustained support of the people of developing countries in their efforts to acquire the knowledge and resources essential to development and to build the economic, political, and social institutions which will improve the quality of their lives. The Congress reaffirms the profound humanitarian and foreign policy concerns of the United States in the economic and social progress of the developing countries and in the alleviation of the worst physical manifestations of poverty in these countries.

In furtherance of that objective, the Congress recognizes that developing countries require extensive scientific and technological capacity in order to deal effectively with their development problems, relate to the industrialized nations, and constructively participate in the shaping of a stable world order.

It is therefore in the mutual interest of the United States and the developing countries to increase scientific and technological cooperation and jointly to support long-term research on critical problems that impede development and limit the efficient use of the world's human, natural, and capital resources.

(Pub. L. 96-53, title IV, § 401, Aug. 14, 1979, 93 Stat. 371.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in text, is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

EFFECTIVE DATE

Chapter effective Oct. 1, 1979, see section 512(a) of Pub. L. 96-53, set out as an Effective Date of 1979 Amendment note under section 2151 of this title.

§ 3502. Purposes and establishment; policy guidelines and objectives

(a) To strengthen the capacity of the people of developing countries to solve their development problems through scientific and technological

¹ So in original. Probably should be “Assistance”.

innovation, to foster research on problems of development, and to facilitate scientific and technological cooperation with developing countries, the President is authorized to establish an Institute for Scientific and Technological Cooperation (hereafter in this chapter referred to as the "Institute"), which shall be subject to the foreign policy guidance of the Secretary of State.

(b) The Institute shall be guided by the policies set forth in sections 2151 and 2151-1 of this title and shall direct a substantial share of its resources to those objectives.

(Pub. L. 96-53, title IV, §402, Aug. 14, 1979, 93 Stat. 372.)

§ 3503. Functions

(a) Assistance, support, etc., activities in United States and developing countries

In carrying out its purposes, the Institute shall—

(1) assist developing countries to strengthen their own scientific and technological capacity in order for them to undertake the research and experimentation necessary for development;

(2) support research, in the United States and in developing countries, on critical development problems, with emphasis on research relating to technologies which are labor-intensive or which do not generate additional unemployment or underemployment and with emphasis on those problems which are the greatest impediment to improvement in the lives of the majority of the poor;

(3) foster the exchange of scientists and other technological experts with developing countries, and other forms of exchange and communication to promote the joint solution of problems of mutual concern to the United States and developing countries;

(4) advise and assist other agencies of the United States Government in planning and executing policies and programs of scientific and technological cooperation with developing countries;

(5) facilitate the participation of private United States institutions, businesses, and individuals in scientific and technological cooperation with developing countries; and

(6) gather, analyze, and disseminate information relevant to the scientific and technological needs of developing countries.

(b) Review of programs, projects, and other activities; objectives of review

In carrying out the functions specified in subsection (a) of this section, the Institute shall take particular care to review all of its programs, projects, and other activities to ensure that technologies which are developed, utilized, or promoted are assessed with regard to minimizing any new problems and that participants in such programs, projects, and activities are fully aware of the need for such review with respect to any technology-related activities for which the¹ are responsible.

¹ So in original. Probably should be "they".

(c) Presidential utilization of additional statutory authorities

For purposes of carrying out the functions of the Institute, the President may utilize, in addition to authorities conferred by this chapter, such authority contained in the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.], title V of the Foreign Relations Authorization Act, Fiscal Year 1979 [22 U.S.C. 2656a to 2656d], and title IV of the International Development and Food Assistance Act of 1978 [22 U.S.C. 2385a], as the President deems necessary.

(d) Consultation and cooperation with United States and foreign government agencies, and international organizations

The Institute shall carry out its functions in consultation and cooperation with the agencies of the United States Government, international organizations, and agencies of other governments engaged in promoting economic, social, and technological development in developing countries.

(e) Presidential promulgation of coordination procedures concerning other governmental activities

The President shall prescribe appropriate procedures to assure coordination of the activities of the Institute with other activities of the United States Government in furthering the use of science and technology in the cause of development.

(Pub. L. 96-53, title IV, §403, Aug. 14, 1979, 93 Stat. 372; Pub. L. 96-465, title II, §2206(a)(11), Oct. 17, 1980, 94 Stat. 2162.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (c), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsec. (c), is Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, which is classified principally to chapter 52 (§3901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

The Foreign Relations Authorization Act, Fiscal Year 1979, referred to in subsec. (c), is Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 963, as amended. Title V of the Foreign Relations Authorization Act, Fiscal Year 1979, is classified generally to sections 2656a to 2656d of this title. For complete classification of this Act to the Code, see Tables.

The International Development and Food Assistance Act of 1978, referred to in subsec. (c), is Pub. L. 95-424, Oct. 6, 1978, 92 Stat. 937, as amended. Title IV of the International Development and Food Assistance Act of 1978 is classified to section 2385a of this title. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 2151 of this title and Tables.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-465 substituted reference to the Foreign Service Act of 1980 for reference to the Foreign Service Act of 1946.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L.

96-465, set out as an Effective Date note under section 3901 of this title.

§ 3504. General authorities; fiscal requirement for authorities

(a) To carry out the purposes and functions of the Institute, the President may—

(1) make and perform contracts and other agreements with any individual, institution, corporation, or other body of persons however designated, within or outside the United States, and with governments or government agencies, domestic or foreign;

(2) make advances, grants, and loans to any individual, institution, corporation, or other body of persons however designated, within or outside the United States, and to governments or government agencies, domestic or foreign;

(3) employ such personnel as necessary and fix their compensation;

(4) make provision for compensation, transportation, housing, subsistence (or per diem in lieu thereof), and health care or health and accident insurance for foreign nationals engaged in activities authorized by this chapter while they are away from their homes, without regard to the provisions of any other law;

(5) accept and use money, funds, property, and services of any kind by gift, devise, bequest, grant, or otherwise in furtherance of the purposes of the Institute;

(6) acquire by purchase, lease, loan, bequest, or gift and hold and dispose of by sale, lease, loan, or grant, real and personal property of all kinds;

(7) prescribe, amend, and repeal such rules and regulations as may be necessary to the conduct of the business of the Institute;

(8) utilize information, services, facilities, officers, and employees of any agency of the United States Government;

(9) establish a principal office in the United States and such other offices within or outside the United States, as may be necessary;

(10) make such expenditures as may be necessary for administering the provisions of this chapter;

(11) adopt, alter, and use an official seal for the Institute, which shall be judicially noticed; and

(12) take such other actions as may be necessary and incident to carrying out the functions of the Institute.

(b) Any authority provided by this section involving the expenditure of appropriated funds shall be effective for a fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 96-53, title IV, §404, Aug. 14, 1979, 93 Stat. 373.)

INTERNATIONAL AGREEMENTS

The negotiation, conclusion, and termination of international agreements pursuant to this chapter, shall be subject to requirements of section 112b of Title 1, General Provisions, and to applicable regulations and procedures, see section 1-604 of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56677, eff. Oct. 1, 1979, set out as a note under section 2381 of this title.

§ 3505. Director

(a) Appointment; compensation

There shall be a Director of the Institute (hereafter in this chapter referred to as the "Director") who shall be the chief executive officer of the Institute. The Director shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate payable for level III of the Executive Schedule under section 5314 of title 5.

(b) Exercise of Presidential authority; delegation of authority

The President may exercise any authorities conferred upon him by this chapter through the Director or any other agency or officer of the United States Government as he shall direct. The Director or head of any such agency or any such officer may delegate to any of his subordinates authority to perform any of such functions.

(Pub. L. 96-53, title IV, §405, Aug. 14, 1979, 93 Stat. 373.)

§ 3506. Deputy Director

(a) Appointment; compensation

A Deputy Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall receive compensation at the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties and powers

The Deputy Director shall perform such duties and exercise such powers as the Director may prescribe.

(c) Additional positions; establishment by President; compensation

The President may establish up to two additional positions in the Institute to be compensated at the rate payable for level V of the Executive Schedule under section 5316 of title 5.

(Pub. L. 96-53, title IV, §406, Aug. 14, 1979, 93 Stat. 374.)

ADDITIONAL INSTITUTE POSITIONS; ESTABLISHMENT

The two additional positions in the Institute authorized by subsec. (c) of this section were established by section 1-403 of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56675, eff. Oct. 1, 1979, set out as a note under section 2381 of this title.

§ 3507. Council on International Scientific and Technological Cooperation

(a) Establishment

In order to further the purposes of the Institute, the President is authorized to establish a Council on International Scientific and Technological Cooperation (hereafter in this chapter referred to as the "Council").

(b) Functions

(1) The Council shall—

(A) advise the Director with respect to the policies, programs, planning, and procedures of the Institute;

(B) make recommendations to the Director on the use of the resources available to the Institute; and

(C) advise the Director on matters involving the activities of the Institute overseas and appropriate relationships with the private sector, within and outside the United States.

(2) The Council shall prepare an annual report setting forth the major recommendations made and advice given pursuant to paragraph (1) of this subsection.

(c) Advice to Director concerning selection, termination, or change in activities, and transfer of government programs and projects to Institute; review and recommendations respecting new programs and initiatives

The Director shall seek the advice of the Council before making any decision with respect to the selection or termination of, or any significant change in, the areas and issues in which the Institute conducts its activities, and with respect to the transfer of specific programs and projects from any other Government agency to the Institute. The Council shall have the authority to review all new programs and initiatives before their implementation and to make recommendations with regard to the approval or disapproval of new programs and initiatives having a cost in excess of \$500,000 or a duration greater than two years.

(d) Composition; Chairman; appointment, terms, etc., of members

The Council shall consist of up to twenty-five members appointed by the President, one of whom the President shall designate as Chairman. The members of the Council shall be appointed for terms of four years, except that the members first appointed shall be appointed for terms of one, two, three, or four years, as designated by the President at the time of their appointment, so that the terms of approximately one-fourth of the members of the Council expire in any year. The members of the Council shall be selected from among—

(1) citizens of the United States who are widely recognized for their broad knowledge of, or expertise in, science and technology, or their interest in the scientific and technological problems of developing countries;

(2) citizens of foreign countries who by their knowledge and expertise are capable of providing advice and guidance to the Institute on the application of science and technology to the problems of developing countries, except that not more than one-third of the membership of the Council shall consist of members who are citizens of foreign countries; and

(3) officials of the United States Government, except that not to exceed five members of the Council may be appointed under this paragraph, one of whom shall be the Secretary of State or his designee.

(e) Compensation, reimbursement, status, etc., of nongovernmental members

Members of the Council who are not officials of the United States Government shall be entitled to compensation, not to exceed the daily equivalent of the highest rate which may be paid to an employee under the General Schedule established by section 5332 of title 5, while in the performance of their duties under this chapter, and to reimbursement for expenses and per diem

in lieu of subsistence while away from their homes or regular places of business in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5. Members of the Council who are not officials of the United States Government shall not be deemed officers, employees, or otherwise in the service or employment of the United States Government for any purpose, except that members of the Council who are United States citizens shall be deemed Government employees for the purposes of sections 202, 203, 205, 207, 208, and 209 of title 18.

(f) Executive and additional committees; membership, powers, etc., of Executive Committee

The Council may appoint from among its members an Executive Committee, and such other committees it deems necessary, to assist it in exercising its powers and functions. The Executive Committee shall consist of seven members, one of whom shall be the Chairman of the Council and not more than three of whom shall be employees of the United States Government. The Executive Committee shall exercise such powers and functions as are delegated to it by the Council.

(Pub. L. 96-53, title IV, §407, Aug. 14, 1979, 93 Stat. 374.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

ESTABLISHMENT OF COUNCIL

The Council on International Scientific and Technological Cooperation by subsec. (a) of this section was established by section 1-402 of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56675, eff. Oct. 1, 1979, set out as a note under section 2381 of this title.

§ 3508. Fellowships

(a) Authorization; number; duration; renewal; criteria; foreign recipients; designation of recipients as Institute Fellows

The President is authorized to award up to twenty fellowships annually for periods up to two years, such awards to be renewable for an additional period not to exceed two years, to individuals who have demonstrated exceptional competence and ability in the fields of scientific, technological, economic, or social endeavor selected by the Institute for concentration. The awards shall be made so as to encompass a wide diversity of disciplines and backgrounds, and shall be made on the basis of criteria established by the President upon the advice of the Council. Up to ten of the awards in any year may be made to citizens of countries other than the United States. Individuals awarded fellowships shall be designated as Institute Fellows.

(b) Activities of Institute Fellows

The President may assign Institute Fellows to undertake such activities, in the United States

or abroad, as will further the purposes of the Institute.

(c) Amount of awards; transportation, housing, etc., benefits

The amount of the awards made pursuant to this section shall be established by the President, but shall not in any case exceed the highest rate which may be paid to an employee under the General Schedule established by section 5332 of title 5. In addition, where appropriate, the President may make provisions for transportation, housing (when assigned outside country of residence), subsistence (or per diem in lieu thereof), and health care or health or accident insurance for Institute Fellows and their dependents while engaged in activities authorized by this chapter.

(d) Status of Institute Fellows

Except as provided otherwise in this section, Institute Fellows shall not be deemed employees or otherwise in the service or employment of the United States Government. Institute Fellows shall be considered employees for purposes of compensation of injuries under chapter 81 of title 5 and the tort claim provisions of chapter 171 of title 28. In addition, Institute Fellows who are United States citizens shall be considered Government employees for purposes of sections 202, 203, 205, 207, 208, and 209 of title 18.

(e) Admission into United States of alien participants in program

Alien participants in any program of the Institute, including Institute Fellows and their dependents, may be admitted to the United States, if otherwise qualified as non-immigrants under section 1101(a)(15) of title 8, for such time and under such conditions as may be prescribed by regulations promulgated by the Secretary of State and the Attorney General.

(Pub. L. 96-53, title IV, § 408, Aug. 14, 1979, 93 Stat. 375.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 3509. Conflict of interest; personnel and activities covered

Members of the Council and Institute Fellows shall avoid any action, in their activities with respect to the Institute, which might result in, or create the appearance of, a conflict of interest, including but not limited to—

- (1) using their office or position for private gain;
- (2) giving preferential treatment to any person;
- (3) making recommendations or decisions relating to any activity authorized by this chapter in other than an impartial and independent manner;
- (4) misusing Government property or official information obtained through their office or

position which has not been made available to the general public; or

(5) affecting adversely the confidence of the public in the integrity of the Institute.

(Pub. L. 96-53, title IV, § 409, Aug. 14, 1979, 93 Stat. 376.)

§ 3510. Authorization of appropriations

There are authorized to be appropriated to the President to carry out this chapter, in addition to funds otherwise available for such purpose, \$12,000,000 for the fiscal year 1981. Funds appropriated under this section are authorized to remain available until expended.

(Pub. L. 96-53, title IV, § 410, Aug. 14, 1979, 93 Stat. 376; amended Pub. L. 96-533, title III, § 312, Dec. 16, 1980, 94 Stat. 3148.)

AMENDMENTS

1980—Pub. L. 96-533 substituted appropriations authorization of \$12,000,000 for fiscal year 1981 for such authorization of \$23,750,000 for fiscal year 1980.

ALLOCATION OF FUNDS

Funds available to the President for carrying out this chapter were allocated to the Director of the United States International Development Cooperation Agency by section 1-801(a)(2) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56678, eff. Oct. 1, 1979, set out as a note under section 2381 of this title.

§ 3511. Repealed. Pub. L. 98-164, title X, § 1011(a)(6), Nov. 22, 1983, 97 Stat. 1061

Section, Pub. L. 96-53, title IV, § 411, Aug. 14, 1979, 93 Stat. 376, required the President to submit an annual report to Congress relating to the operations of the Institute during the preceding fiscal year, and set forth the contents of such report.

§ 3512. Establishment within International Development Cooperation Agency

Upon the establishment of the United States International Development Cooperation Agency pursuant to Reorganization Plan Numbered 2 of 1979, the Institute shall be established within such Agency.

(Pub. L. 96-53, title IV, § 413, Aug. 14, 1979, 93 Stat. 377.)

REFERENCES IN TEXT

Reorganization Plan Numbered 2 of 1979, referred to in text, is Reorg. Plan No. 2 of 1979, 44 F.R. 41165, 93 Stat. 1378, effective Oct. 1, 1979, pursuant to Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, set out as notes under section 2381 of this title.

§ 3513. Expiration of statutory authorities

The authorities contained in this chapter shall expire on September 30, 1984.

(Pub. L. 96-53, title IV, § 414, Aug. 14, 1979, 93 Stat. 377.)

CHAPTER 51—PANAMA CANAL

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|--|--|

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3791. Prescription of measurement rules and rates of tolls.
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- 3801, 3802. Repealed.

PART 8—SHIPPING AND NAVIGATION

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3811. Operating regulations.

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3821. Vessels subject to inspection.
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- 3831 to 3852. Repealed.

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§ 3601. Congressional statement of purpose

It is the purpose of this chapter to provide legislation necessary or desirable for the implementation of the Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama and of the related agreements accompanying that Treaty.

(Pub. L. 96-70, §2, Sept. 27, 1979, 93 Stat. 455.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

EFFECTIVE DATE

Section 3304 of Pub. L. 96-70 provided that: "Except as provided in sections 1231 [enacting section 3671 of this

title and amending sections 5595, 5724a, and 8102 of Title 5, Government Organization and Employees], 1232 [enacting section 3672 of this title and provisions set out as a note under section 3672 of this title], 1241 [amending section 8336 of Title 5 and enacting provisions set out as notes under section 8336 of Title 5], 1242 [amending section 8339 of Title 5 and enacting provisions set out as notes under section 8339 of Title 5], 1261 [enacting section 3691 of this title and provisions set out as a note under section 3691 of this title], 1605 [enacting section 3795 of this title and provisions set out as a note under section 3795 of this title], 2203 [enacting section 3843 of this title and provisions set out as a note under section 3843 of this title], 2402 [enacting section 3852 of this title and provisions set out as a note under section 3852 of this title], 3101 [enacting section 3861 of this title], and 3201 [amending sections 1101 and 1182 of Title 8, Aliens and Nationality, and enacting provisions set out as notes under sections 1101 and 1182 of Title 8] of this Act, the preceding provisions of this Act [see Short Title note below] shall take effect on the date on which the Panama Canal Treaty of 1977 enters into force [Oct. 1, 1979].”

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104-201, div. C, title XXXV, §3521(a), Sept. 23, 1996, 110 Stat. 2860, provided that: “This subtitle [subtitle B (§§ 3521-3549) of title XXXV of div. C of Pub. L. 104-201, enacting sections 3714b and 3873 of this title, amending sections 3602, 3613, 3614, 3623, 3642, 3649 to 3653, 3657, 3658, 3663, 3664, 3671, 3682, 3712, 3713, 3721, 3723, 3731, 3741, 3751, 3777, and 3811 of this title and sections 3401, 5102, 5342, 5343, 5348, 5373, 5537, 5541, 5924, 6322, and 7901 of Title 5, Government Organization and Employees, repealing sections 3654, 3683, 3711, 3795, 3801, 3802, 3831, 3841 to 3844, 3851, 3852, and 3861 of this title, enacting provisions set out as notes under sections 3613, 3614, and 3652 of this title, and repealing provisions set out as notes under sections 3795 and 3843 of this title] may be cited as the ‘Panama Canal Act Amendments of 1996.’”

Pub. L. 104-106, div. C, title XXXV, §3521, Feb. 10, 1996, 110 Stat. 638, provided that: “This subtitle [subtitle B (§§ 3521-3530) of title XXXV of div. C of Pub. L. 104-106, enacting sections 3612a and 3612b of this title and amending sections 3611, 3612, 3645, 3712, 3713, 3723, 3731, 3761, 3775, 3776, 3791, and 3794 of this title and section 9101 of Title 31, Money and Finance] may be cited as the ‘Panama Canal Amendments Act of 1995.’”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-705, §1, Nov. 19, 1988, 102 Stat. 4685, provided that: “This Act [enacting sections 3715 to 3715d of this title, amending sections 3612, 3712, and 3731 of this title, and enacting provisions set out as a note under section 3612 of this title] may be cited as the ‘Panama Canal Commission Compensation Fund Act of 1988.’”

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-203, title V, §5421, Dec. 22, 1987, 101 Stat. 1330-271, provided that: “This part [part 2 of subtitle E (§§ 5421-5429) of title V of Pub. L. 100-203, enacting section 3714 of this title, amending sections 3683, 3711, 3712, 3713, 3751, 3753, 3754, 3792, and 3793 of this title and section 8348 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 3683 of this title] may be referred to as the ‘Panama Canal Revolving Fund Act.’”

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99-209, §1, Dec. 23, 1985, 99 Stat. 1716, provided that: “This Act [enacting section 3779 of this title, amending sections 3771, 3772, and 3774 to 3776 of this title, and enacting provisions set out as a note under section 3771 of this title] may be cited as the ‘Panama Canal Amendments Act of 1985.’”

SHORT TITLE

Section 1 of Pub. L. 96-70 provided that: “This Act [enacting this chapter, amending section 2778 of this

title, sections 305, 5102, 5316, 5342, 5343, 5348, 5373, 5504, 5533, 5541, 5583, 5595, 5724a, 6301, 6322, 6323, 8102, 8146, 8335, 8336, 8339, 8348, 8701, and 8901 of Title 5, Government Organization and Employees, sections 1101 and 1182 of Title 8, Aliens and Nationality, section 213 of Title 29, Labor, sections 403, 3401, and 3682 of Title 39, Postal Service, and sections 191, 195, and 196 of Title 50, War and National Defense, repealing section 3402 of Title 39 and section 191b of Title 50, and enacting provisions set out as notes under sections 3601, 3602, 3672, 3691, 3795, 3843, and 3852 of this title, sections 8336 and 8339 of Title 5, and sections 1101 and 1182 of Title 8] may be cited as the ‘Panama Canal Act of 1979.’”

EX. ORD. NO. 12173. CONTINUING APPLICABILITY OF PANAMA CANAL REGULATIONS

Ex. Ord. No. 12173, Nov. 29, 1979, 44 F.R. 69271, as amended by Ex. Ord. No. 12203, Mar. 26, 1980, 45 F.R. 20451, provided:

By the authority vested in me as President of the United States of America by Section 301 of Title 3 of the United States Code, by the Panama Canal Code (76A Stat. 1), as amended, and by Public Law 96-70 (93 Stat. 452) [see Short Title note above], and in accordance with the rights granted to the United States of America by the Panama Canal Treaty of 1977 “to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal,” it is hereby ordered as follows:

1-101. All regulations that were adopted by the President or his delegates pursuant to former Title 2 of the Canal Zone Code (76A Stat. 6-50), repealed by Section 303(a)(1) [probably should be 3303(a)(1)] of Public Law 96-70, or actions taken pursuant thereto, that were in effect on September 30, 1979, and that address matters which the President is authorized to regulate pursuant to Public Law 96-70 [see Short Title note above], shall remain in effect unless or until amended, superseded, or otherwise terminated by the President or the Panama Canal Commission. This extension shall not apply to the extent that any such regulation or action is inconsistent with the provisions of the Panama Canal Treaty of 1977, its implementing agreements, or Public Law 96-70.

1-102. The Secretary of Defense shall exercise the powers and carry out the responsibilities vested in the President of the United States by the Panama Canal Code (76A Stat. 1), as amended, and Public Law 96-70 (93 Stat. 452), except for those powers and responsibilities vested in the President by Sections 1102(b), 1103, 1104, 1105(a), 1106(b), 1108, 1109(a), 1112(d), 1243(a)(1), 1321(c), 1344(b), 1504(b), 1601(a), 2206(b) and 3301 of Public Law 96-70 [sections 3612(b), 3613, 3614, 3615(a), 3616(b), 3618, 3619(a), 3622(d), 3681(a)(1), 3731(c), 3754(b), 3784(b), 3791(a), [former] 3844(b) and 3871 of this title]. This delegation shall be effective until May 15, 1980.

JIMMY CARTER.

EX. ORD. NO. 12215. DELEGATION OF PANAMA CANAL FUNCTIONS

Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, as amended by Ex. Ord. No. 12652, Sept. 19, 1988, 53 F.R. 36775, provided:

By the authority vested in me as President of the United States of America by the Panama Canal Code (76A Stat. 1), as amended, by the Panama Canal Act of 1979 (93 Stat. 452; 22 U.S.C. 3601 et seq.), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-1. THE SECRETARY OF DEFENSE

1-101. The Secretary of Defense shall develop for the President’s consideration an appropriate legislative proposal as required by Section 3(d) of the Panama Canal Act of 1979 (93 Stat. 456; 22 U.S.C. 3602(d)). The Secretary of Defense shall coordinate development of this proposal with the Secretary of State and the heads of other interested Executive agencies.

1-102. The function vested in the President by Section 1212(d)(1) of the Panama Canal Act of 1979 (93 Stat. 464; 22 U.S.C. 3652(d)(1)) to exclude employees of, or positions within, the Department of Defense from coverage under any provision of subchapter II, Chapter 2 of Title I of the Panama Canal Act of 1979 [22 U.S.C. 3651 et seq.], is delegated to the Secretary of Defense.

1-103. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-104. The function vested in the President by Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801), with respect to regulations applicable within the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, is delegated to the Secretary of Defense.

1-105. The functions vested in the President by Sections 1243(c)(1) and 2401 of the Panama Canal Act of 1979 (93 Stat. 474 and 495; 22 U.S.C. 3681(c)(1) and 3851) are delegated to the Secretary of Defense.

1-106. The functions vested in the President by Section 1502(a) of the Panama Canal Act of 1979 (93 Stat. 488; 22 U.S.C. 3782(a)) are delegated to the Secretary of Defense.

1-2. COORDINATION OF PAY AND EMPLOYMENT PRACTICES

1-201. In order to coordinate the policies and activities of agencies under subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463; 22 U.S.C. 3651 et seq.), each agency shall periodically consult with the Secretary of Defense with respect to the establishment of rates of pay, in order to develop compatible or unified systems for basic pay. In addition, each agency shall consult with the Secretary of Defense on such other matters as the Secretary may deem appropriate in order to develop compatible or unified employment practices.

1-202. The head of each agency shall, upon approval by the Secretary of Defense, adopt a schedule of basic pay pursuant to Section 1215 of the Panama Canal Act of 1979 (93 Stat. 465; 22 U.S.C. 3655) and adopt regulations governing other matters relating to pay and employment practices.

1-203. The authority vested in the President by Section 1223(a) of the Panama Canal Act of 1979 to coordinate the policies and activities of agencies (93 Stat. 467; 22 U.S.C. 3663(a)) is delegated to the Secretary of Defense. The Secretary shall exercise such functions in a manner which is in accord with the provisions of Sections 1-201 and 1-202 of this Order.

1-3. PANAMA CANAL COMMISSION

1-301. The functions vested in the President and delegated to the Secretary of Defense in this Section 1-3 of this Order shall be carried out by the Secretary of Defense, who shall, in carrying out the said functions, provide, by redelegation or otherwise, for their performance, in a manner consistent with paragraph 3 of Article III of the Panama Canal Treaty of 1977, by the Panama Canal Commission.

1-302. The authority of the President under Section 1104 of the Panama Canal Act of 1979 (93 Stat. 457; 22 U.S.C. 3614) to fix the compensation of and to define the authorities and duties of the Deputy Administrator and the Chief Engineer is delegated to the Secretary of Defense.

1-303. The functions vested in the President by Sections 1418, 1801, and 2206 of the Panama Canal Act of 1979 (93 Stat. 487, 492, and 494; 22 U.S.C. 3778, 3811, and 3844) are delegated to the Secretary of Defense.

1-304. The authority of the President under Section 1701 of the Panama Canal Act of 1979 (93 Stat. 492; 22 U.S.C. 3801) with respect to regulations applicable with-

in the areas and installations made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-305. The function vested in the President by Section 1281(b) of Title 6 of the Panama Canal Code (76A Stat. 455; 6 P.C.C. 1281(b)), as amended, with respect to areas and installations in the Republic of Panama made available to the United States pursuant to the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977 is delegated to the Secretary of Defense.

1-306. The functions vested in the President by Sections 82 and 86 of Title 3 of the Panama Canal Code (76A Stat. 54 and 55; 3 P.C.C. 82 and 86), as amended, are delegated to the Secretary of Defense.

[1-307. Rescinded by Ex. Ord. No. 12652, Sept. 19, 1988, 53 F.R. 36775, eff. Jan. 1, 1989.]

1-308. Except to the extent heretofore delegated, the functions vested in the President pursuant to subchapter II of Chapter 2 of Title I of the Panama Canal Act of 1979 (93 Stat. 463) [22 U.S.C. 3651 et seq.] are hereby delegated to the Secretary of Defense.

1-4. OTHER AGENCIES

1-401. The functions vested in the President by Sections 1111 and 3301 of the Panama Canal Act of 1979 (93 Stat. 459 and 497; 22 U.S.C. 3621 and 3871), are delegated to the Secretary of State. The Secretary shall perform these functions in coordination with the Secretary of Defense.

1-402. The functions vested in the President by Sections 1112(d), 1344(b), and 1504(b) of the Panama Canal Act of 1979 (93 Stat. 460, 484, and 488; 22 U.S.C. 3622(d), 3754(b), and 3784(b)) are delegated to the Secretary of State.

1-403. The functions vested in the President by Section 1243(a)(1) of the Panama Canal Act of 1979 (93 Stat. 473; 22 U.S.C. 3681(a)(1)) are delegated to the Director of the Office of Personnel Management.

1-404. Paragraphs (22) and (23) of Section 1 of Executive Order No. 11609, as amended [set out as a note under section 301 of Title 3, The President], and Executive Order No. 11713 are revoked.

JIMMY CARTER.

§ 3602. Definitions

(a) References to Panama Canal Treaty of 1977 and related agreements

For purposes of this chapter—

(1) references to the Panama Canal Treaty of 1977 refer to the Panama Canal Treaty between the United States of America and the Republic of Panama, signed September 7, 1977; and

(2) references to the Panama Canal Treaty of 1977 and related agreements refer to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

(b) Definitions

Subject to the provisions of subsection (c) of this section, for purposes of applying the Canal Zone Code or other laws of the United States and regulations issued pursuant to such Code or other laws with respect to transactions, occurrences, or status on or after October 1, 1979—

(1) "Canal Zone" shall be deemed to refer to the areas and installations in the Republic of Panama made available to the United States

pursuant to the Panama Canal Treaty of 1977 and related agreements;

(2) “Canal Zone waters” and “waters of the Canal Zone” shall be deemed to refer to “Panama Canal waters” and “waters of the Panama Canal”, respectively;

(3) “Government of the Canal Zone” or “Canal Zone Government” shall be deemed to refer to the United States of America;

(4) “Governor of the Canal Zone” or “Governor”, wherever the reference is to the Governor of the Canal Zone, shall be deemed to refer to the Panama Canal Commission; and

(5) “Panama Canal Company” or “Company”, wherever the reference is to the Panama Canal Company, shall be deemed to refer to the Panama Canal Commission.

(c) Applicability of subsection (b)

Any reference set forth in subsection (b) of this section shall apply except as otherwise provided in this chapter or unless (1) such reference is inconsistent with the provisions of this chapter, (2) in the context in which a term is used such reference is clearly not intended, or (3) a term refers to a time before October 1, 1979.

(Pub. L. 96-70, § 3, Sept. 27, 1979, 93 Stat. 455; Pub. L. 104-201, div. C, title XXXV, §§ 3522, 3548(c)(1), Sept. 23, 1996, 110 Stat. 2860, 2869.)

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a) and (c), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Canal Zone Code, referred to in subsec. (b), which was redesignated the Panama Canal Code (see note below), was repealed by Pub. L. 104-201, div. C, title XXXV, § 3549, Sept. 23, 1996, 110 Stat. 2870.

REFERENCES TO CANAL ZONE CODE DEEMED
REFERENCES TO PANAMA CANAL CODE

Section 3303(b) of Pub. L. 96-70 provided that: “Those provisions of the Canal Zone Code not repealed by this Act are redesignated as the ‘Panama Canal Code’. Any reference to the Canal Zone Code in those laws and regulations referred to in section 3(b) of this Act [subsec. (b) of this section] shall, subject to the provisions of such section, be deemed to refer to the [former] Panama Canal Code.”

AMENDMENTS

1996—Pub. L. 104-201, § 3548(c)(1), struck out “and recommendation for legislation” after “Definitions” in section catchline.

Subsec. (b)(4) to (7). Pub. L. 104-201, § 3522(1), inserted “and” at end of par. (4), substituted a period for semicolon at end of par. (5), and struck out pars. (6) and (7) which read as follows:

“(6) in chapter 57 of title 5 of the Canal Zone Code, ‘hospitals’ and ‘Health Bureau’ shall be deemed to refer, respectively, to the hospitals operated by the United States in the Republic of Panama, and to the organizational unit operating such hospitals; and

“(7) in chapter 57 of title 5 of the Canal Zone Code, in section 4784 of title 6 of such Code, and in section 2 of title 7 of such Code, ‘health director’ shall be deemed to refer to the senior official in charge of the hospitals operated by the United States in the Republic of Panama.”

Subsec. (d). Pub. L. 104-201, § 3522(2), struck out subsec. (d) which read as follows: “The President shall,

within two years after October 1, 1979, submit to the Congress a request for legislation which would—

“(1) amend or repeal provisions of law which in their present form are applicable only during the transition period prescribed in Article XI of that Treaty.

“(2) repeal the Canal Zone Code, and

“(3) contain provisions considered necessary and appropriate in light of the experience as of that time under that Treaty.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 5595, 5724, 5724a, 8102; title 8 section 1101.

SUBCHAPTER I—ADMINISTRATION AND
REGULATIONS

PART 1—PANAMA CANAL COMMISSION

§ 3611. Establishment, purposes, offices, and residence of Commission

(a) For the purposes of managing, operating, and maintaining the Panama Canal and its complementary works, installations and equipment, and of conducting operations incident thereto, in accordance with the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission (hereinafter in this chapter referred to as the “Commission”) is established as a wholly owned government corporation (as that term is used in chapter 91 of title 31) within the executive branch of the Government of the United States. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.

(b) The principal office of the Commission shall be located in the Republic of Panama in one of the areas made available for use of the United States under the Panama Canal Treaty of 1977 and related agreements, but the Commission may establish branch offices in such other places as it considers necessary or appropriate for the conduct of its business. Within the meaning of the laws of the United States relating to venue in civil actions, the Commission is an inhabitant and resident of the District of Columbia and the eastern judicial district of Louisiana.

(Pub. L. 96-70, title I, § 1101, Sept. 27, 1979, 93 Stat. 456; Pub. L. 104-106, div. C, title XXXV, § 3522(a), Feb. 10, 1996, 110 Stat. 638.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-106 amended section generally. Prior to amendment, section read as follows: “There is established in the executive branch of the United States Government an agency to be known as the Panama Canal Commission (hereinafter in this chapter referred to as the ‘Commission’). The Commission shall, under the general supervision of the Board established by section 3612 of this title, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto. The authority of the President with respect to the Commission shall be exercised through the Secretary of Defense.”

RECOMMENDATIONS BY PRESIDENT ON CHANGES TO
PANAMA CANAL COMMISSION STRUCTURE

Pub. L. 102-484, div. C, title XXXV, §3522, Oct. 23, 1992, 106 Stat. 2657, provided that:

“(a) REPORT.—The President shall conduct a study and, if warranted, develop a plan setting forth recommendations for such changes, if any, to the Panama Canal Commission for the operation of the Panama Canal during the period before the termination of the Panama Canal Treaty of 1977 as the President determines would facilitate and encourage the operation of the canal through an autonomous entity under the Government of Panama after the transfer of the canal on December 31, 1999, pursuant to the Panama Canal Treaty of 1977 and related agreements. The President shall submit the study and, if warranted, plan to Congress, together with a legislative proposal containing any changes to existing law required to implement the plan, not later than one year after the date of the enactment of this Act [Oct. 23, 1992].

“(b) PREPARATION OF PLAN.—Recommendations to the President for purposes of the study and plan required by subsection (a) shall be prepared with the participation of a representative of each of the following:

- “(1) The Secretary of State.
- “(2) The Secretary of Defense.
- “(3) The Secretary of the Treasury.
- “(4) The Secretary of Commerce.
- “(5) The Secretary of Transportation.
- “(6) The Panama Canal Commission.

“(c) PLAN TO BE CONSISTENT WITH PANAMA CANAL TREATY.—The study and, if warranted, plan submitted by the President pursuant to subsection (a) shall be consistent with the Panama Canal Treaty of 1977 and related agreements.”

REPORT BY COMPTROLLER GENERAL ON CHANGES TO
PANAMA CANAL COMMISSION STRUCTURE

Pub. L. 102-484, div. C, title XXXV, §3523, Oct. 23, 1992, 106 Stat. 2658, provided that:

“(a) REPORT.—The Comptroller General shall submit to Congress a report analyzing the effectiveness of the fiscal, operational, and management structure of the Panama Canal Commission and setting forth recommendations for such changes to that structure as the Comptroller General determines would, if implemented, enable the Commission to operate more efficiently and, thereby, serve as a model for the Government of Panama for the operation of the Panama Canal after the transfer of the Panama Canal on December 31, 1999, pursuant to the Panama Canal Treaty of 1977 and related agreements. The Comptroller General shall submit the report to Congress not later than one year after the date of the enactment of this Act [Oct. 23, 1992].

“(b) PREPARATION OF REPORT.—In developing the report required by subsection (a), the Comptroller General shall seek the views of each of the following:

- “(1) The Secretary of State.
- “(2) The Secretary of Defense.
- “(3) The Secretary of the Treasury.
- “(4) The Secretary of Commerce.
- “(5) The Secretary of Transportation.
- “(6) The Panama Canal Commission.

“(c) REPORT TO BE CONSISTENT WITH PANAMA CANAL TREATY.—The recommendations in the report submitted by the Comptroller General pursuant to subsection (a) shall be consistent with the Panama Canal Treaty of 1977 and related agreements.”

§ 3612. Supervisory Board

(a) Composition of Board

The Commission shall be supervised by a Board composed of nine members, one of whom shall be the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not less than five members of the Board shall be nationals of the United States

and the remaining members of the Board shall be nationals of the Republic of Panama. Three members of the Board who are nationals of the United States shall hold no other office in, and shall not be employed by, the Government of the United States, and shall be chosen for the independent perspective they can bring to the Commission's affairs. Members of the Board who are nationals of the United States shall cast their votes as directed by the Secretary of Defense or a designee of the Secretary of Defense.

(b) Membership of Board; appointing authority; compensation and travel expenses; compensation for non-Government Board members

The President shall appoint the members of the Board. The members of the Board who are United States nationals shall be appointed by and with the advice and consent of the Senate. Each member of the Board shall hold office at the pleasure of the President and, before assuming the duties of such office, shall take an oath to discharge faithfully the duties of his office. Members of the Board shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 3617 of this title, except that, in addition to such travel or transportation expenses, members of the Board who hold no other office with either the Government of the United States or the Republic of Panama for which they receive pay are authorized to be compensated at the daily equivalent of the annual rate of basic pay in effect for level V of the Executive Schedule under section 5316 of title 5, for each day during which they are traveling to or from or attending meetings of the Board as provided in subsection (c) of this section or, as authorized by the Chairman of the Board, while on official Panama Canal Commission business.

(c) Meetings; quorum; proxies

The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States. The Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, may act by proxy for any other member of the Board if that other member authorizes the proxy in writing and signs the proxy. The proxy may be counted to establish a quorum and may be used by the Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, to cast the vote of the absent Board member and to act for that member with all the powers that member would possess if present.

(Pub. L. 96-70, title I, §1102, Sept. 27, 1979, 93 Stat. 456; Pub. L. 98-217, Feb. 14, 1984, 98 Stat. 9; Pub. L. 99-223, §6, Dec. 28, 1985, 99 Stat. 1740; Pub. L. 100-203, title V, §5416, Dec. 22, 1987, 101 Stat. 1330-270; Pub. L. 100-705, §7, Nov. 19, 1988, 102 Stat. 4686; Pub. L. 101-510, div. C, title XXXV, §3504, Nov. 5, 1990, 104 Stat. 1846; Pub. L. 104-106, div. C, title XXXV, §3523, Feb. 10, 1996, 110 Stat. 638.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106 added subsec. (a) and struck out former subsec. (a) which read as follows: “The Commission shall be supervised by a Board composed of nine members, one of whom shall be the Secretary of Defense or an officer of the Department of Defense designated by the Secretary. Not less than five members of the Board shall be nationals of the United States and the remaining members shall be nationals of the Republic of Panama. At least one of the members of the Board who are nationals of the United States shall be experienced and knowledgeable in the management or operation of an American-flag steamship line which has or had ships regularly transiting the Panama Canal, at least one other such member shall be experienced and knowledgeable in United States port operations or in the business of exporting or importing one of the regular commodities dependent on the Panama Canal as a transportation route, and at least one other such member shall be experienced and knowledgeable in labor matters in the United States. Three members of the Board shall hold no other office in or be employed by the Government of the United States. Members of the Board who are nationals of the United States shall cast their votes as directed by the Secretary of Defense or his designee.”

1990—Subsec. (b). Pub. L. 101-510 substituted “level V of the Executive Schedule under section 5316” for “grade GS-18 of the General Schedule under section 5332”.

1988—Subsec. (c). Pub. L. 100-705 struck out after third sentence “Only one proxy may be valid at any one time.”

1987—Subsec. (b). Pub. L. 100-203 inserted before period at end “or, as authorized by the Chairman of the Board, while on official Panama Canal Commission business”.

1985—Subsec. (b). Pub. L. 99-223 inserted provisions relating to compensation of members of the Board who hold no other office with either the Government of the United States or the Republic of Panama for which they receive pay.

1984—Subsec. (c). Pub. L. 98-217 inserted provisions under which the Secretary of Defense or the officer of the Department of Defense designated by the Secretary may act by proxy for other members of the Board.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 10 of Pub. L. 100-705 provided that: “This Act [enacting sections 3715 to 3715d of this title, amending this section and sections 3712 and 3731 of this title, and enacting provisions set out as a note under section 3601 of this title] takes effect on October 1, 1988.”

EFFECTIVE DATE OF 1985 AMENDMENT

Section 8 of Pub. L. 99-223 provided that: “Section 5 and section 6 of the Act [enacting section 3650 of this title and amending this section and sections 3647 and 3731 of this title] shall be effective as of October 1, 1985.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3714a, 3723 of this title.

§ 3612a. General powers of Commission**(a) Corporate seal**

The Commission may adopt, alter, and use a corporate seal, which shall be judicially noticed.

(b) Bylaws

The Commission may by action of the Board of Directors adopt, amend, and repeal bylaws governing the conduct of its general business and the performance of the powers and duties granted to or imposed upon it by law.

(c) Suits by and against Commission

The Commission may sue and be sued in its corporate name, except that—

(1) the amenability of the Commission to suit is limited by Article VIII of the Panama Canal Treaty of 1977, section 3761 of this title, and otherwise by law;

(2) an attachment, garnishment, or similar process may not be issued against salaries or other moneys owed by the Commission to its employees except as provided by section 5520a of title 5 and sections 659, 661, and 662¹ of title 42, or as otherwise specifically authorized by the laws of the United States; and

(3) the Commission is exempt from the payment of interest on claims and judgments.

(d) Contracts, leases, agreements, or other transactions

The Commission may enter into contracts, leases, agreements, or other transactions.

(e) Obligations and expenditures

The Commission—

(1) may determine the character of, and necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid; and

(2) may incur, allow, and pay its obligations and expenditures, subject to pertinent provisions of law generally applicable to Government corporations.

(f) Priority in payment of debts out of bankrupt estates

The Commission shall have the priority of the Government of the United States in the payment of debts out of bankrupt estates.

(g) Limitations on authority

The authority of the Commission under this section and section 3612b of this title is subject to the Panama Canal Treaty of 1977 and related agreements, and to chapter 91 of title 31.

(Pub. L. 96-70, title I, §1102a, as added Pub. L. 104-106, div. C, title XXXV, §3524(a), Feb. 10, 1996, 110 Stat. 639.)

REFERENCES IN TEXT

Sections 661 and 662 of title 42, referred to in subsec. (c)(2), were repealed by Pub. L. 104-193, title III, §362(b)(1), Aug. 22, 1994, 110 Stat. 2246.

§ 3612b. Specific powers of Commission**(a) Panama Canal management, operation, and maintenance**

The Commission may manage, operate, and maintain the Panama Canal.

(b) Establishment, maintenance, and operation of activities, facilities, and appurtenances

The Commission may construct or acquire, establish, maintain, and operate such activities, facilities, and appurtenances as necessary and appropriate for the accomplishment of the purposes of this chapter, including the following:

(1) Docks, wharves, piers, and other shoreline facilities.

(2) Shops and yards.

(3) Marine railways, salvage and towing facilities, fuel-handling facilities, and motor transportation facilities.

(4) Power systems, water systems, and a telephone system.

¹ See References in Text note below.

- (5) Construction facilities.
- (6) Living quarters and other buildings.
- (7) Warehouses, storehouses, a printing plant, and manufacturing, processing, or service facilities in connection therewith.
- (8) Recreational facilities.

(c) Use of United States mails

The Commission may use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government.

(d) Necessary or appropriate actions

The Commission may take such actions as are necessary or appropriate to carry out the powers specifically conferred upon it.

(Pub. L. 96-70, title I, §1102b, as added Pub. L. 104-106, div. C, title XXXV, §3524(a), Feb. 10, 1996, 110 Stat. 639.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979 which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3612a of this title.

§ 3613. Administrator

(a) There shall be an Administrator of the Commission who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President.

(b) The Administrator shall be paid compensation in an amount, established by the Board, not to exceed level III of the Executive Schedule.

(Pub. L. 96-70, title I, §1103, Sept. 27, 1979, 93 Stat. 457; Pub. L. 104-201, div. C, title XXXV, §3523(a), Sept. 23, 1996, 110 Stat. 2860.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (b), is set out in section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104-201 amended section generally. Prior to amendment, section read as follows: “There shall be an Administrator of the Commission, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the President.”

SAVINGS PROVISION

Section 3523(b) of Pub. L. 104-201 provided that: “Nothing in this section [amending this section] (or section 3549(3) [section 3549 of Pub. L. 104-201 did not contain a par. (3) and is not classified to the Code]) shall be considered to affect—

“(1) the tenure of the individual serving as Administrator of the Commission on the day before subsection (a) takes effect [section 3523(a) of Pub. L. 104-201, effective Sept. 23, 1996]; or

“(2) until modified under section 1103(b) of the Panama Canal Act of 1979 [subsec. (b) of this section], as amended by subsection (a), the compensation of the individual so serving.”

§ 3614. Deputy Administrator

(a) Appointment and duties

There shall be a Deputy Administrator of the Commission who shall be appointed by the President. The Deputy Administrator shall perform such duties as may be prescribed by the Board.

(b) Compensation

The Deputy Administrator shall be paid compensation at a rate of pay, established by the Board, which does not exceed the rate of basic pay in effect for level IV of the Executive Schedule, and, if eligible, shall be paid the overseas recruitment and retention differential provided for in section 3657 of this title.

(Pub. L. 96-70, title I, §1104, Sept. 27, 1979, 93 Stat. 457; Pub. L. 101-510, div. C, title XXXV, §3505, Nov. 5, 1990, 104 Stat. 1846; Pub. L. 104-201, div. C, title XXXV, §3524(a), Sept. 23, 1996, 110 Stat. 2860.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b), is set out in section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104-201 struck out “and Chief Engineer” after “Deputy Administrator” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) There shall be a Deputy Administrator and a Chief Engineer of the Commission, both of whom shall be appointed by the President. The Deputy Administrator and the Chief Engineer shall perform such duties as may be prescribed by the President.

“(b) The Deputy Administrator and the Chief Engineer shall each be paid compensation at a rate of pay established by the President which does not exceed the rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5, and, if eligible, shall each be paid the overseas recruitment or retention differential provided for in section 3657 of this title.”

1990—Subsec. (b), Pub. L. 101-510 inserted before period at end “”, and, if eligible, shall each be paid the overseas recruitment or retention differential provided for in section 3657 of this title”.

DELEGATION OF FUNCTIONS

Authority of President under this section to fix the compensation of and to define authorities and duties of Deputy Administrator delegated to Secretary of Defense, see section 1-302 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

SAVINGS PROVISION

Section 3524(b) of Pub. L. 104-201 provided that: “Nothing in this section [amending this section] shall be considered to affect—

“(1) the tenure of the individual serving as Deputy Administrator of the Commission on the day before subsection (a) takes effect [section 3524(a) of Pub. L. 104-201, effective Sept. 23, 1996]; or

“(2) until modified under section 1104(b) of the Panama Canal Act of 1979 [subsec. (b) of this section], as amended by subsection (a), the compensation of the individual so serving.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3642 of this title.

§ 3615. Consultative Committee

(a) Designation and coordination

The President shall designate, and the Secretary of State shall coordinate the participation of, representatives of the United States to the Consultative Committee to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977.

(b) Functions

The Consultative Committee shall function as a diplomatic forum for the exchange of views between the United States and the Republic of Panama. The Committee shall advise the United States Government and the Government of the Republic of Panama on matters of policy affecting the operation of the Panama Canal. The Committee shall have no authority to direct the Commission or any other department or agency of the United States to initiate or withhold action.

(Pub. L. 96-70, title I, §1105, Sept. 27, 1979, 93 Stat. 457.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3617 of this title.

§ 3616. Joint Commission on the Environment

(a) Establishment; composition

The United States and the Republic of Panama, in accordance with the Panama Canal Treaty of 1977, shall establish a Joint Commission on the Environment (hereinafter in this section referred to as the "Joint Commission") to be composed of not more than three representatives of the United States and three representatives of the Republic of Panama, or such other equivalent numbers of representatives as may be agreed upon by the Governments of the two countries. The United States members of the Joint Commission shall periodically review the implementation of the Panama Canal Treaty of 1977 with respect to its impact on the environment and shall, jointly with the representatives of the Government of Panama, make recommendations to the United States Government and the Government of the Republic of Panama with respect to ways to avoid or mitigate adverse environmental impacts resulting from actions taken pursuant to such Treaty.

(b) Appointment; compensation and travel expenses

Representatives of the United States on the Joint Commission shall be appointed by the President and shall serve at the pleasure of the President. Such representatives shall serve without compensation but shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in accordance with section 3617 of this title.

(c) Protection of pay, seniority, or other rights or benefits of appointed or detailed Federal employees

Any Federal employee subject to the civil service laws and regulations who is detailed to serve with, or appointed by, the United States representatives on the Joint Commission shall not lose any pay, seniority, or other rights or

benefits by reason of such detail or appointment.

(d) Compensation of necessary personnel

The United States representatives on the Joint Commission may, to such extent or in such amounts as are provided in advance in appropriation Acts, appoint and fix the compensation of such personnel as the representatives of the United States on the Joint Commission may consider necessary for the participation of the United States on the Joint Commission.

(e) Rules of procedure; establishment; approval

The United States representatives on the Joint Commission may, in cooperation with the representatives of the Republic of Panama on the Joint Commission, establish rules of procedure to be used by the Joint Commission in conducting its affairs, subject to the approval of such rules by the Governments of the United States and the Republic of Panama.

(Pub. L. 96-70, title I, §1106, Sept. 27, 1979, 93 Stat. 457.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3617 of this title.

§ 3617. Travel expenses

While away from their homes, regular places of business, or official stations in performance of services under this part, members of the Board of the Commission and the representatives of the United States on the Consultative Committee referred to in section 3615 of this title and on the Joint Commission on the Environment referred to in section 3616 of this title shall be allowed travel or transportation expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5.

(Pub. L. 96-70, title I, §1107, Sept. 27, 1979, 93 Stat. 458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3612, 3616 of this title.

§ 3618. Defense of Panama Canal

In the event of an armed attack against the Panama Canal, or when, in the opinion of the President, conditions exist which threaten the security of the Canal, the Administrator of the Commission shall, upon the order of the President, comply with such directives as the United States military officer charged with the protection and defense of the Panama Canal may consider necessary in the exercise of his duties.

(Pub. L. 96-70, title I, §1108, Sept. 27, 1979, 93 Stat. 458.)

§ 3619. Joint sea level canal study

(a) Committee; appointment of representatives

The President shall appoint the representatives of the United States to any joint commit-

tee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977.

(b) Transmittal of study to President of Senate and Speaker of House of Representatives

Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to paragraph 1 of Article XII of the Panama Canal Treaty of 1977, the text of the study shall be transmitted by the President to the President of the Senate and to the Speaker of the House of Representatives.

(c) Congressional authorization respecting construction of sea level canal

No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express congressional authorization after submission of the study by the President as provided in subsection (b) of this section.

(Pub. L. 96-70, title I, §1109, Sept. 27, 1979, 93 Stat. 459.)

§ 3620. Authority of Ambassador; independence of Commission regarding its Panama Canal responsibilities

(a) The United States Ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b)(1) The Commission shall not be subject to the direction or supervision of the United States Chief of Mission in the Republic of Panama with respect to the responsibilities of the Commission for the operation, management, or maintenance of the Panama Canal, as established in this chapter or any other Act or in the Panama Canal Treaty of 1977 and related agreements, except that the Commission shall keep the Ambassador fully and currently informed with respect to all activities and operations of the Commission.

(2) Except as provided in paragraph (1) of this subsection, section 2680a¹ of this title shall apply with respect to the activities of the Commission.

(Pub. L. 96-70, title I, §1110, Sept. 27, 1979, 93 Stat. 459.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

Section 2680a of this title, referred to in subsec. (b)(2), was repealed by Pub. L. 96-465, title II, §2205(10), Oct. 17, 1980, 94 Stat. 2160. See section 3927 of this title.

¹ See References in Text note below.

§ 3621. Security legislation

It is the sense of the Congress that the best interests of the United States require that the President enter into negotiations with the Republic of Panama for the purpose of arranging for the stationing of United States military forces, after the termination of the Panama Canal Treaty of 1977, in the area comprising the Canal Zone before October 1, 1979, and for the maintenance of installations and facilities, after the termination of such Treaty, for the use of United States military forces stationed in such area. The President shall report to the Congress in a timely manner the status of negotiations conducted pursuant to this section.

(Pub. L. 96-70, title I, §1111, Sept. 27, 1979, 93 Stat. 459.)

DELEGATION OF FUNCTIONS

Functions vested in President by this section delegated to Secretary of State who shall perform such functions in coordination with Secretary of Defense, see section 1-401 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

§ 3622. Code of conduct for Commission personnel

(a) Oath; compliance with laws of United States regarding duties and responsibilities of Federal employees

Before assuming the duties of his office or employment, each member of the Board of the Commission and each officer and employee of the Commission shall take an oath to discharge faithfully the duties of his office or employment. All employees of the Commission shall be subject to the laws of the United States regarding duties and responsibilities of Federal employees.

(b) Adoption of code of conduct; time limit; contents

Not later than 60 days after all the members of the Board of the Commission have been appointed, the Board shall adopt a code of conduct applicable to the persons referred to in subsection (a) of this section. The code of conduct shall contain provisions substantially equivalent to those contained in part 735 of title 5 of the Code of Federal Regulations on October 1, 1979. The code of conduct shall, at a minimum, contain provisions substantially equivalent to the following provisions of law:

(1) the provisions of chapter 11 of title 18, relating to bribery, graft, or conflicts of interest, as appropriate to the employees concerned;

(2) section 7352 of title 5;

(3) sections 207, 208, 285, 508, 641, 645, 1001, 1917, and 2071 of title 18;

(4) section 1343, 1344, and 1349(b) of title 31;

(5) the Ethics in Government Act of 1978 (92 Stat. 1824), as amended; and

(6) those provisions of the laws and regulations of the Republic of Panama which are substantially equivalent to those of the United States set forth in this subsection.

(c) Investigations by Commission respecting violations; recommendations for suspension

The Commission shall investigate any allegations regarding the violation of the code of con-

duct adopted pursuant to subsection (b) of this section. The Commission may recommend that the President suspend from the performance of his duties any member of the Board of the Commission or any officer or employee of the Commission, pending judicial proceedings by appropriate authorities concerning such allegations.

(d) Measures to insure compliance with code of conduct

The President shall negotiate suitable arrangements with the Republic of Panama whereby each nation shall agree to take all measures within its legal authority to assure that members of the Board of the Commission comply with the code of conduct established pursuant to subsection (b) of this section. Without prejudice to such jurisdiction as the United States may have with respect to members of the Board, the provisions of law enumerated in subsection (b) of this section shall be enforced with respect to members of the Board only in accordance with such arrangements.

(Pub. L. 96-70, title I, §1112, Sept. 27, 1979, 93 Stat. 459.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978 (92 Stat. 1824), as amended, referred to in subsec. (b)(5), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

CODIFICATION

In subsec. (b)(4), “sections 1343, 1344, and 1349(b) of title 31” substituted for “section 5 of the Act of July 16, 1914 (31 U.S.C. 638a), as amended” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (d) of this section delegated to Secretary of State, see section 1-402 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

§ 3623. Office of Ombudsman

(a) Establishment; appointment of Ombudsman; functions

There is established within the Commission an Office of Ombudsman, to be directed by an Ombudsman, who shall be appointed by the Commission. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests, and suggestions of employees (and their dependents) of the Commission and other departments and agencies of the United States, including the Smithsonian Institution, conducting operations before October 1, 1979, in the area then comprising the Canal Zone concerning administrative problems, inefficiencies, and conflicts caused within departments and agencies of the United States, including the Smithsonian Institution, as a result of the implementation of the Panama Canal Treaty of 1977 and related agreements.

(b) Authority to make findings, render assistance, and offer recommendations

The Ombudsman shall make findings and render assistance with respect to the com-

plaints, grievances, requests, and suggestions submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Commission or any other department or agency of the United States, including the Smithsonian Institution.

(c) Effect on procedures for grievances, appeals, or administrative matters under this chapter, in other provisions of law, or in Federal regulations

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination date

The Office of Ombudsman shall terminate upon the termination of the Panama Canal Treaty of 1977.

(Pub. L. 96-70, title I, §1113, Sept. 27, 1979, 93 Stat. 460; Pub. L. 104-201, div. C, title XXXV, §3525, Sept. 23, 1996, 110 Stat. 2861.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104-201 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: “The Ombudsman shall be a citizen of the United States.”

PART 2—EMPLOYEES

SUBPART I—PANAMA CANAL COMMISSION
PERSONNEL

§ 3641. Definitions

As used in this part—

- (1) “Executive agency” has the meaning given that term in section 105 of title 5;
- (2) “uniformed services” has the meaning given that term in section 2101(3) of title 5;
- (3) “competitive service” has the meaning given that term in section 2102 of title 5; and
- (4) “United States”, when used in a geographic sense, means each of the several States and the District of Columbia.

(Pub. L. 96-70, title I, §1201, Sept. 27, 1979, 93 Stat. 461.)

EMPLOYMENT OF COMMISSION EMPLOYEES BY
GOVERNMENT OF PANAMA

Pub. L. 103-160, div. C, title XXXV, §3504, Nov. 30, 1993, 107 Stat. 1965, provided that:

“(a) CONSENT OF CONGRESS.—Subject to subsection (b), the Congress consents to employees of the Panama Canal Commission who are not citizens of the United States accepting civil employment with agencies and organizations affiliated with the Government of Panama (and compensation for that employment) for which the consent of Congress is required by the 8th clause of section 9 of article I of the Constitution of the United States, relating to acceptance of emolument, office, or title from a foreign State.

“(b) CONDITION.—Employees described in subsection (a) may accept employment described in such sub-

section (and compensation for that employment) only if the employment is approved by the designated agency ethics official of the Panama Canal Commission designated pursuant to the Ethics in Government Act of 1978 (5 U.S.C. App.), and by the Administrator of the Panama Canal Commission.”

§ 3642. Appointment and compensation; duties

(a) Officers and employees

In accordance with this part, the Commission may appoint, fix the compensation of, and define the authority and duties of officers and employees (other than the Administrator and Deputy Administrator) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

(b) Eligibility to serve as officer or employee of Commission

Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals in the uniformed services, may, if appointed under this section or section 3614 of this title, serve as officers or employees of the Commission.

(Pub. L. 96–70, title I, §1202, Sept. 27, 1979, 93 Stat. 461; Pub. L. 104–201, div. C, title XXXV, §3526, Sept. 23, 1996, 110 Stat. 2861.)

AMENDMENTS

1996—Pub. L. 104–201 amended text generally. Prior to amendment, text read as follows:

“(a) In accordance with this part, the Panama Canal Commission may appoint without regard to the provisions of title 5, relating to appointments in the competitive service, fix the compensation of, and define the authority and duties of, officers, agents, attorneys, and employees (other than the Administrator, Deputy Administrator, and Chief Engineer) necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, and equipment.

“(b) Individuals serving in any Executive agency (other than the Commission) or the Smithsonian Institution, including individuals serving in the uniformed services, may, if appointed under this section or section 3613 or 3614 of this title, serve as officers or employees of the Commission.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5948.

§ 3643. Transfer of Federal employees

(a) Authority to enter into agreements; reemployment rights

The head of any agency may enter into agreements for the transfer or detail to the Commission of any employee of that agency serving under a permanent appointment. Any employee who so transfers or is so detailed shall, upon completion of the employee’s tour of duty with the Commission, be entitled to reemployment with the agency from which the employee was transferred or detailed without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had the employee not been so transferred or been so detailed.

(b) “Agency” defined

For purposes of this section, the term “agency” means an Executive agency, the United

States Postal Service, and the Smithsonian Institution.

(c) Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purposes of this section.

(Pub. L. 96–70, title I, §1203, Sept. 27, 1979, 93 Stat. 461.)

§ 3644. Compensation of individuals in uniformed services

(a) Individual serving in a position in Commission

Except as provided in subsection (b) of this section, any individual who is serving in a position in the Commission and who is a member of a uniformed service shall continue to be paid basic pay by such uniformed service and shall not be paid by the Commission for the period of the service in the uniformed service involved.

(b) Individual appointed as Administrator, Deputy Administrator, or Chief Engineer

If the individual appointed as Administrator, Deputy Administrator, or Chief Engineer of the Commission is a member of a uniformed service, the amount of basic pay otherwise payable to the individual for service in that position shall be reduced, up to the amount of that basic pay, by the amount of the basic pay payable to the individual as a member of a uniformed service.

(c) Reimbursement to uniformed service

The Commission shall annually pay to each uniformed service amounts sufficient to reimburse that uniformed service for any basic pay paid by that uniformed service to any member of that service during any period of service in the Commission by the member.

(Pub. L. 96–70, title I, §1204, Sept. 27, 1979, 93 Stat. 461.)

§ 3645. Deduction from basic pay of amounts due for supplies or services

The Commission may deduct from the basic pay otherwise payable by the Commission to any officer or employee of the Commission any amount due from the officer or employee to the Commission or to any contractor of the Commission for transportation, board, supplies, or any other service. Any amount so deducted may be paid by the Commission to any contractor to whom it is due or may be credited by the Commission to any fund from which the Commission has expended such amount.

(Pub. L. 96–70, title I, §1205, Sept. 27, 1979, 93 Stat. 462; Pub. L. 104–106, div. C, title XXXV, §3529(1), Feb. 10, 1996, 110 Stat. 641.)

AMENDMENTS

1996—Pub. L. 104–106 substituted “fund” for “appropriation”.

§ 3646. Cost of living allowance

Effective beginning October 1, 1984, each officer and employee of the Commission who is a citizen of the United States and was employed by the Panama Canal Company or the Canal Zone Government on September 30, 1979, or who

is an individual of any nationality recruited outside the Republic of Panama after September 30, 1979, may be paid an allowance to offset any increased cost of living which may result from the termination of the eligibility of the officer or employee and his dependents to use military postal services, sales stores, and exchanges. The amount of the allowance may be determined by the Commission.

(Pub. L. 96-70, title I, §1206, Sept. 27, 1979, 93 Stat. 462.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3650, 3691 of this title.

§ 3647. Educational travel benefits

(a) The Commission shall provide by regulation for round-trip transportation between the Republic of Panama and the United States or, in the case of an employee described in paragraph (2) of this subsection, between the Republic of Panama and the country in which such employee is recruited, for undergraduate college education for dependents of employees of the Commission who—

(1) are United States citizens who were employed by the Panama Canal Company or the Canal Zone Government on September 30, 1979, or

(2) are recruited outside the Republic of Panama after that date.

(b) The regulations prescribed by the Commission under this section shall—

(1) provide eligibility requirements which must be met by such dependents to qualify for transportation under this section, including a requirement that all eligible dependents must be under 23 years of age; and

(2) limit the transportation provided to two round trips during any one-year period.

(Pub. L. 96-70, title I, §1207, Sept. 27, 1979, 93 Stat. 462; Pub. L. 99-223, §5(a), Dec. 28, 1985, 99 Stat. 1739.)

AMENDMENTS

1985—Subsec. (b)(2). Pub. L. 99-223 substituted “two round trips” for “one round trip”.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-223 effective Oct. 1, 1985, see section 8 of Pub. L. 99-223, set out as a note under section 3612 of this title.

§ 3648. Privileges and immunities of certain employees

The Secretary of Defense shall designate those officers and employees of the Commission and other individuals entitled to the privileges and immunities accorded under paragraph 3 of Article VIII of the Panama Canal Treaty of 1977. The Department of State shall furnish to the Republic of Panama a list of the names of such officers, employees, and other individuals and shall notify the Republic of Panama of any subsequent additions to or deletions from the list.

(Pub. L. 96-70, title I, §1208, Sept. 27, 1979, 93 Stat. 463.)

§ 3649. Applicability of certain benefits

Chapter 81 of title 5, relating to compensation for work injuries, chapters 83 and 84 of such title 5, relating to retirement, chapter 87 of such title 5, relating to life insurance, and chapter 89 of such title 5, relating to health insurance, are applicable to Commission employees, except any individual—

(1) who is not a citizen of the United States;

(2) whose initial appointment by the Commission occurs after October 1, 1979; and

(3) who is covered by the Social Security System of the Republic of Panama pursuant to any provision of the Panama Canal Treaty of 1977 and related agreements.

(Pub. L. 96-70, title I, §1209, Sept. 27, 1979, 93 Stat. 463; Pub. L. 104-201, div. C, title XXXV, §3527, Sept. 23, 1996, 110 Stat. 2861.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “Applicability of certain benefits” for “Inapplicability of certain benefits to certain noncitizens” in section catchline and amended text generally. Prior to amendment, text was comprised of subsec. (a) of section 1209 of Pub. L. 96-70 which read as follows: “Chapter 81 of title 5, relating to compensation for work injuries, chapter 83 of such title 5, relating to civil service retirement, chapter 87 of such title 5, relating to life insurance, and chapter 89 of such title 5, relating to health insurance, are inapplicable to any individual—

“(1) who is not a citizen of the United States;

“(2) whose initial appointment by the Commission occurs after October 1, 1979; and

“(3) who is covered by the Social Security System of the Republic of Panama pursuant to any provision of the Panama Canal Treaty of 1977 and related agreements.”

Prior to amendment, section 1209 also contained subsecs. (b) and (c) which amended sections 8701 and 8901 of Title 5, Government Organization and Employees.

§ 3650. Travel and transportation

(a) In general

Subject to subsections (b) and (c) of this section, the Commission may pay travel and transportation expenses for employees in accordance with subchapter II of chapter 57 of title 5.

(b) Employees subject to section 3646

For an employee to whom section 3646 of this title applies, the Commission may pay travel and transportation expenses associated with vacation leave for the employee and the immediate family of the employee notwithstanding requirements regarding periods of service established by subchapter II of chapter 57 of title 5 or the regulations promulgated thereunder.

(c) Employees not subject to section 3646

For an employee to whom section 3646 of this title does not apply, the Commission may pay travel and transportation expenses associated with vacation leave for the employee and the immediate family of the employee notwithstanding requirements regarding a written agreement concerning the duration of a continuing service obligation established by subchapter II of chapter 57 of title 5 or the regulations promulgated thereunder.

(d) Contracting with Panamanian carriers

(1) Notwithstanding any other provision of law (except paragraph (2)), the Commission may con-

tract with Panamanian carriers registered under the laws of the Republic of Panama to provide air transportation to officials and employees of the Commission who are citizens of the Republic of Panama.

(2) Notwithstanding paragraph (1), an official or employee of the Commission referred to in paragraph (1) may elect, for security or other reasons, to travel by an air carrier holding a certificate under section 41102 of title 49.

(Pub. L. 96-70, title I, §1210, as added Pub. L. 99-223, §5(b)(1), Dec. 28, 1985, 99 Stat. 1739; amended Pub. L. 104-201, div. C, title XXXV, §3528, Sept. 23, 1996, 110 Stat. 2861.)

AMENDMENTS

1996—Pub. L. 104-201 struck out “expenses” after “transportation” in section catchline and amended text generally. Prior to amendment, text read as follows: “The Commission may pay the expenses of vacation leave travel for an employee of the Commission to whom section 3646 of this title applies and for transportation of employee’s family from the employee’s post of duty in Panama to the place of the employee’s actual residence at the time of appointment to the post of duty. The authorization of expenses under this section shall be in accordance with subchapter II of chapter 57 of title 5 and the regulations issued under that subchapter, except that the Commission may prescribe required periods of service notwithstanding section 5722 of title 5 and the regulations issued under subchapter II of chapter 57 of such title.”

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 8 of Pub. L. 99-223, set out as an Effective Date of 1985 Amendment note under section 3612 of this title.

SUBPART II—WAGE AND EMPLOYMENT PRACTICES

§ 3651. Definitions

As used in this subpart—

(1) “agency” means—

(A) the Commission, and

(B) any other Executive agency or the Smithsonian Institution, to the extent of any election in effect under section 3652(b) of this title;

(2) “position” means a civilian position in the Commission, or in any other agency if a substantial portion of the duties and responsibilities are performed in the Republic of Panama; and

(3) “employee” means an individual serving in a position.

(Pub. L. 96-70, title I, §1211, Sept. 27, 1979, 93 Stat. 463; Pub. L. 104-201, div. C, title XXXV, §§3529, 3548(b)(1), Sept. 23, 1996, 110 Stat. 2862, 2869.)

AMENDMENTS

1996—Par. (1)(B). Pub. L. 104-201, §3548(b)(1), which directed substitution of “section 3652(b)” for “section 3652(B)(2)” could not be executed because the phrase “section 3652(B)(2)” did not appear after amendment by Pub. L. 104-201, §3529. See below.

Pub. L. 104-201, §3529, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “an Executive agency or the Smithsonian Institution, to the extent of any election in effect under section 3652(b)(2) of this title;”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3657a of this title.

§ 3652. Panama Canal Employment System; merit and other employment requirements

(a) Establishment; merit and other employment requirements

The Commission shall establish a Panama Canal Employment System and prescribe the regulations necessary for its administration. The Panama Canal Employment System shall—

(1) be established in accordance with and be subject to the provisions of the Panama Canal Treaty of 1977 and related agreements, the provisions of this part, and any other applicable provision of law;

(2) be based on the consideration of the merit of each employee or candidate for employment and the qualifications and fitness of the employee to hold the position concerned;

(3) conform, to the extent practicable and consistent with the provisions of this chapter, to the policies, principles, and standards applicable to the competitive service;

(4) in the case of employees who are citizens of the United States, provide for the appropriate interchange of those employees between positions under the Panama Canal Employment System and positions in the competitive service; and

(5) not be subject to the provisions of title 5, unless specifically made applicable by this chapter.

(b) Applicability to any Executive agency and Smithsonian Institution

(1) The head of any Executive agency (other than the Commission) and the Smithsonian Institution may elect to have the Panama Canal Employment System made applicable in whole or in part to personnel of that agency in the Republic of Panama.

(2) Any Executive agency (other than the Commission) and the Smithsonian Institution, to the extent of any election under paragraph (1), shall conduct its employment and pay practices relating to employees in accordance with the Panama Canal Employment System.

(3) Notwithstanding any other provision of this chapter or the Panama Canal Act Amendments of 1996, this subpart, as last in effect before September 23, 1996, shall continue to apply to an Executive agency or the Smithsonian Institution to the extent of an election under paragraph (1) by the head of¹ agency or the Institution, respectively.

(c) Exclusion of employees or positions from coverage

The Commission may exclude any employee or position from coverage under any provision of this subpart, other than the interchange rights extended under subsection (a)(4) of this section.

(Pub. L. 96-70, title I, §1212, Sept. 27, 1979, 93 Stat. 464; Pub. L. 104-201, div. C, title XXXV, §3530(a), Sept. 23, 1996, 110 Stat. 2862.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3), (5) and (b)(3), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this

¹ So in original. Probably should be followed by “an”.

chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

The Panama Canal Act Amendments of 1996, referred to in subsec. (b)(3), is subtitle B of title XXXV of div. C of Pub. L. 104-201, Sept. 23, 1996, 110 Stat. 2860. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-201 amended section generally, substituting subsecs. (a) to (c) requiring the Commission to establish a Panama Canal Employment System for former subsecs. (a) to (d) requiring the President to establish such a System.

SAVINGS PROVISION

Section 3530(b) of Pub. L. 104-201 provided that: “The Panama Canal Employment System and all elections, rules, regulations, and orders relating thereto, as last in effect before the amendment made by subsection (a) [amending this section] takes effect, shall continue in effect, according to their terms, until modified, terminated, or superseded under section 1212 of the Panama Canal Act of 1979 [this section], as amended by subsection (a).”

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3651, 3657a of this title.

§ 3653. Employment standards

The Commission shall establish written standards for—

- (1) determining the qualifications and fitness of employees and of candidates for employment in positions; and
- (2) selecting individuals for appointment, promotion, or transfer to positions.

The standards shall conform to the provisions of this subpart, any regulations prescribed thereunder, and the Panama Canal Employment System.

(Pub. L. 96-70, title I, §1213, Sept. 27, 1979, 93 Stat. 464; Pub. L. 104-201, div. C, title XXXV, §3531, Sept. 23, 1996, 110 Stat. 2863.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “The Commission” for “The head of each agency” in introductory provisions.

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3656 of this title.

§ 3654. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3532, Sept. 23, 1996, 110 Stat. 2863

Section, Pub. L. 96-70, title I, §1214, Sept. 27, 1979, 93 Stat. 465, related to an interim, continuing application of Canal Zone Merit System, as in effect on Sept. 30, 1979, until Panama Canal Employment System was established and in effect.

§ 3655. Basic pay

(a) Establishment and revision of rates

The head of each agency, in accordance with the provisions of this subpart, shall establish, and from time to time may revise, the rates of basic pay for positions and employees in the agency.

(b) Relationship of same or similar work performed in United States or certain other areas outside United States

The rates of basic pay may be established and revised in relation to the rates of basic pay for the same or similar work performed in the United States or in such areas outside the United States as may be designated in the regulations prescribed under section 3663¹ of this title.

(c) Adjustments in rates; limits

The head of each agency may make adjustments in rates of basic pay established under subsection (b) of this section in amounts not to exceed the amounts of the adjustments made from time to time by or under statute in the corresponding rates of basic pay for the same or similar work referred to in such subsection (b) of this section. The head of the agency may designate the effective date of any such adjustment, except that that date may not be earlier than the effective date of the adjustment in the corresponding rate of basic pay.

(Pub. L. 96-70, title I, §1215, Sept. 27, 1979, 93 Stat. 465.)

REFERENCES IN TEXT

Section 3663 of this title, referred to in subsec. (b), was amended generally by Pub. L. 104-201, div. C, title XXXV, §3535, Sept. 23, 1996, 110 Stat. 2863, and, as so amended, no longer authorizes the prescribing of regulations.

ADOPTION OF BASIC PAY SCHEDULE AND REGULATIONS GOVERNING OTHER MATTERS RELATING TO PAY AND EMPLOYMENT PRACTICES

For provisions requiring that the head of each agency adopt a schedule of basic pay pursuant to this section and adopt regulations governing other matters relating to pay and employment practices, upon the approval of the Secretary of Defense, see section 1-202 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

¹ See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3656, 3658, 3659 of this title.

§ 3656. Uniform application of standards and rates

The standards established pursuant to section 3653 of this title and the rates of basic pay established pursuant to section 3655 of this title shall be applied without regard to whether the employee or individual concerned is a citizen of the United States or a citizen of the Republic of Panama.

(Pub. L. 96-70, title I, §1216, Sept. 27, 1979, 93 Stat. 465.)

§ 3657. Recruitment and retention remuneration

(a) Determination by head of agency

In addition to basic pay, additional compensation may be paid, in such amounts as the head of the agency concerned determines, as an overseas recruitment or retention differential to any individual who—

(1) before October 1, 1979, was employed by the Panama Canal Company, by the Canal Zone Government, or by any other agency in the area then known as the Canal Zone;

(2) is an employee who was recruited on or after October 1, 1979, outside of the Republic of Panama for placement in the Republic of Panama; or

(3) is a medical doctor employed by the Department of Defense in the Republic of Panama or by the Commission;

if, in the judgment of the head of the agency concerned, the recruitment or retention of the individual is essential.

(b) Restriction

Any employee described in more than one paragraph of subsection (a) of this section may qualify for a recruitment or retention differential under only one of those paragraphs.

(c) Limit on compensation

Additional compensation provided under this section may not exceed 25 percent of the rate of basic pay for the same or similar work performed in the United States by individuals employed by the Government of the United States.

(Pub. L. 96-70, title I, §1217, Sept. 27, 1979, 93 Stat. 465; (As amended Pub. L. 104-201, div. C, title XXXV, §3533, Sept. 23, 1996, 110 Stat. 2863.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-201 struck out subsec. (d) which read as follows: “Subchapter III of chapter 59 of title 5, relating to overseas differentials and allowances, shall not apply with respect to any employee whose permanent duty station is in the Republic of Panama and who is employed by an agency.”

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3614, 3658 of this title.

§ 3657a. Quarters allowances

(a) “Position” and “employee” defined

Notwithstanding paragraphs (2) and (3) of section 3651 of this title, as used in this section—

(1) “position” means a civilian position; and

(2) “employee” means an individual serving in a position in the Department of Defense whose permanent duty station is in the area which, before October 1, 1979, was known as the Canal Zone.

(b) Covered employees

Under regulations prescribed by or under authority of the President, the Department of Defense may grant a quarters allowance in the case of—

(1) any employee who is a citizen of the United States and who, before October 1, 1979, was employed by the Panama Canal Company, the Canal Zone Government, or any other agency, in the area then known as the Canal Zone; and

(2) any other employee who is a citizen of the United States and who (before, on, or after the effective date of this section) is or was recruited within the United States;

for whom adequate Government owned or leased quarters are not made available.

(c) Determination of amount

The amount of any quarters allowance granted to an employee under this section shall be determined in accordance with the regulations prescribed under subsection (b) of this section, except that such allowance for any period may not exceed the amount, if any, by which—

(1) the lesser of—

(A) the actual expenses for rent and utilities incurred by the employee during such period while occupying quarters other than Government owned or leased quarters; or

(B) the maximum amount which would be authorized for such employee with respect to such period under the Department of State Standardized Regulations (Government Civilians, Foreign Areas) if such employee were covered by those regulations;

exceeds

(2) the estimated total cost of rent and utilities which the employee would have been charged if Government owned or leased quarters had been provided on a rental basis during such period.

(d) Inapplicability of election under section 3652(b) of this title

The provisions of this section shall apply without regard to whether any election by the Department of Defense under section 3652(b) of this title is then in effect.

(Pub. L. 96-70, title I, §1217a, as added Pub. L. 98-600, §1(a), Oct. 30, 1984, 98 Stat. 3145.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (b)(2), see section 2 of Pub. L. 98-600, set out below.

EFFECTIVE DATE

Section 2 of Pub. L. 98-600 provided that: “The amendments made by this Act [enacting this section] shall take effect on October 1, 1984, and shall apply with respect to utility costs incurred, and rent payable for any period beginning, on or after that date.”

EX. ORD. NO. 12520. QUARTERS ALLOWANCE TO DEPARTMENT OF DEFENSE EMPLOYEES IN PANAMA

Ex. Ord. No. 12520, June 19, 1985, 50 F.R. 25683, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1217a of the Panama Canal Act of 1979 (22 U.S.C. 3657a), it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is authorized to prescribe the regulations referred to in section 1217a of the Panama Canal Act of 1979 [22 U.S.C. 3657a], relating to quarters allowances.

SEC. 2. The regulations prescribed under Section 1 shall be consistent with Article VII(4) of the Agreement in Implementation of Article IV of the Panama Canal Treaty and with all other relevant provisions of the Panama Canal Treaty and related agreements.

RONALD REAGAN.

§ 3658. Benefits based on basic pay

For the purpose of determining—

- (1) amounts of compensation for disability or death under chapter 81 of title 5, relating to compensation for work injuries;
- (2) benefits under subchapter III of chapter 83 or chapter 84 of title 5, relating to retirement;
- (3) amounts of insurance under chapter 87 of title 5, relating to life insurance;
- (4) amounts of overtime pay or other premium pay;
- (5) annual leave benefits; and
- (6) any other benefits related to basic pay;

the basic pay of each employee shall include the rate of basic pay established for his position under section 3655 of this title plus the amount of any additional compensation provided under section 3657 of this title.

(Pub. L. 96-70, title I, §1218, Sept. 27, 1979, 93 Stat. 466; Pub. L. 104-201, div. C, title XXXV, §3534, Sept. 23, 1996, 110 Stat. 2863.)

AMENDMENTS

1996—Par. (2). Pub. L. 104-201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “benefits under subchapter III of chapter 83 of title 5, relating to civil service retirement;”.

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

§ 3659. Salary protection upon conversion of pay base

(a) In the case of any employee whose rate of basic pay is determined in relation to rates of basic pay for the same or similar work in the United States and which is converted to a rate of basic pay pursuant to section 3655(b) of this

title which is determined in relation to rates in areas other than the United States pursuant to such section 3655(b) of this title, the employee shall continue to receive a rate of basic pay not less than that to which the employee was entitled immediately before the conversion.

(b) This section shall cease to apply with respect to any employee if the employee is placed in a position—

- (1) for which the rate of basic pay is determined in relation to rates of basic pay in the United States pursuant to section 3655(b) of this title; or
- (2) which is of a lower grade.

(Pub. L. 96-70, title I, §1219, Sept. 27, 1979, 93 Stat. 466.)

§ 3660. Review and adjustment of classifications, grades, and pay level

An employee may request at any time that the employee’s agency—

- (1) review the classification of the employee’s position or the grade or pay level for the employee’s position, or both; and
- (2) revise or adjust that classification, grade or pay level, or both, as the case may be.

The request for review and revision or adjustment shall be submitted and adjudicated in accordance with the regularly established appeals procedures of the agency.

(Pub. L. 96-70, title I, §1220, Sept. 27, 1979, 93 Stat. 466.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3662 of this title.

§ 3661. Panama Canal Board of Appeals; duties

(a) Subject to the provisions of this part, the President shall prescribe regulations establishing a Panama Canal Board of Appeals. The regulations shall provide for the number of members of the Board and their appointment, compensation, and terms of office, the selection of a Chairman of the Board, the appointment and compensation of the Board’s employees, and other appropriate matters relating to the Board.

(b) The Board shall review and determine the appeals of employees in accordance with section 3662 of this title. The decisions of the Board shall conform to the provisions of this subpart.

(Pub. L. 96-70, title I, §1221, Sept. 27, 1979, 93 Stat. 466.)

DELEGATION OF FUNCTIONS

Functions vested in President pursuant to this subpart delegated to Secretary of Defense, see section 1-308 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

§ 3662. Appeals to Board; procedures**(a) Persons entitled to appeal; form; time**

An employee may appeal to the Panama Canal Board of Appeals from an adverse determination made by an agency under section 3660 of this title. The appeal shall be made in writing within a reasonable time (as specified in regulations prescribed by, or under the authority of, the President) after the date of the transmittal by

the agency to the employee of written notice of the adverse determination.

(b) Personal appearance

The Board may authorize, in connection with an appeal pursuant to subsection (a) of this section, a personal appearance before the Board by the employee, or by a representative of the employee designated for that purpose.

(c) Consideration of evidence; decision

After investigation and consideration of the evidence submitted, the Board shall—

- (1) prepare a written decision on the appeal;
- (2) transmit its decision to the agency concerned; and
- (3) transmit copies of the decision to the employee concerned or to the designated representative.

(d) Finality of decision

The decision of the Board on any question or other matter relating to an appeal is final and conclusive. The agency concerned shall take action in accordance with the decision of the Board.

(Pub. L. 96-70, title I, §1222, Sept. 27, 1979, 93 Stat. 467.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3661 of this title.

§ 3663. Central Examining Office

The Commission shall establish a Central Examining Office. The purpose of the office shall be to implement the provisions of the Panama Canal Treaty of 1977 and related agreements with respect to recruitment, examination, determination of qualification standards, and similar matters relating to employment of the Commission.

(Pub. L. 96-70, title I, §1223, Sept. 27, 1979, 93 Stat. 467; Pub. L. 104-201, div. C, title XXXV, §3535, Sept. 23, 1996, 110 Stat. 2863.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “Central Examining Office” for “Administration by President” in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (c) authorizing President to prescribe regulations to carry out this subpart, to establish an office within the Commission to succeed the Canal Zone Central Examining Office, and to delegate authority under this subpart.

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3655 of this title.

§ 3664. Applicability of title 5

The following provisions of title 5 apply to the Panama Canal Commission:

- (1) Part I of title 5 (relating to agencies generally).

(2) Chapter 21 (relating to employee definitions).

(3) Section 2302(b)(8) (relating to whistleblower protection) and all provisions of title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

(4) All provisions relating to preference eligibles.

(5) Section 5514 (relating to offset from salary).

(6) Section 5520a (relating to garnishments).

(7) Sections 5531-5535 (relating to dual pay and employment).

(8) Subchapter VI of chapter 55 (relating to accumulated and accrued leave).

(9) Subchapter IX of chapter 55 (relating to severance and back pay).

(10) Chapter 57 (relating to travel, transportation, and subsistence).

(11) Chapter 59 (relating to allowances).

(12) Chapter 63 (relating to leave for CONUS employees).

(13) Section 6323 (relating to military leave; Reserves and National Guardsmen).

(14) Chapter 71 (relating to labor relations).

(15) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively) and all provisions of title 5 relating to the administration or enforcement or any other aspect thereof, as identified in regulations prescribed by the Commission in consultation with the Office of Personnel Management.

(16) Chapter 81 (relating to compensation for work injuries).

(17) Chapters 83 and 84 (relating to retirement).

(18) Chapter 85 (relating to unemployment compensation).

(19) Chapter 87 (relating to life insurance).

(20) Chapter 89 (relating to health insurance).

(Pub. L. 96-70, title I, §1224, Sept. 27, 1979, 93 Stat. 467; (As amended Pub. L. 104-201, div. C, title XXXV, §3536, Sept. 23, 1996, 110 Stat. 2864.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “title 5” for “certain laws” in section catchline and amended text generally. Prior to amendment, text read as follows: “This part does not affect the applicability of—

“(1) the provisions of title 5 which relate to preference eligibles;

“(2) the provisions of title 5 which relate to removal or suspension from the competitive service; and

“(3) the provisions of section 5544(a) of title 5 which relate to wage-board overtime and Sunday rates, with respect to classes of employees who were covered by those provisions on September 27, 1979.”

§ 3665. Minimum level of pay; minimum annual increase

(1) Effective October 1, 1979, each individual employed by an Executive agency or the Smithsonian Institution, whose permanent duty station is located within an area or installation in the Republic of Panama made available to the United States pursuant to the Panama Canal

Treaty of 1977 and related agreements, shall be paid basic pay at a rate of not less than \$2.90 an hour.

(2) Effective on October 1 of each succeeding calendar year, the rate of basic pay for each individual referred to in paragraph (1) of this section whose basic pay is not fixed in relation to rates of basic pay for the same or similar work performed in the United States shall be increased by an amount equal to not less than 2 percent of the rate of basic pay for that individual in effect immediately before that date.

(Pub. L. 96-70, title I, §1225(b), Sept. 27, 1979, 93 Stat. 468.)

COORDINATION OF PAY AND EMPLOYMENT PRACTICES

For provisions requiring consultations with the Secretary of Defense for agencies under this subpart with respect to the establishment of rates of pay and other matters deemed appropriate by the Secretary in order to develop compatible or unified systems of basic pay and employment practices, see section 1-201 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

SUBPART III—CONDITIONS OF EMPLOYMENT AND PLACEMENT

§ 3671. Transferred or reemployed employees

(a) Terms and conditions of employment

(1) With respect to any individual employed in the Panama Canal Company or the Canal Zone Government—

(A) who is transferred—

- (i) to a position in the Commission; or
- (ii) to a position in an Executive agency or in the Smithsonian Institution the permanent duty station of which is in the Republic of Panama (including the area known before October 1, 1979, as the Canal Zone); or

(B) who is separated by reason of a reduction in force on September 30, 1979, and is appointed to a position in the Commission before April 1, 1980;

the terms and conditions of employment set forth in paragraph (2) of this subsection shall be generally no less favorable, on or after the date of the transfer referred to in subparagraph (A) of this paragraph or the date of the appointment referred to in subparagraph (B) of this paragraph, as the case may be, than the terms and conditions of employment with the Panama Canal Company and Canal Zone Government on September 30, 1979, or, in the case of a transfer described in subparagraph (A)(ii) of this paragraph which takes place before that date, on the date of the transfer.

(2) The terms and conditions of employment referred to in paragraph (1) of this subsection are the following:

- (A) rates of basic pay;
- (B) tropical differential;
- (C) premium pay and night differential;
- (D) reinstatement and restoration rights;
- (E) injury and death compensation benefits;
- (F) leave and travel;
- (G) transportation and repatriation benefits;
- (H) group health and life insurance;
- (I) reduction-in-force rights;
- (J) an employee grievance system, and the right to appeal adverse and disciplinary actions and position classification actions;

- (K) veterans' preference eligibility;
- (L) holidays;
- (M) saved pay provisions; and
- (N) severance pay benefits.

(b) Break in service

Any individual described in subsection (a)(1)(B) of this section who would have met the service requirement for early retirement benefits under section 8336(i) or 8339(d)(2) of title 5 (as amended by sections 1241(a) and 1242 of this Act, respectively), but for a break in service of more than 3 days immediately after September 30, 1979, shall be considered to meet that requirement. Any break in service by any such individual for purposes of section 8332 of such title 5 during the period beginning September 30, 1979, and ending on the date of the appointment referred to in such subsection (a)(1)(B) of this section shall be considered a period of creditable service under such section 8332 for such individual, except that such period shall not be taken into account for purposes of determining average pay (as defined in section 8331(4) of such title 5) and no deduction, contribution, or deposit shall be required for that period under section 8334 of such title 5.

(c) Applicability of sections 903(c) and 904(a)(2) of title 20; sabbaticals

(1) Section 903(c) of title 20 shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School System and the permanent duty station of which is in the Republic of Panama, until the rates of basic compensation established under section 903(c) of title 20 equal or exceed the rates of basic compensation then in effect for teachers who were so transferred.

(2) Section 904(a)(2) of title 20 shall not apply with respect to any teacher who was employed by the Canal Zone Government school system on September 30, 1979, and who was transferred from such position to a teaching position which is under the Department of Defense Overseas Dependent School System and the permanent duty station of which is in the Republic of Panama.

(3)(A) The head of a department or agency of the United States may grant a sabbatical to any teacher to whom paragraph (1) of this subsection applies for not to exceed 11 months in order to permit the teacher to engage in study or uncompensated work experience which is in the United States and which will contribute to the teacher's development and effectiveness. Basic compensation shall be paid to teachers on sabbatical under this section in the same manner and to the same extent as basic compensation would have been paid to teachers on sabbatical while employed in the Canal Zone Government school system on the day before October 1, 1979. A sabbatical shall not result in a loss of, or reduction in, leave to which the teacher is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the department or agency may authorize in accordance with chapter 57 of title 5 such travel expenses (including per diem allowance) as the head of the department or agency may determine to be essential for the study or experience.

(B) A sabbatical under this paragraph may not be granted to any teacher—

- (i) more than once in any 10-year period;
- (ii) unless the teacher has completed 7 years of service as a teacher; and
- (iii) if the teacher is eligible for voluntary retirement with a right to an immediate annuity.

(C)(i) Any teacher in a department or agency of the United States may be granted a sabbatical under this paragraph only if the teacher agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of two consecutive years.

(ii) Each agreement required under clause (i) of this subparagraph shall provide that in the event the teacher fails to carry out the agreement (except for good and sufficient reason as determined by the head of the department or agency that granted the sabbatical) the teacher shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(Pub. L. 96-70, title I, §1231(a)-(c), Sept. 27, 1979, 93 Stat. 468, 469; Pub. L. 104-201, div. C, title XXXV, §3537, Sept. 23, 1996, 110 Stat. 2864.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

CODIFICATION

Section 1231(d) of Pub. L. 96-70 amended sections 5595, 5724a, and 8102 of Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-201 struck out par. (3) which read as follows:

“(3)(A) The provisions of this subsection shall take effect on September 27, 1979.

“(B) No spending authority (as described in section 651(c)(2)(C) of title 2) provided for under this subsection shall take effect before October 1, 1979.

“(C) Effective October 1, 1979, any individual who, but for subparagraph (B) of this paragraph, would have been entitled to one or more payments pursuant to this subsection for periods before October 1, 1979, shall be entitled, to the extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such payments.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3691 of this title; title 5 section 8348.

§ 3672. Placement

(a) Citizens separated from employment with Panama Canal Company or Canal Zone Government

Any citizen of the United States—

- (1) who, on March 31, 1979, was an employee of the Panama Canal Company or the Canal Zone Government;
- (2) who separates or is scheduled to separate on or after such date for any reason other than misconduct or delinquency; and

(3) who is not placed in another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(b) Citizens eliminated from employment with Executive agency or Canal Zone Government as a result of implementation of Panama Canal Treaty of 1977

Any citizen of the United States—

(1) who, on March 31, 1979, was employed in the Canal Zone as an employee of an Executive agency (other than the Panama Canal Company or the Canal Zone Government) or the Smithsonian Institution;

(2) whose position is eliminated as the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; and

(3) who is not appointed to another appropriate position in the Government of the United States in the Republic of Panama;

shall, upon the employee's request, be accorded appropriate assistance for placement in vacant positions in the Government of the United States in the United States.

(c) Establishment and administration of program by Office of Personnel Management

The Office of Personnel Management shall establish and administer a Government-wide placement program for all eligible employees who request appointment to positions under this section.

(d) Effective date

The provisions of this section shall take effect on September 27, 1979.

(Pub. L. 96-70, title I, §1232, Sept. 27, 1979, 93 Stat. 470.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3691 of this title.

SUBPART IV—RETIREMENT

§ 3681. Retirement under special treaty provisions

(a) Purchase of retirement equity; individuals entitled to participate

(1) Subject to subsection (b) of this section, and under such regulations as the President may prescribe, the Secretary of the Treasury shall pay to the Social Security System of the Republic of Panama, out of funds deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund under section 8334(a)(2) of title 5, such sums of money as may be necessary to aid in the purchase of a retirement equity in such System for each individual who—

(A) meets the requirements of paragraph (2) of this subsection;

(B) is separated from employment in the Panama Canal Company, the Canal Zone Government, or the Commission by reason of the implementation of any provision of the Pan-

ama Canal Treaty of 1977 and related agreements; and

(C) becomes employed in a position covered by the Social Security System of the Republic of Panama through the transfer of a function or activity to the Republic of Panama from the United States or through a job placement assistance program.

(2) This subsection applies with respect to any individual only if the individual—

(A) has been credited with at least 5 years of civilian service under section 8332 of title 5, relating to creditable service for purposes of civil service retirement;

(B) is not eligible for an immediate retirement annuity under chapter 83 of title 5, relating to civil service retirement, and elects not to receive a deferred annuity under that chapter based on any portion of that service, and

(C) elects to withdraw from the Civil Service Retirement and Disability Fund the individual's entire lump-sum credit (as defined in section 8331(8) of title 5) and to transfer that amount to the Social Security System of the Republic of Panama pursuant to the special regime referred to in paragraph 3 of Article VIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

(b) Limitation on amount paid to Social Security System of Republic of Panama

The amount paid to the Social Security System of the Republic of Panama with respect to any individual under subsection (a) of this section shall not exceed the individual's entire lump-sum credit (as so defined).

(c) Purchase of nontransferable deferred annuity; employees entitled to participate

(1) Pursuant to paragraph 2(b) of Annex C to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, the President, or the President's designee, shall purchase from a source determined by the President to be appropriate, in accordance with such regulations as the President or the President's designee may prescribe, and to such extent or in such amounts as may be provided in advance in appropriation Acts, a nontransferable deferred annuity for the benefit of each employee of an agency or instrumentality of the Government of the United States in the Republic of Panama—

(A) who is not a citizen of the United States;

(B) who was employed on October 1, 1979, and during any period before that date by an agency or instrumentality of the Government of the United States at any permanent duty station in the Republic of Panama (including, with respect to employment before that date, the area then known as the Canal Zone);

(C) who, for any period of service with such agency or instrumentality before October 1, 1979, at any such permanent duty station was not covered, by reason of that service, by the United States Civil Service Retirement system or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama; and

(D) who, on October 1, 1979, is under a Federal retirement system and, on or before that

date, has accrued in one or more agencies or instrumentalities of the United States a total of 5 years or more of service which—

(i) is creditable toward any Federal retirement system as in effect on October 1, 1979;

(ii) would have been creditable toward any such retirement system if the retirement system were in effect at the time of the service accrued by the employee; or

(iii) consists of any combination of service described in clauses (i) and (ii) of this subparagraph.

(2) The retirement annuity referred to in paragraph (1) of this subsection with respect to any employee will cover retroactivity,¹ from October 1, 1979, all periods of service, described in subparagraph (D) of that paragraph, by that employee at any permanent duty station in the Republic of Panama (including the area known before that date as the Canal Zone) in agencies and instrumentalities of the Government of the United States during which that employee was not covered by the United States Civil Service Retirement System or any other Federal retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama.

(Pub. L. 96-70, title I, §1243, Sept. 27, 1979, 93 Stat. 473.)

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (a)(1) delegated to Director of Office of Personnel Management and function vested in President by subsec. (c)(1) of this section delegated to Secretary of Defense, see sections 1-105 and 1-403 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, 36045, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8348.

§ 3682. Administration of certain disability benefits

(a) Continuation of cash relief payments to employees under Act of July 8, 1937

(1) The Commission, or any other United States Government agency or private entity acting pursuant to an agreement with the Commission, under the Act entitled "An Act authorizing cash relief for certain employees of the Panama Canal not coming within the provisions of the Canal Zone Retirement Act", approved July 8, 1937 (50 Stat. 478; 68 Stat. 17), may continue the payments of cash relief to those individual former employees of the Canal Zone Government or Panama Canal Company or their predecessor agencies not coming within the scope of the former Canal Zone Retirement Act whose services were terminated prior to October 5, 1958, because of unfitness for further useful service by reason of mental or physical disability resulting from age or disease.

(2) Subject to subsection (b) of this section, cash relief under this subsection may not exceed \$1.50 per month for each year of service of the employees so furnished relief, with a maximum of \$45 per month, plus the amount of any cost-

¹ So in original. Probably should be "retroactively."

of-living increases in such cash relief granted before October 1, 1979, pursuant to section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), nor be paid to any employee who, at the time of termination for disability prior to October 5, 1958, had less than 10 years' service with the Canal Zone Government, the Panama Canal Company, or their predecessor agencies on the Isthmus of Panama.

(b) Additional amounts for relief under subsection (a)

An additional amount of \$20 per month shall be paid to each person who receives payment of cash relief under subsection (a) of this section and shall be allowed without regard to the limitations contained therein.

(c) Increases in cash relief payments

Each cash relief payment made pursuant to this section shall be increased on the same effective date and by the same percent, adjusted to the nearest dollar, as civil service retirement annuities are increased under the cost-of-living adjustment provisions of section 8340(b) of title 5. Such increase shall apply only to cash relief payments made after October 1, 1979, as increased by annuity increases made after that date under such section 8340(b) of title 5.

(d) Cash relief payments to widows

The Commission may pay cash relief to the widow of any former employee of the Canal Zone Government or the Panama Canal Company who, until the time of his death, receives or has received cash relief under subsection (a) of this section, under section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), or under the Act of July 8, 1937, referred to in such subsection (a) of this section. The term "widow" as used in this subsection includes only the following:

(1) a woman legally married to such employee at the time of his termination for disability and at his death;

(2) a woman who, although not legally married to such former employee at the time of his termination, had resided continuously with him for at least five years immediately preceding the employee's termination under such circumstances as would at common law make the relationship a valid marriage and who continued to reside with him until his death; and

(3) a woman who has not remarried or assumed a common-law relationship with any other person.

Cash relief granted to such a widow shall not at any time exceed 50 percent of the rate at which cash relief, inclusive of any additional payment under subsection (b) of this section, would be payable to the former employee were he then alive.

(e) Applicability of subchapter III of chapter 83 of title 5

Subchapter III of chapter 83 of title 5 applies with respect to those individuals who were in the service of the Canal Zone Government or the Panama Canal Company on October 5, 1958, and who, except for the operation of section 13(a)(1) of the Act entitled "An Act to implement item

1 of a Memorandum of Understanding attached to the treaty of January 25, 1955, entered into by the Government of the United States of America and the Government of the Republic of Panama with respect to wage and employment practices of the Government of the United States of America in the Canal Zone", approved July 25, 1958 (72 Stat. 405), would have been within the classes of individuals subject to the Act of July 8, 1937, referred to in subsection (a) of this section.

(Pub. L. 96-70, title I, §1245, Sept. 27, 1979, 93 Stat. 475; Pub. L. 104-201, div. C, title XXXV, §§3538, 3548(c)(2), Sept. 23, 1996, 110 Stat. 2864, 2869.)

REFERENCES IN TEXT

The reference to the Act of July 8, 1937, in subsecs. (a)(1), (d), and (e), is act July 8, 1937, ch. 443, 50 Stat. 478, as amended, which was classified to section 1372 of Title 48, Territories and Insular Possessions, prior to repeal by Pub. L. 87-845, §26(b), Oct. 18, 1962, 76A Stat. 701.

The Canal Zone Code, referred to in subsec. (a)(2), was enacted by Pub. L. 87-845, §1, Oct. 18, 1962, 76A Stat. 1, redesignated the Panama Canal Code by Pub. L. 96-70, title III, §3303(b), Sept. 27, 1979, 93 Stat. 499, and repealed by Pub. L. 104-201, div. C, title XXXV, §3549, Sept. 23, 1996, 110 Stat. 2870.

Section 13(a)(1) of Act July 25, 1958, referred to in subsec. (e), probably means section 13(a) of Pub. L. 85-550, July 25, 1958, 72 Stat. 405, as amended, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1996—Pub. L. 104-201, §§3538, 3548(c)(2), amended section catchline to read "Administration of certain disability benefits".

Subsec. (a). Pub. L. 104-201, §3538, added subsec. (a) and struck out former subsec. (a) which read as follows: "The Commission, under the regulations prescribed by the President pursuant to the Act entitled 'An Act authorizing cash relief for certain employees of the Panama Canal not coming within the provisions of the Canal Zone Retirement Act', approved July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17), may continue the payments of cash relief to those individual former employees of the Canal Zone Government or Panama Canal Company or their predecessor agencies not coming within the scope of the former Canal Zone Retirement Act whose services were terminated prior to October 5, 1958, because of unfitness for further useful service by reason of mental or physical disability resulting from age or disease. Subject to subsection (b) of this section, that cash relief may not exceed \$1.50 per month for each year of service of the employees so furnished relief, with a maximum of \$45 per month, plus the amount of any cost-of-living increases in such cash relief granted before October 1, 1979, pursuant to section 181 of title 2 of the Canal Zone Code (as in effect on September 30, 1979), nor be paid to any employee who, at the time of termination for disability prior to October 5, 1958, had less than 10 years' service with the Canal Zone Government, the Panama Canal Company, or their predecessor agencies on the Isthmus of Panama."

§3683. Repealed. Pub. L. 104-201, div. C, title XXXV, §3546(a)(6), Sept. 23, 1996, 110 Stat. 2868

Section, Pub. L. 96-70, title I, §1246, Sept. 27, 1979, 93 Stat. 476; Pub. L. 100-203, title V, §5428(a), Dec. 22, 1987, 101 Stat. 1330-274, authorized Commission to purchase artificial limbs or other appliances for persons who were injured in service of Isthmian Canal Commission or of Panama Canal before Sept. 7, 1916.

SUBPART V—APPLICATION TO RELATED
PERSONNEL

§ 3691. Individuals considered employees

(a) Individuals considered employees for purposes of certain sections

For the purposes of sections 3646, 3671, and 3672 of this title, including any amendment made by sections 1231, 1241, and 1242 of this Act, the United States Attorney for the District of the Canal Zone and the Assistant United States Attorneys and their clerical assistants, and the United States Marshal for the District of the Canal Zone and his deputies and clerical assistants shall be considered employees of the Commission.

(b) Individuals considered employees for certain purposes

For the purposes of this Act, including any amendment made by this Act, the Executive Director of the Canal Zone Civilian Personnel Policy Coordinating Board, the Manager, Central Examining Office, and their staffs shall be considered to have been employees of the Panama Canal Company with respect to service in those positions before October 1, 1979, and as employees of the Commission with respect to service in those positions on or after that date.

(Pub. L. 96-70, title I, §1261(a), (b), Sept. 27, 1979, 93 Stat. 476.)

REFERENCES IN TEXT

Section 1231 of this Act, referred to in subsec. (a), amended sections 5595, 5724a, and 8102 of Title 5, Government Organization and Employees.

Section 1241 of this Act, referred to in subsec. (a), amended section 8336 of Title 5 and enacted provisions set out as notes thereunder.

Section 1242 of this Act, referred to in subsec. (a), amended section 8339 of Title 5 and enacted provisions set out as notes thereunder.

This Act, referred to in subsec. (b), is Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

EFFECTIVE DATE

Section 1261(c) of Pub. L. 96-70 provided that: "The provisions of this section [enacting this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979]."

SUBPART VI—LABOR-MANAGEMENT RELATIONS

§ 3701. Labor-management relations

(a) Nothing in this chapter shall be construed to affect the applicability of chapter 71 of title 5, relating to labor-management and employee relations, with respect to the Commission or the operations of any other Executive agency conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, except that in applying those provisions—

(1) the definition of "employee" shall be applied without regard to clause (i) of section 7103(a)(2) of such title 5 which relates to nationality and citizenship;

(2) a unit shall be considered to be appropriate notwithstanding the fact that it in-

cludes any supervisor if that supervisor's position (or type of position) was, before October 1, 1979, represented before the Panama Canal Company by a labor organization that included employees who were not supervisors; and

(3) any negotiated grievance procedures under section 7121 of title 5, including any provisions relating to binding arbitration, shall, with respect to any personnel action to which subchapter II of chapter 75 of such title applies (as determined under section 7512 of such title), be available to the same extent and in the same manner as if employees of the Panama Canal Commission were not excluded from such subchapter under section 7511(b)(8) of such title.

(b) Labor-management and employee relations of the Commission, other Executive agencies, and the Smithsonian Institution, their employees, and organizations of those employees, in connection with operations conducted in that area of the Republic of Panama which, on September 30, 1979, was the Canal Zone, shall be governed and regulated solely by the applicable laws, rules, and regulations of the United States.

(Pub. L. 96-70, title I, §1271, Sept. 27, 1979, 93 Stat. 476; Pub. L. 103-160, div. C, title XXXV, §3505, Nov. 30, 1993, 107 Stat. 1966.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103-160 added par. (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3506 of title XXXV of div. C of Pub. L. 103-160 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [amending this section and enacting provisions set out as a note under section 3641 of this title] shall take effect as of October 1, 1993.

"(b) SPECIAL RULE.—Paragraph (3) of section 1271(a) of the Panama Canal Act of 1979 (22 U.S.C. 3701(a)), as added by section 3505(3), shall take effect on the date of the enactment of this Act [Nov. 30, 1993] and shall apply with respect to grievances arising on or after such date."

PART 3—FUNDS AND ACCOUNTS

SUBPART I—FUNDS

§ 3711. Repealed. Pub. L. 104-201, div. C, title XXXV, §3546(a)(8), Sept. 23, 1996, 110 Stat. 2868

Section, Pub. L. 96-70, title I, §1301, Sept. 27, 1979, 93 Stat. 477; Pub. L. 100-203, title V, §5428(e), Dec. 22, 1987, 101 Stat. 1330-274, directed that, on Oct. 1, 1979, unexpended balances of Canal Zone Government appropriations accounts be covered into general fund of Treasury, repealed any appropriations to which expenditures under such accounts had been chargeable before Oct. 1, 1979, and authorized Commission to pay claims or make payments chargeable to such accounts.

§ 3712. Panama Canal Revolving Fund**(a) Establishment**

There is established in the Treasury of the United States a revolving fund to be known as “Panama Canal Revolving Fund”. The Panama Canal Revolving Fund shall, subject to subsection (b) of this section, be available to the Commission to carry out the purposes, functions, and powers authorized by this chapter, including for—

- (1) the hire of passenger motor vehicles and aircraft;
- (2) uniforms or allowances therefor;
- (3) official receptions and representation expenses of the Board, the Secretary of the Commission, and the Administrator;
- (4) the operation of guide services;
- (5) a residence for the Administrator;
- (6) disbursements by the Administrator for employee and community projects;
- (7) the procurement of expert and consultant services;
- (8) promotional activities, including the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, film, or other media presentation designed to promote the Panama Canal as a resource of the world shipping industry; and
- (9) the purchase and transportation to the Republic of Panama of passenger motor vehicles, including large, heavy-duty vehicles.

(b) Tolls and other receipts into Panama Canal Revolving Fund; restriction on use of funds

(1) There shall be deposited in the Panama Canal Revolving Fund, on a continuing basis, toll receipts (other than amounts of toll receipts deposited into the Panama Canal Commission Dissolution Fund under section 3714a of this title) and all other receipts of the Commission. Except as provided in section 3713 of this title, no funds may be obligated or expended by the Commission in any fiscal year unless such obligation or expenditure has been specifically authorized by law.

(2) No funds may be authorized for the use of the Commission, or obligated or expended by the Commission in any fiscal year; in excess of—

- (A) the amount of revenues deposited in the Panama Canal Revolving Fund and the Panama Canal Commission Dissolution Fund during such fiscal year; plus
- (B) the amount of revenues deposited in the Panama Canal Revolving Fund before such fiscal year and remaining unobligated at the beginning of such fiscal year; plus
- (C) the \$100,000,000 borrowing authority provided for in section 3714 of this title.

Not later than 30 days after the end of each fiscal year, the Secretary of the Treasury shall report to the Congress the amount of revenues deposited in the Panama Canal Revolving Fund during such fiscal year.

(c) Authority of Commission to make deposits

With the approval of the Secretary of the Treasury, the Commission may deposit amounts in the Panama Canal Revolving Fund in any Federal Reserve bank, any depository for public funds, or such other place and in such manner as the Commission and the Secretary may agree.

(d) Costs of implementation

(1) It is the sense of the Congress that the additional costs resulting from the implementation of the Panama Canal Treaty of 1977 and related agreements should be kept to the absolute minimum level. To this end, the Congress declares appropriated costs of implementation to be borne by the taxpayers over the life of such Treaty should be kept to a level no greater than the March 1979 estimate of those costs (\$870,700,000) presented to the Congress by the executive branch during consideration of this chapter by the Congress, less personnel retirement costs of \$205,000,000, which were subtracted and charged to tolls, therefore resulting in net taxpayer cost of approximately \$665,700,000, plus appropriate adjustments for inflation.

(2) It is further the sense of the Congress that the actual costs of implementation be consistent with the obligations of the United States to operate the Panama Canal safely and efficiently and keep it secure.

(Pub. L. 96-70, title I, §1302, Sept. 27, 1979, 93 Stat. 477; Pub. L. 99-195, §1(a), Dec. 23, 1985, 99 Stat. 1349; Pub. L. 100-203, title V, §5422(a), (b)(1), Dec. 22, 1987, 101 Stat. 1330-271, 1330-272; Pub. L. 100-705, §9, Nov. 19, 1988, 102 Stat. 4687; Pub. L. 102-484, div. C, title XXXV, §3521(b)(1), Oct. 23, 1992, 106 Stat. 2657; Pub. L. 104-106, div. C, title XXXV, §3525, Feb. 10, 1996, 110 Stat. 640; Pub. L. 104-201, div. C, title XXXV, §3539, Sept. 23, 1996, 110 Stat. 2865.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(1), was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979 which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-201 amended section generally, reenacting section catchline without change, revising and restating former subsecs. (a)(1), (c), (d), and (f) as subsecs. (a) to (d), and striking out provisions of former subsecs. (a)(2), (b), and (e), which related to termination of the Fund, transfer of funds, and congressional review of Commission budgets.

Subsec. (c)(1). Pub. L. 104-106, §3525(1)(A), struck out “and subject to paragraph (2)” after “section 3713 of this title”.

Subsec. (c)(2), (3). Pub. L. 104-106, §3525(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “No funds may be obligated or expended by the Commission in any fiscal year for administrative expenses except to the extent or in such amounts as are provided in appropriations Acts.”

Subsec. (e). Pub. L. 104-106, §3525(2), added subsec. (e) and struck out former subsec. (e) which read as follows: “The Committee on Appropriations of each House of Congress shall review the annual budget of the Commission, including operations and capital expenditures.”

1992—Subsec. (c)(1). Pub. L. 102-484, §3521(b)(1)(A), inserted “(other than amounts of toll receipts deposited into the Panama Canal Commission Dissolution Fund under section 3714a of this title)” after “toll receipts”.

Subsec. (c)(3)(A). Pub. L. 102-484, §3521(b)(1)(B), inserted “and the Panama Canal Dissolution Fund” after “Panama Canal Revolving Fund”.

1988—Subsecs. (e), (f). Pub. L. 100-705 redesignated subsec. (e), relating to costs of implementation, as (f).

1987—Pub. L. 100-203, §5422(b)(1), substituted “Panama Canal Revolving Fund” for “Panama Canal Commission Fund” in section catchline.

Subsecs. (a) to (d). Pub. L. 100-203, §5422(a), added subsecs. (a) to (d) and struck out former subsecs. (a) to (d) which related to termination of Panama Canal Company Fund on Oct. 1, 1979, subsequent deposit of tolls and other receipts into Panama Canal Commission Fund, restriction on use of funds, and authority of the Commission to enter into contracts, respectively.

Subsec. (e). Pub. L. 100-203, §5422(a), added subsec. (e), directing Appropriations Committee of each House to review annual budget of the Commission.

1985—Subsec. (b). Pub. L. 99-195 provided for deposit of interest receipts as miscellaneous receipts.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-705 effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as a note under section 3612 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 5429 of Pub. L. 100-203 provided that: “This part and the amendments made by this part [part 2 (§§5421-5429) of subtitle E of title V of Pub. L. 100-203, enacting section 3714 of this title, amending this section, sections 3683, 3711, 3713, 3751, 3753, 3754, 3792, and 3793 of this title, and section 8348 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 3601 of this title] take effect on January 1, 1988.”

EFFECTIVE DATE OF 1985 AMENDMENT

Section 2 of Pub. L. 99-195 provided that: “The amendments made by this Act [amending this section and section 3793 of this title] shall apply only to tolls and other receipts of the Commission deposited in the Treasury on or after the date of the enactment of this Act [Dec. 23, 1985].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3713, 3751 of this title.

§ 3712a. Authority to lease office space

Notwithstanding section 490 of title 40, the Commission is authorized to negotiate directly and enter into contracts for the lease of, and for improvements to, real property in the United States for use by the Commission as office space, on such terms as the Commission considers to be in the interest of the United States, and to make direct payments therefor.

(Pub. L. 100-203, title V, §5415, Dec. 22, 1987, 101 Stat. 1330-270.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1987, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

§ 3713. Panama Canal emergency authority

If authorizing legislation described in section 3712(b)(1) of this title has not been enacted for a fiscal year, then the Commission may withdraw funds from the Panama Canal Revolving Fund in order to defray emergency expenses and to ensure the continuous, efficient, and safe operation of the Panama Canal, including expenses for capital projects. The authority of this section may be exercised only until authorizing legislation described in section 3712(b)(1) of this title is enacted, or for a period of 24 months after the end of the fiscal year for which such

authorizing legislation was last enacted, whichever occurs first. Within 60 days after the end of any calendar quarter in which expenditures are made under this section, the Commission shall report such expenditures to the appropriate committees of the Congress.

(Pub. L. 96-70, title I, §1303, Sept. 27, 1979, 93 Stat. 478; Pub. L. 100-203, title V, §5423(a), (b)(1), Dec. 22, 1987, 101 Stat. 1330-273; Pub. L. 104-106, div. C, title XXXV, §3529(2), Feb. 10, 1996, 110 Stat. 642; Pub. L. 104-201, div. C, title XXXV, §3548(b)(2), Sept. 23, 1996, 110 Stat. 2869.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “section 3712(b)(1)” for “section 3712(c)(1)” in two places.

Pub. L. 104-106 struck out “The authority of this section may not be used for administrative expenses.” after “capital projects.”

1987—Pub. L. 100-203 substituted “authority” for “Fund” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) On October 1, 1979, the Secretary of the Treasury shall establish and thereafter shall maintain in the Treasury a fund to be known as the ‘Panama Canal Emergency Fund’. There are authorized to be appropriated for deposit in such Fund (1) for the fiscal year beginning on October 1, 1979, \$40,000,000, and (2) for any fiscal year beginning on or after October 1, 1980, such additional sums as may be specifically authorized by law for such fiscal year.

“(b) The Commission may make withdrawals from the Panama Canal Emergency Fund by check in order to defray emergency expenses and to insure the continuous, efficient, and safe operation of the Panama Canal, if funds appropriated for the operation and maintenance of the Canal are insufficient for such purposes. Any withdrawal from such Fund to cover increased costs attributable to unprogrammed increases in traffic may not be made in amounts greater than the revenues from such increased traffic. Such Fund shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977. Any withdrawal from such fund or expenditure made under this subsection shall be reported forthwith by the Commission to the Congress and to the Office of Management and Budget.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3712 of this title.

§ 3714. Borrowing authority

(a) Limitation on amount; issuance of notes and other obligations

The Panama Canal Commission may borrow from the Treasury, for any of the purposes of the Commission, not more than \$100,000,000 outstanding at any time. For this purpose, the Commission may issue to the Secretary of the Treasury its notes or other obligations—

(1) which shall have maturities (of not later than December 31, 1999) agreed upon by the Commission and the Secretary of the Treasury, and

(2) which may be redeemable at the option of the Commission before maturity.

(b) Restrictions on use

Amounts borrowed under this section shall not be available for payments to Panama under Article XIII of the Panama Canal Treaty of 1977.

(c) Effect on investment interest in Panama Canal

Amounts borrowed under this section shall increase the investment of the United States in the Panama Canal, and repayment of such amounts shall decrease such investment.

(d) Report to Congress

The Commission shall report to the Congress and to the Office of Management and Budget on each exercise of borrowing authority under this section.

(Pub. L. 96-70, title I, §1304, as added Pub. L. 100-203, title V, §5424(a), Dec. 22, 1987, 101 Stat. 1330-273.)

EFFECTIVE DATE

Section effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note under section 3712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3712 of this title.

§ 3714a. Dissolution of Commission**(a) Study and report**

(1) The Commission shall conduct a study of—

(A) the costs associated with the dissolution of the Commission, including the composition, location, and costs of the office authorized to be established under subsection (b) of this section; and

(B) costs and liabilities incurred or administered by the Commission that will not be paid before the date of that dissolution.

(2) The Commission shall submit to the Congress, by not later than September 30, 1996, a report on the findings and conclusions of the study under this subsection. The report shall include an estimate of the period of time which may be required to close out the affairs of the Commission after the termination of the Panama Canal Treaty of 1977.

(b) Termination office

The Commission shall during fiscal year 1998 establish an office to close out the affairs of the Commission that are still pending after the termination of the Panama Canal Treaty of 1977.

(c) Panama Canal Commission Dissolution Fund

(1) There is established in the Treasury of the United States a fund to be known as the "Panama Canal Commission Dissolution Fund" (hereinafter in this section referred to as the "Fund"). The Fund shall be managed by the Commission until the termination of the Panama Canal Treaty of 1977 and by the office established under subsection (b) of this section thereafter.

(2)(A) Subject to paragraph (5), the Fund shall be available after September 30, 1998, to pay—

(i) the costs of operating the office established under subsection (b) of this section; and

(ii) the costs and liabilities associated with dissolution of the Commission, including such costs incurred or identified after the termination of the Panama Canal Treaty of 1977.

(B) Payments from the Fund made during the period beginning on October 1, 1998, and ending

with the termination of the Panama Canal Treaty of 1977 shall be subject to the approval of the Board provided for in section 3612 of this title.

(3) The Fund shall consist of—

(A) such amounts as may be deposited into the Fund by the Commission, from amounts collected as toll receipts, to pay the costs described in paragraph (2); and

(B) amounts credited to the Fund under paragraph (4).

(4)(A) The Secretary of the Treasury shall invest excess amounts in the Fund in public debt securities with maturities suitable to the needs of the Fund, as determined by the manager of the Fund.

(B) Securities invested under subparagraph (A) shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(C) Interest earned on securities invested under subparagraph (A) shall be credited to and form part of the Fund.

(5) Amounts in the Fund may not be obligated or expended in any fiscal year unless the obligation or expenditure is specifically authorized by law.

(6) The Fund shall terminate on October 1, 2004. Amounts in the Fund on that date shall be deposited in the general fund of the Treasury of the United States.

(Pub. L. 96-70, title I, §1305, as added Pub. L. 102-484, div. C, title XXXV, §3521(a), Oct. 23, 1992, 106 Stat. 2656.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3712, 3792 of this title.

§ 3714b. Printing

(a) Section 501 of title 44 shall not apply to direct purchase by the Commission for its use of printing, binding, and blank-book work in the Republic of Panama when the Commission determines that such direct purchase is in the best interest of the Government.

(b) This section shall not affect the Commission's authority, under chapter 5 of title 44, to operate a field printing plant.

(Pub. L. 96-70, title I, §1306, as added Pub. L. 104-201, div. C, title XXXV, §3540, Sept. 23, 1996, 110 Stat. 2866.)

§ 3715. Establishment of Compensation Fund

There is established in the Treasury of the United States the Panama Canal Commission Compensation Fund (hereafter in this Act referred to as the "Fund").

(Pub. L. 100-705, §2, Nov. 19, 1988, 102 Stat. 4685.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100-705, Nov. 19, 1988, 102 Stat. 4685, known as the Panama Canal Commission Compensation Fund Act of 1988, which enacted sections 3715 to 3715d of this title, amended sections 3612, 3712, and 3731 of this title, and enacted provisions set out as notes under sections 3601 and 3612 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 3601 of this title and Tables.

CODIFICATION

Section was enacted as part of the Panama Canal Commission Compensation Fund Act of 1988, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as an Effective Date of 1988 Amendment note under section 3612 of this title.

§ 3715a. Operation of Fund**(a) Deposits to Fund**

The Panama Canal Commission shall make deposits on a regular basis to the Fund, beginning on October 1, 1988, to accumulate an amount sufficient to defray the estimated total cost of liability for the workers' compensation benefits and other payments payable under chapter 81 of title 5 for the disability or death of employees of the Panama Canal Commission or any of its predecessor agencies on account of injuries sustained on or before December 31, 1999, except for those claims arising before, on, or after October 1, 1988, for which the Secretary of Labor has assumed fiscal responsibility.

(b) Calculation of amounts to be deposited

The amounts deposited under subsection (a) of this section shall be based upon periodic actuarial studies conducted by experts or consultants whose services are procured by the Panama Canal Commission by contract. The amounts of such deposits shall take into consideration interest earnings in accordance with subsection (c) of this section and expected cost of living adjustments as provided in section 8146a of title 5, but not amounts payable by the Commission for continuation of pay pursuant to section 8118 of such title.

(c) Investment of amounts in Fund

The Secretary of the Treasury, upon the request of the Secretary of Labor, shall invest moneys in the Fund in public debt securities which shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity. Such interest shall be credited to and form a part of the Fund.

(Pub. L. 100-705, § 3, Nov. 19, 1988, 102 Stat. 4685.)

CODIFICATION

Section was enacted as part of the Panama Canal Commission Compensation Fund Act of 1988, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as an Effective Date of 1988 Amendment note under section 3612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3715b, 3715c of this title.

§ 3715b. Transfers from Fund for compensation benefits

The Secretary of the Treasury shall, upon request of the Secretary of Labor, transfer funds

from the Fund to the Employees' Compensation Fund to reimburse the Employees' Compensation Fund for the total cost of workers' compensation benefits and other payments described in section 3715a(a) of this title that are provided on or after October 1, 1988.

(Pub. L. 100-705, § 4, Nov. 19, 1988, 102 Stat. 4685.)

CODIFICATION

Section was enacted as part of the Panama Canal Commission Compensation Fund Act of 1988, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as an Effective Date of 1988 Amendment note under section 3612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3715c of this title.

§ 3715c. Final evaluation of Fund; deficiency or surplus in Fund**(a) Final evaluation of Fund**

Upon the termination of the Panama Canal Commission, the Secretary of Labor shall, on the basis of an actuarial study conducted by experts or consultants whose services are procured by the Secretary of Labor by contract, make a final determination of the amounts estimated to be necessary to meet expenditures for workers' compensation benefits and other payments described in section 3715a(a) of this title, as calculated in accordance with the second sentence of section 3715a(b) of this title. Amounts in the Fund shall be used to pay for the final determination under this subsection.

(b) Deficiency or surplus in Fund

If amounts in the Fund are not sufficient to meet expenditures as determined by the Secretary of Labor under subsection (a) of this section for workers' compensation benefits and other payments described in section 3715a(a) of this title, then amounts in the Panama Canal Revolving Fund not otherwise obligated shall be transferred to the Fund to make up the deficiency. Any amounts remaining in the Fund in excess of the final determination amount as described in subsection (a) of this section shall be transferred to the Panama Canal Revolving Fund, and may be used to satisfy lawful obligations of the Revolving Fund arising on or before December 31, 1999.

(c) Continuity of Fund

(1) Amounts in the Fund (including amounts transferred as a result of the final determination made under subsection (a) of this section) shall be maintained by the Secretary of the Treasury, shall be made available for transfer to the Employees' Compensation Fund in such amounts as are requested by the Secretary of Labor pursuant to section 3715b of this title, and may be discontinued only in accordance with paragraph (2).

(2) At such time as the Secretary of Labor certifies that no further liability exists for workers compensation benefits or other payments described in section 3715a(a) of this title, the Sec-

retary of the Treasury may discontinue the Fund in the manner provided by law.

(Pub. L. 100-705, § 5, Nov. 19, 1988, 102 Stat. 4686; Pub. L. 101-510, div. C, title XXXV, § 3507, Nov. 5, 1990, 104 Stat. 1847.)

CODIFICATION

Section was enacted as part of the Panama Canal Commission Compensation Fund Act of 1988, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

AMENDMENTS

1990—Pub. L. 101-510, § 3507(1), struck out “Upon the termination of the Panama Canal Commission:” before subsec. (a).

Subsec. (a). Pub. L. 101-510, § 3507(2), substituted “Upon the termination of the Panama Canal Commission, the Secretary of Labor” for “The Secretary of Labor” and struck out at end “The Secretary of the Treasury shall, in accordance with such final determination, transfer from the Fund to the Employee Compensation Fund amounts sufficient to meet expenditures for workers compensation benefits and other payments described in section 3715a(a) of this title.”

Subsec. (b). Pub. L. 101-510, § 3507(3), inserted “under subsection (a) of this section” after “Secretary of Labor” and struck out “Employees Compensation” before “Fund to make up”.

Subsec. (c). Pub. L. 101-510, § 3507(4), added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as an Effective Date of 1988 Amendment note under section 3612 of this title.

§ 3715d. Continuation of benefits

The provisions of chapter 81 of title 5 shall, on or after October 1, 1988, continue to be the exclusive remedy, in accordance with section 8116 of such title, for the disability or death of any employee of the Panama Canal Commission, or any of its predecessor agencies, who is covered under such chapter, resulting from injuries sustained while in the performance of the employee's duty. The rights of any such employee for workers' compensation benefits shall be based only on the provisions of that chapter.

(Pub. L. 100-705, § 6, Nov. 19, 1988, 102 Stat. 4686.)

CODIFICATION

Section was enacted as part of the Panama Canal Commission Compensation Fund Act of 1988, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as an Effective Date of 1988 Amendment note under section 3612 of this title.

SUBPART II—ACCOUNTING POLICIES AND AUDITS

§ 3721. Accounting policies

(a) Establishment and maintenance of accounts; specifications

The Commission shall establish and maintain its accounts pursuant to chapter 91 of title 31 and the provisions of this part. Such accounts shall specify all revenues received by the Commission, including tolls for the use of the Panama Canal, expenditures for capital replacement, expansion, and improvement, and all

costs of maintenance and operation of the Panama Canal and of its complementary works, installations, and equipment, including depreciation, payments to the Republic of Panama under the Panama Canal Treaty of 1977, and interest on the investment of the United States calculated in accordance with section 3793 of this title.

(b) Regulations establishing the basis of accounting for assets

The Commission may issue regulations establishing the basis of accounting for the assets which are made available for the use of the Commission. Such regulations may provide for depreciation of the net replacement value of the assets which will ultimately require replacement to maintain the service capacity of the Panama Canal. Such regulations may also provide that depreciation of such assets be recorded ratably over their service lives.

(Pub. L. 96-70, title I, § 1311, Sept. 27, 1979, 93 Stat. 479; Pub. L. 104-201, div. C, title XXXV, § 3541(a), Sept. 23, 1996, 110 Stat. 2866.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-201 substituted “chapter 91 of title 31” for “the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3751, 3793 of this title.

§ 3722. Repealed. Pub. L. 104-66, title II, § 2201(a), Dec. 21, 1995, 109 Stat. 732

Section, Pub. L. 96-70, title I, § 1312, Sept. 27, 1979, 93 Stat. 479, related to annual reports to President and Congress.

§ 3723. Audits

(a) Financial transactions of Commission; access to books, accounts, etc.

Notwithstanding any other provision of law, and subject to subsection (d)¹ of this section, financial transactions of the Commission shall be audited by the Comptroller General of the United States (hereinafter in this chapter referred to as the “Comptroller General”). In conducting any such audit, the appropriate representatives of the Comptroller General shall have access to all books, accounts, financial records, reports, files, and other papers, items, or property in use by the Commission and necessary to facilitate such audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Any such audit shall first be conducted with respect to the fiscal year in which this chapter becomes effective. An audit performed under this section is subject to the requirements of paragraphs (2), (3), and (5) of section 9105(a) of title 31.

(b) Annual report to Congress; contents

Subject to subsection (d)¹ of this section, the Comptroller General shall, not later than six months after the end of each fiscal year, submit

¹ So in original. Probably should be subsection “(c)”.

to the Congress a report of the audit conducted pursuant to subsection (a) of this section with respect to such fiscal year. Such report shall set forth the scope of the audit and shall include—

(1) a statement of assets and liabilities, capital, and surplus or deficit, based on the accounts of the Commission established pursuant to this part,

(2) a statement of income and expenses,

(3) a statement of sources and application of funds,

(4) a statement listing all direct and indirect costs incurred by the United States in implementing the Panama Canal Treaty of 1977, including the cost of property transferred to the Republic of Panama during each fiscal year, and

(5) such comments and information as the Comptroller General considers necessary to keep the Congress informed of the operations and financial transactions of the Commission, together with such recommendations with respect to such operations and transactions as the Comptroller General considers advisable.

The report shall identify specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried out or made and has not been authorized by law. The Comptroller General shall submit a copy of each such report to the President, the Secretary of the Treasury, and the Commission.

(c) Independent auditors

At the discretion of the Board provided for in section 3612 of this title, the Commission may hire independent auditors to perform, in lieu of the Comptroller General, the audit and reporting functions prescribed in subsections (a) and (b) of this section.

(d) Examination and report on Commission's financial forecast

In addition to auditing the financial statements of the Commission, the Comptroller General (or the independent auditor if one is employed pursuant to subsection (d)¹ of this section) shall, in accordance with standards for an examination of a financial forecast established by the American Institute of Certified Public Accountants, examine and report on the Commission's financial forecast that it will be in a position to meet its financial liabilities on December 31, 1999.

(Pub. L. 96-70, title I, §1313, Sept. 27, 1979, 93 Stat. 479; Pub. L. 104-106, div. C, title XXXV, §3526(a), Feb. 10, 1996, 110 Stat. 640; Pub. L. 104-201, div. C, title XXXV, §§3541(b), 3546(a)(9), (b), Sept. 23, 1996, 110 Stat. 2867, 2868.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-106, §3526(a)(1), substituted "Audits" for "Audit by the Comptroller General of the United States" as section catchline.

Subsec. (a). Pub. L. 104-201, §3541(b), which directed substitution of "chapter 91 of title 31" for "the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.)", could not be executed because that phrase did not appear subsequent to amendment by Pub. L. 104-106, §3526(a)(2)(B). See below.

Pub. L. 104-106, §3526(a)(2), substituted "Notwithstanding any other provision of law, and subject to subsection (d) of this section, financial transactions" for "Financial transactions", struck out "pursuant to the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.)" after "as the 'Comptroller General'", substituted "conducting any such audit" for "conducting any audit pursuant to such Act" and "Any such audit shall first" for "An audit pursuant to such Act shall first", and inserted at end "An audit performed under this section is subject to the requirements of paragraphs (2), (3), and (5) of section 9105(a) of title 31."

Subsec. (b). Pub. L. 104-106, §3526(a)(3), substituted "Subject to subsection (d) of this section, the Comptroller General" for "The Comptroller General" in introductory provisions.

Subsec. (c). Pub. L. 104-201, §3546(b), redesignated subsec. (d) as (c).

Pub. L. 104-201, §3546(a)(9), struck out subsec. (c) which read as follows: "In conducting the audits and preparing the reports provided for in this section and in carrying out his other responsibilities pursuant to law, the Comptroller General shall, with respect to fiscal year 1980, take into account the problems inherent in converting the existing accounting system of the Panama Canal Company to conform to the requirements established in section 3721 of this title. Accordingly, the Comptroller General shall take no adverse action with respect to the Commission, nor shall any violation of sections 1341, 1342, and 1349-1351 and subchapter II of chapter 15 of title 31 be considered to have taken place, so long as the Commission is in substantial compliance with the requirements of this chapter. The Comptroller General shall make such recommendations to the Commission and to the Congress as he may consider appropriate to insure that full compliance with the financial controls provided for in chapter 91 of title 31 is achieved promptly."

Pub. L. 104-201, §3541(b), substituted "chapter 91 of title 31" for "the Accounting and Auditing Act of 1950 (31 U.S.C. 65 et seq.)".

Subsec. (d). Pub. L. 104-201, §3546(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Pub. L. 104-106, §3526(a)(4), added subsec. (d).

Subsec. (e). Pub. L. 104-201, §3546(b), redesignated subsec. (e) as (d).

Pub. L. 104-106, §3526(a)(4), added subsec. (e).

SUBPART III—INTERAGENCY ACCOUNTS

§ 3731. Reimbursements

(a) Reimbursement of the Employees' Compensation Fund, Bureau of Employees' Compensation, Department of Labor, and other Government departments and agencies by Commission

The Commission shall reimburse the Employees' Compensation Fund, Bureau of Employee's Compensation, Department of Labor, for the benefit payments to the Commission's employees, and shall also reimburse other Government departments and agencies for payments of a similar nature made on its behalf.

(b) Reimbursement of Commission by Department of Defense

The Department of Defense shall reimburse the Commission for amounts expended by the Commission in maintaining defense facilities in standby condition for the Department of Defense.

(c) Designation of funds of Department of Defense or any other department or agency of United States to carry out purposes of this subsection

Notwithstanding any other provision of law, funds appropriated (for any fiscal year beginning after September 30, 1979) to or for the use of the Department of Defense, or to any other department or agency of the United States as may be designated by the President to carry out the purposes of this subsection, shall be available for—

(1) conducting the educational and health care activities, including kindergartens and college, carried out by the Canal Zone Government and the Panama Canal Company before October 1, 1979, and

(2) providing the services related thereto to the categories of persons to which such services were provided before such effective date.

Notwithstanding any other provision of law, the Department of Defense, or any department or agency designated by the President to provide health care services to those categories of persons referred to in this subsection, shall provide such services to such categories of persons on a basis no less favorable than that applied to its own employees and their dependents.

(d) Reimbursement to departments or agencies furnishing services

Amounts expended for furnishing services referred to in subsection (c) of this section to persons eligible to receive them, less amounts payable by such persons, shall be fully reimbursable to the department or agency furnishing the services, except to the extent that such expenditures are the responsibility of that department or agency. The funds of the Commission shall be available for such reimbursements on behalf of—

(1) employees of the Commission, and

(2) other persons authorized to receive such services who are eligible to receive them pursuant to the Panama Canal Treaty of 1977 and related agreements.

The appropriations or funds of any other department or agency of the United States conducting operations in the Republic of Panama, including the Smithsonian Institution, shall be available for reimbursements on behalf of employees of such department or agency and their dependents.

(e) Availability of funds to defray certain costs

The appropriations or funds of the Commission, or of any other department or agency of the United States conducting operations in the Republic of Panama, shall be available to defray the cost of—

(1) health care services provided by medical facilities licensed and approved by the Republic of Panama (and not operated by the United States) to elderly or disabled persons who were eligible to receive such services before October 1, 1979, less amounts payable by such persons, and

(2) educational services provided by schools in the Republic of Panama or the United States, which are not operated by the United States, to employees of the Commission who

are citizens of the United States and persons who were receiving such services at the expense of the Canal Zone Government before October 1, 1979.

Notwithstanding the provisions relating to the availability of adequate schools contained in section 5924(4)(A) of title 5, the Commission shall by regulation determine the extent to which costs of educational services may be defrayed under this subsection.

(f) Reimbursement of United States by Republic of Panama for salaries and other employment costs

For purposes of the reimbursement of the United States by the Republic of Panama for the salaries and other employment costs of employees of the Commission who are assigned to assist the Republic of Panama in the operation of activities which are transferred to that Government as a result of any provision of the Panama Canal Treaty of 1977 and related agreements, which reimbursement is provided for in paragraph 8 of Article 10 of that Treaty, the Commission shall be deemed to be the United States of America.

(g) Operation of Canal Zone College

Notwithstanding any other provision of law, the President, through the appropriate department or agency of the United States, shall, until January 1, 2000, operate the educational institution known as the "Canal Zone College". Such institution shall continue to provide, insofar as practicable, the level of services which it offered immediately before October 1, 1979.

(h) Prohibition of funds for uses other than Commission activities

Except as expressly provided in this chapter, funds available to the Panama Canal Commission may not be made available to any other agency as that term is defined in section 551 of title 5, nor may funds be authorized or appropriated for any function other than Panama Canal Commission activities.

(Pub. L. 96-70, title I, §1321, Sept. 27, 1979, 93 Stat. 480; Pub. L. 99-223, §5(c), Dec. 28, 1985, 99 Stat. 1739; Pub. L. 100-705, §8, Nov. 19, 1988, 102 Stat. 4686; Pub. L. 102-484, div. C, title XXXV, §3512, Oct. 23, 1992, 106 Stat. 2655; Pub. L. 103-337, div. C, title XXXVI, §3604, Oct. 5, 1994, 108 Stat. 3112; Pub. L. 104-106, div. C, title XXXV, §3529(3), Feb. 10, 1996, 110 Stat. 642; Pub. L. 104-201, div. C, title XXXV, §3542, Sept. 23, 1996, 110 Stat. 2867.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (h), was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-106 struck out "appropriations or" before "funds of the Commission" in introductory provisions.

Subsec. (e). Pub. L. 104-201 inserted concluding provisions "Notwithstanding the provisions relating to the availability of adequate schools contained in section 5924(4)(A) of title 5, the Commission shall by regulation

determine the extent to which costs of educational services may be defrayed under this subsection.”

1994—Subsec. (e)(2). Pub. L. 103-337 inserted “or the United States” after “schools in the Republic of Panama”.

1992—Subsec. (e)(1). Pub. L. 102-484 inserted “provided by medical facilities licensed and approved by the Republic of Panama (and not operated by the United States)” after “health care services”.

1988—Subsec. (h). Pub. L. 100-705 added subsec. (h).

1985—Subsec. (e). Pub. L. 99-223 amended subsec. (e) generally, striking out “, in accordance with subsection (d) of this section,” after “shall be available” in provisions preceding par. (1) and inserting “employees of the Commission who are citizens of the United States and” in par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-705 effective Oct. 1, 1988, see section 10 of Pub. L. 100-705, set out as a note under section 3612 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-223 effective Oct. 1, 1985, see section 8 of Pub. L. 99-223, set out as a note under section 3612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3751 of this title.

SUBPART IV—POSTAL MATTERS

§ 3741. Postal service

(a) Possession or administration of funds by Commission

The Commission shall take possession of and administer the funds of the Canal Zone postal service and shall assume its obligations.

(b) Expiration of responsibility for unpaid balances

Effective December 1, 1999, neither the Commission nor the United States Government shall be responsible for the distribution of any accumulated unpaid balances relating to Canal Zone postal-savings deposits, postal-savings certificates, and postal money orders.

(c) Mail addressed to Canal Zone from or through United States

Mail addressed to the Canal Zone from or through the continental United States may be routed by the United States Postal Service to the military post offices of the United States Armed Forces in the Republic of Panama. Such military post offices shall provide the required directory services and shall accept such mail to the extent permitted under the Panama Canal Treaty of 1977 and related agreements. The Commission shall furnish personnel, records, and other services to such military post offices to assure wherever appropriate the distribution, routing, or return of such mail.

(Pub. L. 96-70, title I, §1331, Sept. 27, 1979, 93 Stat. 481, 482; Pub. L. 104-201, div. C, title XXXV, §3543, Sept. 23, 1996, 110 Stat. 2867.)

AMENDMENTS

1996—Pub. L. 104-201 reenacted section catchline without change and amended text generally. Prior to amendment, text was comprised of subsecs. (a) to (d) of section 1331 of Pub. L. 96-70 which provided for discontinuation of postal service under former Canal Zone Code, savings provision, possession and administration

of postal funds by Commission, and handling of mail addressed to the Canal Zone. Prior to amendment, section 1331 also contained a subsec. (e) which amended sections 403, 3401, 3402, and 3682 of Title 39, Postal Service.

SUBPART V—ACCOUNTS WITH REPUBLIC OF PANAMA

§ 3751. Payments to Republic of Panama

(a) Payments required under Panama Canal Treaty; annual audit

The Commission shall pay to the Republic of Panama those payments required under paragraph 5 of Article III and paragraph 4 of Article XIII of the Panama Canal Treaty of 1977. Payments made under paragraph 5 of Article III of such Treaty shall be audited annually by the Comptroller General and any overpayment, as determined in accordance with Understanding (1) incorporated in the Resolution of Ratification of the Panama Canal Treaty (adopted by the United States Senate on April 18, 1978), for the services described in that paragraph which are provided shall be refunded by the Republic of Panama or set off against amounts payable by the United States to the Republic of Panama under paragraph 5 of Article III of the Panama Canal Treaty of 1977.

(b) Excess operating revenues

In determining whether operating revenues exceed expenditures for the purpose of payments to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977, such operating revenues in a fiscal period shall be reduced by (1) all costs of such period as shown by the accounts established pursuant to section 3721 of this title, and (2) the cumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of costs of the Panama Canal Commission over operating revenues.

(c) Retroactive taxation

The President shall not accede to any interpretation of paragraph 1 of Article IX of the Panama Canal Treaty of 1977 which would permit the Republic of Panama to tax retroactively organizations and businesses operating, and citizens of the United States living, in the Canal Zone before October 1, 1979.

(d) Accumulated unpaid balances

Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 at the termination of such Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and nothing in such paragraph may be construed as obligating the United States to pay after the date of the termination of the Treaty any such unpaid balance which has accrued before such date.

(e) Toll rates; payment of costs of operation and maintenance of canal with unexpended funds

As provided in section 3792(b) of this title, tolls shall not be prescribed at rates calculated to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the

Panama Canal Treaty of 1977. Moreover, no payments may be made to the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977 unless unexpended funds are used to pay all costs of operation and maintenance of the canal, including but not limited to (1) operating expenses determined in accordance with generally accepted accounting principles, (2) payments to the Republic of Panama under paragraphs 4(a) and 4(b) of such Article XIII and under paragraph (5) of Article III of such Treaty, (3) amounts in excess of depreciation and amortization which are programmed for plant replacement, expansion, and improvements, (4) payments to the Treasury of the United States under section 3793 of this title, (5) reimbursement to the Treasury of the United States for costs incurred by other departments and agencies of the United States in providing educational, health, and other services to the Commission, its employees and their dependents, and other categories of persons in accordance with section 3731 of this title, (6) any costs of Treaty implementation associated with the maintenance and operation of the Panama Canal, and (7) amounts programmed to meet working capital requirements.

(f) Prohibitions

The prohibitions contained in this section and in sections 3712(b) and 3783 of this title shall apply notwithstanding any other provision of law authorizing transfers of funds between accounts, reprogramming of funds, use of funds for contingency purposes, or waivers of prohibitions.

(g) Exemption from automatic budget cuts

Notwithstanding any other provision of law, no reduction under any order issued pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 shall apply to the Commission if the implementation of such an order would result in a payment to the Republic of Panama under paragraph 4(c) of article XIII of the Panama Canal Treaty of 1977 and this section.

(Pub. L. 96-70, title I, §1341, Sept. 27, 1979, 93 Stat. 482; Pub. L. 99-368, §6, Aug. 1, 1986, 100 Stat. 776; Pub. L. 100-203, title V, §5426, Dec. 22, 1987, 101 Stat. 1330-274; Pub. L. 104-201, div. C, title XXXV, §3548(b)(3), Sept. 23, 1996, 110 Stat. 2869.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (g), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

1996—Subsec. (f), Pub. L. 104-201 which directed substitution of “section 3712(b)” for “section 3712(c)”, was executed by substituting “sections 3712(b)” for “sections 3712(c)” to reflect the probable intent of Congress.

1987—Subsec. (e)(7), Pub. L. 100-203 added cl. (7).
1986—Subsec. (g), Pub. L. 99-368 added subsec. (g).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 7 of Pub. L. 99-368 provided that: “The amendment made by section 6 [amending this section] shall take effect with respect to fiscal year 1986 and subsequent fiscal years.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3872 of this title.

§ 3752. Transactions with Republic of Panama

The Commission may, on a reimbursable basis, provide to the Republic of Panama materials, supplies, equipment, work, or services, including water and electric power, requested by the Republic of Panama, at such rates as may be agreed upon by the Commission and the Republic of Panama. Payment for such materials, supplies, equipment, work, or services may be made by direct payment by the Republic of Panama to the Commission or by offset against amounts due the Republic of Panama by the United States.

(Pub. L. 96-70, title I, §1342, Sept. 27, 1979, 93 Stat. 483.)

§ 3753. Disaster relief

If an emergency arises because of disaster or calamity by flood, hurricane, earthquake, fire, pestilence, or like cause, not foreseen or otherwise provided for, and occurring in the Republic of Panama in such circumstances as to constitute an actual or potential hazard to health, safety, security, or property in the areas and installations made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements, the Commission may expend funds available to the Commission for such purpose, and utilize or furnish materials, supplies, equipment, and services for relief, assistance, and protection.

(Pub. L. 96-70, title I, §1343, Sept. 27, 1979, 93 Stat. 483; Pub. L. 100-203, title V, §5428(b), Dec. 22, 1987, 101 Stat. 1330-274.)

AMENDMENTS

1987—Pub. L. 100-203 substituted “funds available” for “available funds appropriated”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

§ 3754. Congressional restraints on property transfers and tax expenditures; formal appraisal of Panama

(a) The Congress enacts this section in the exercise of its authority under Article IV, section 3, clause 2 of the Constitution of the United States to dispose of and make necessary rules and regulations with respect to property of the United States.

(b) Prior to the transfer of property of the United States located in the Republic of Pan-

ama to the Republic of Panama pursuant to section 3784 of this title the President shall formally advise the Government of Panama that—

(1) in fulfilling its obligations under the Panama Canal Treaty of 1977, the United States shall make no payments to the Republic of Panama derived from tax revenues of the United States;

(2) the United States retains full discretion and authority to determine whether and the extent to which tax revenues of the United States may be expended in exercising United States rights and carrying out United States responsibilities under the Panama Canal Treaty of 1977 and related agreements;

(3) no tax revenues of the United States shall be made available for obligations and expenditure after October 1, 1979, for purposes of implementing the Panama Canal Treaty of 1977 and related agreements, unless hereafter specifically approved by the Congress through the authorization and appropriation process;

(4) the total amount expended by the Commission from funds available for the use of the Commission shall not exceed the total amount deposited in the Panama Canal Revolving Fund; and

(5) the foregoing paragraphs of this subsection do not apply to expenditures made by the United States in fulfilling United States obligations to transfer the remains of our honored dead from Mount Hope Cemetery in the former Canal Zone to an appropriate and dignified resting place in accordance with Reservation 3 to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

(Pub. L. 96-70, title I, §1344, Sept. 27, 1979, 93 Stat. 484; Pub. L. 100-203, title V, §5428(c), Dec. 22, 1987, 101 Stat. 1330-274.)

AMENDMENTS

1987—Subsec. (b)(4). Pub. L. 100-203 substituted “available” for “appropriated to or” and “Panama Canal Revolving Fund” for “Panama Canal Commission Fund”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (b) delegated to Secretary of State, see section 1-402 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

PART 4—CLAIMS FOR INJURIES TO PERSONS OR PROPERTY

SUBPART I—GENERAL PROVISIONS

§ 3761. Settlement of claims generally

(a) Claims for injury to, or loss of, property or personal injury or death arising from operation of Panama Canal

Subject to the provisions of this part, the Commission may adjust and pay claims for injury to, or loss of, property or for personal injury or death, arising from the operation of the Panama Canal or related facilities and appurtenances.

(b) Limitation on amount of claims

The Commission may pay not more than \$50,000 on any claim described in subsection (a) of this section.

(c) Source of award; release

An award made to a claimant under this section shall be payable out of any moneys made available to the Commission. The acceptance by the claimant of the award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of his claim against the United States and against any employee of the United States acting in the course of his employment who is involved in the matter giving rise to the claim.

(d) Action for damages on claims cognizable under this part; action against officers or employees of United States for injuries resulting from acts outside scope of their employment

Except as provided in section 3776 of this title, no action for damages on claims cognizable under this part shall lie against the United States or the Commission, and no such action shall lie against any officer or employee of the United States. Neither this section nor section 3776 of this title shall preclude actions against officers or employees of the United States for injuries resulting from their acts outside the scope of their employment or not in the line of their duties, or from their acts committed with the intent to injure the person or property of another.

(e) Applicability of provisions of section 1346 and chapter 171 of title 28

The provisions of section 1346(b) of title 28 and the provisions of chapter 171 of such title shall not apply to claims cognizable under this part.

(Pub. L. 96-70, title I, §1401, Sept. 27, 1979, 93 Stat. 484; Pub. L. 100-203, title V, §5417(a), Dec. 22, 1987, 101 Stat. 1330-271; Pub. L. 104-106, div. C, title XXXV, §3529(4), Feb. 10, 1996, 110 Stat. 642.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-106 struck out “appropriated for or” after “any moneys”.

1987—Subsec. (b). Pub. L. 100-203 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “No claim for an amount exceeding \$50,000 shall be adjusted and paid by the Commission under the provisions of this subpart.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3612a, 3771 of this title.

SUBPART II—VESSEL DAMAGE

§ 3771. Injuries in locks of canal; adjustment and payment of claims

(a) Subject to subsection (b) of this section, the Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels, which may arise by reason of their passage through the locks of the Panama Canal when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and

in the line of his duties in connection with the operation of the Canal. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. Damages may not be allowed and paid for injuries to any protrusion beyond any portion of the hull of a vessel, whether it is permanent or temporary in character. A vessel is considered to be passing through the locks of the Canal, under the control of officers or employees of the United States, from the time the first towing line is made fast on board before entrance into the locks and until the towing lines are cast off upon, or immediately prior to, departure from the lock chamber. No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within 2 years after the date of the injury, or within 1 year after December 23, 1985, whichever is later.

(b)(1) With respect to a claim under subsection (a) of this section for damages for injuries to a vessel or its cargo, if, at the time the injuries were incurred, the navigation or movement of the vessel was not under the control of a Panama Canal pilot, the Commission may pay not more than \$50,000 on the claim, unless the injuries were caused by another vessel under the control of a Panama Canal pilot.

(2) The provisions of subsections (c) through (e) of section 3761 of this title shall apply to any claim described in paragraph (1).

(Pub. L. 96-70, title I, §1411, Sept. 27, 1979, 93 Stat. 485; Pub. L. 99-209, §2(a), (b), Dec. 23, 1985, 99 Stat. 1716; Pub. L. 100-203, title V, §5417(b), Dec. 22, 1987, 101 Stat. 1330-271.)

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100-203 substituted “pay not more than \$50,000 on the claim” for “adjust and pay the claim only if the amount of the claim does not exceed \$50,000”.

1985—Subsec. (a). Pub. L. 99-209, §2(a), designated existing provisions as subsec. (a), substituted “Subject to subsection (b) of this section, the” for “The”, substituted “the Panama Canal when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal” for “The Panama Canal under the control of officers or employees of the United States”, struck out provision that damages could not be paid where the injury was proximately caused by the negligence or fault of the vessel, master, crew, or passengers, and inserted provision that no payment for damages on a claim may be made under this section unless the claim is filed with the Commission within 2 years after the date of the injury, or within 1 year after Dec. 23, 1985, whichever is later.

Subsec. (b). Pub. L. 99-209, §2(b), added subsec. (b).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 7 of Pub. L. 99-209 provided that:

“(a) **RETROACTIVE APPLICABILITY.**—The amendments made by subsections (a) and (c) of section 2 [amending this section and section 3772 of this title], and the amendments made by sections 4 and 5 of this Act [amending sections 3775 and 3776 of this title], shall apply to any claim arising on or after October 1, 1979.

“(b) **FUTURE APPLICABILITY.**—

“(1) **SECTIONS 3 AND 6.**—The amendments made by sections 3 [amending section 3774 of this title] and 6

[enacting section 3779 of this title] of this Act shall apply to any claim arising on or after the date of the enactment of this Act [Dec. 23, 1985].

“(2) **SECTION 2(b).**—The amendment made by subsection (b) of section 2 [amending this section] shall apply to any claim arising from an incident occurring on or after the date of the enactment of this Act [Dec. 23, 1985].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3776 of this title.

§ 3772. Injuries outside locks

The Commission shall promptly adjust and pay damages for injuries to vessels, or to the cargo, crew, or passengers of vessels which may arise by reason of their presence in the Panama Canal, or waters adjacent thereto, other than the locks, when the injury was proximately caused by negligence or fault on the part of an officer or employee of the United States acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal. If the negligence or fault of the vessel, master, crew, or passengers proximately contributed to the injury, the award of damages shall be diminished in proportion to the negligence or fault attributable to the vessel, master, crew, or passengers. In the case of a vessel which is required by or pursuant to regulations prescribed pursuant to section 3811 of this title to have a Panama Canal pilot on duty aboard, damages may not be adjusted and paid for injuries to the vessel, or its cargo, crew, or passengers, incurred while the vessel was underway and in motion, unless at the time the injuries were incurred the navigation or movement of the vessel was under the control of a Panama Canal pilot. No payment for damages on a claim may be made under this section unless the claim is filed with the Commission within 2 years after the date of the injury, or within 1 year after December 23, 1985, whichever is later.

(Pub. L. 96-70, title I, §1412, Sept. 27, 1979, 93 Stat. 485; Pub. L. 99-209, §2(c), Dec. 23, 1985, 99 Stat. 1716.)

AMENDMENTS

1985—Pub. L. 99-209 struck out provisions limiting the amount of the claim to \$120,000, and inserted provision that no payment for damages on a claim may be made under this section unless the claim is filed with the Commission within 2 years after the date of the injury, or within 1 year after Dec. 23, 1985, whichever is later.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-209 applicable to any claim arising on or after Oct. 1, 1979, see section 7(a) of Pub. L. 99-209, set out as a note under section 3771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3776 of this title.

§ 3773. Measure of damages generally

In determining the amount of the award of damages for injuries to a vessel for which the Commission is determined to be liable, there may be included—

- (1) the actual or estimated cost of repairs;
- (2) charter hire actually lost by the owners, or charter hire actually paid, depending upon

the terms of the charter party, for the time the vessel is undergoing repairs;

(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire; and

(4) other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

Agent's fees, or commissions, or other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed. The Commission shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value cannot be determined, the value of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If the books are unavailable, such other evidence shall be furnished as may be necessary.

(Pub. L. 96-70, title I, §1413, Sept. 27, 1979, 93 Stat. 486.)

§ 3774. Delays for which no responsibility is assumed

The Commission is not responsible, and may not consider any claim, for demurrage or delays caused by—

- (1) landslides or other natural causes;
- (2) necessary construction or maintenance work on Canal locks, terminals, or equipment;
- (3) obstruction arising from accidents;
- (4) time necessary for admeasurement;
- (5) congestion of traffic;
- (6) investigation of a marine accident that is conducted within 24 hours after the accident occurs, except that any liability of the Commission beyond that 24-hour period shall be limited to the extent to which the accident was caused, or contributed to, by the negligence of an employee of the Commission acting within the scope of the employee's official duties; or
- (7) except as specially set forth in this subpart, any other cause.

(Pub. L. 96-70, title I, §1414, Sept. 27, 1979, 93 Stat. 486; Pub. L. 99-209, §3, Dec. 23, 1985, 99 Stat. 1717.)

AMENDMENTS

1985—Par. (6). Pub. L. 99-209 amended par. (6) generally. Prior to amendment, par. (6) read as follows: "time necessary for investigation of marine accidents; or".

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-209 applicable to any claim arising on or after Dec. 23, 1985, see section 7(b)(1) of

Pub. L. 99-209, set out as a note under section 3771 of this title.

§ 3775. Settlement of claims

The Commission, by mutual agreement, compromise, or otherwise, may adjust and determine the amounts of the respective awards of damages pursuant to this subpart. Such amounts may be paid only out of money allotted for the maintenance and operation of the Panama Canal. Acceptance by a claimant of the amount awarded to him shall be deemed to be in full settlement of such claim against the Government of the United States.

(Pub. L. 96-70, title I, §1415, Sept. 27, 1979, 93 Stat. 486; Pub. L. 99-209, §4, Dec. 23, 1985, 99 Stat. 1717; Pub. L. 104-106, div. C, title XXXV, §3529(5), Feb. 10, 1996, 110 Stat. 642.)

AMENDMENTS

1996—Pub. L. 104-106 struck out "appropriated or" after "out of money" in second sentence.

1985—Pub. L. 99-209 struck out the subsec. (a) designation, substituted "The Commission, by" for "Subject to subsection (b) of this section, the Commission, by" and "Such amounts may be paid only out of money appropriated or allotted for the maintenance and operation of the Panama Canal" for "Such amounts shall be payable promptly out of any moneys appropriated or allotted for the maintenance and operation of the Panama Canal", and struck out subsec. (b) which provided that the Commission could not adjust and pay any claim for damages for injuries arising by reason of the presence of the vessel in the Panama Canal or adjacent waters outside the locks where the amount of the claim exceeded \$120,000 but had to submit the claim to the Congress in a special report containing the material facts and the recommendation of the Commission thereon.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-209 applicable to any claim arising on or after Oct. 1, 1979, see section 7(a) of Pub. L. 99-209, set out as a note under section 3771 of this title.

§ 3776. Actions on claims

A claimant for damages pursuant to section 3771(a) or 3772 of this title who considers himself aggrieved by the findings, determination, or award of the Commission in reference to his claim may bring an action on the claim against the Commission in the United States District Court for the Eastern District of Louisiana. Subject to the provisions of this part and of applicable regulations issued pursuant to section 3811 of this title relative to navigation of the Panama Canal and adjacent waters, such actions shall proceed and be heard by the court without a jury according to the principles of law and rules of practice obtaining generally in like cases between a private party and a department or agency of the United States. Any judgment obtained against the Commission in an action under this subpart may be paid only out of money allotted for the maintenance and operation of the Panama Canal. An action for damages cognizable under this section shall not otherwise lie against the United States or the Commission, nor in any other court, than as provided in this section; nor may it lie against any officer or employee of the United States or of the Commission. Any action on a claim under this section

shall be barred unless the action is brought within one year after the date on which the Commission mails to the claimant written notification of the Commission's final determination with respect to the claim, or within one year after December 23, 1985, whichever is later. Attorneys appointed by the Commission shall represent the Commission in any action arising under this subpart.

(Pub. L. 96-70, title I, §1416, Sept. 27, 1979, 93 Stat. 487; Pub. L. 99-209, §5, Dec. 23, 1985, 99 Stat. 1717; Pub. L. 104-106, div. C, title XXXV, §3529(6), Feb. 10, 1996, 110 Stat. 642.)

AMENDMENTS

1996—Pub. L. 104-106 struck out “appropriated or” after “out of money” in third sentence.

1985—Pub. L. 99-209 substituted “section 3771(a) or 3772 of this title” for “section 3771 of this title”, substituted “may be paid only out out money” for “shall be paid out of any moneys”, and inserted provisions that any action on a claim under this section shall be barred unless the action is brought within one year after the date on which the Commission mails to the claimant written notification of the Commission's final determination with respect to the claim, or within one year after Dec. 23, 1985, whichever is later, and that attorneys appointed by the Commission shall represent the Commission in any action arising under this subpart.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-209 applicable to any claim arising on or after Oct. 1, 1979, see section 7(a) of Pub. L. 99-209, set out as a note under section 3771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3761 of this title.

§ 3777. Investigation of accident or injury giving rise to claim

Notwithstanding any other provision of law, a claim may not be considered under this subpart, or an action for damages lie thereon, unless, prior to the departure from the Panama Canal of the vessel involved—

(1) an investigation of the accident or injury giving rise to the claim has been completed, which shall include a hearing by the Board of Local Inspectors of the Commission; and

(2) the basis for the claim has been laid before the Commission.

(Pub. L. 96-70, title I, §1417, Sept. 27, 1979, 93 Stat. 487; Pub. L. 104-201, div. C, title XXXV, §3544, Sept. 23, 1996, 110 Stat. 2867.)

AMENDMENTS

1996—Par. (1). Pub. L. 104-201 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “an investigation by the competent authorities of the accident or injury giving rise to the claim has been completed; and”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3778 of this title.

§ 3778. Board of local inspectors

(a) The President shall provide for the establishment of a Board of Local Inspectors of the Panama Canal Commission which shall perform, in accordance with regulations prescribed by the President—

(1) the investigations required by section 3777 of this title; and

(2) such other duties with respect to marine matters as may be assigned by the President.

(b) In conducting any investigation pursuant to subsection (a) of this section, the Board of Local Inspectors established pursuant to such subsection may summon witnesses, administer oaths, and require the production of books and papers necessary for such investigation.

(Pub. L. 96-70, title I, §1418, Sept. 27, 1979, 93 Stat. 487.)

DELEGATION OF FUNCTIONS

Functions vested in President by this section delegated to Secretary of Defense, see section 1-303 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

§ 3779. Insurance

The Commission is authorized to purchase insurance to protect the Commission against major and unpredictable revenue losses or expenses arising from catastrophic marine accidents or other unpredictable events.

(Pub. L. 96-70, title I, §1419, as added Pub. L. 99-209, §6(a), Dec. 23, 1985, 99 Stat. 1717; amended Pub. L. 100-203, title V, §5414, Dec. 22, 1987, 101 Stat. 1330-270.)

AMENDMENTS

1987—Pub. L. 100-203 inserted “or other unpredictable events” after “marine accidents”.

EFFECTIVE DATE

Section applicable to any claim arising on or after Dec. 23, 1985, see section 7(b)(1) of Pub. L. 99-209, set out as an Effective Date of 1985 Amendment note under section 3771 of this title.

PART 5—PUBLIC PROPERTY

§ 3781. Assets and liabilities of Panama Canal Company

All property and other assets of the Panama Canal Company shall revert to the United States on October 1, 1979, and, except as otherwise provided by law, the United States shall assume the liabilities, including contractual obligations, of the Panama Canal Company then outstanding. The Commission may use such property, facilities, and records of the Panama Canal Company as are necessary to carry out its functions.

(Pub. L. 96-70, title I, §1501, Sept. 27, 1979, 93 Stat. 487.)

§ 3782. Transfers and cross-servicing between agencies

(a) **Transfers of facilities, buildings, structures, improvements, stocks and equipment located in the Republic of Panama**

In the interest of economy and maximum efficiency in the utilization of property and facilities of the United States, there are authorized to be transferred between departments and agencies of the United States, with or without reimbursement, such facilities, buildings, structures, improvements, stock, and equipment located in

the Republic of Panama, and used for their activities therein, as may be mutually agreed upon by the departments and agencies involved and approved by the President of the United States or his designee.

(b) Cross-servicing agreements

The Commission may enter into cross-servicing agreements with any other department or agency of the United States for the use of facilities, furnishing of services, or performance of functions.

(c) Transfer of records to Government of Republic of Panama

The Commission, any department or agency of the United States, or any United States court in the Republic of Panama is authorized to transfer to the Government of the Republic of Panama any record of such Commission, department, agency, or court, or copy thereof, including any record acquired from the Canal Zone Government or Panama Canal Company (including any vital statistics record), to any other department, agency, or court of the United States if such action is determined by the Commission, the head of the department or agency concerned, or the judge of the court concerned to be in the interest of the United States. Transfer of any record or copy thereof under this section to the Government of the Republic of Panama shall be made under the coordination of and with the approval of the United States Ambassador to the Republic of Panama.

(d) Applicability to Smithsonian Institution

The provisions of this section shall apply to the Smithsonian Institution.

(Pub. L. 96-70, title I, § 1502, Sept. 27, 1979, 93 Stat. 488.)

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (a) of this section delegated to Secretary of Defense, see section 1-106 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36043, set out as a note under section 3601 of this title.

§ 3783. Disposition of property of United States

No property of the United States located in the Republic of Panama may be disposed of except pursuant to law enacted by the Congress.

(Pub. L. 96-70, title I, § 1503, Sept. 27, 1979, 93 Stat. 488.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3751 of this title.

§ 3784. Transfer of property to Republic of Panama

(a) Conveyance of Panama Railroad

(1) On October 1, 1979, the Secretary of State may convey to the Republic of Panama the Panama Railroad and such property located in the area which, immediately before such date, comprised the Canal Zone and which is not within the land and water areas the use of which is made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(2) Property transferred pursuant to paragraph (1) of this subsection may not include buildings

and other facilities, except housing, located outside such areas, the use of which is retained by the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b) Transfer of certain property pursuant to Panama Canal Treaty of 1977; report to Congress

With respect to the transfer of all other property (not described in subsection (a)(1) of this section) to be transferred in accordance with the terms of the Panama Canal Treaty of 1977 and related agreements, the Secretary of State may convey such property from time to time in accordance with the terms of such Treaty and related agreements. Before the transfer of any such property, the President must submit a written report to the Congress—

(1) precisely identifying and describing the particular property to be transferred;

(2) certifying the state of compliance by the Republic of Panama with such Treaty and related agreements; and

(3) setting forth the reasons for the conveyance being made at the particular time.

(c) Restriction on transfer of Panama Canal and certain other property

The Panama Canal, and such other property referred to in paragraph 2(d) of Article XIII of the Panama Canal Treaty of 1977 that has not been previously transferred in accordance with paragraphs 2(a), 2(b), and 2(c) of such Article, shall not be transferred to the Republic of Panama prior to December 31, 1999.

(Pub. L. 96-70, title I, § 1504, Sept. 27, 1979, 93 Stat. 488; Pub. L. 99-223, § 7, Dec. 28, 1985, 99 Stat. 1740.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99-223 substituted “Before” for “At least 180 days before”.

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (b) delegated to Secretary of State, see section 1-402 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3754 of this title.

PART 6—TOLLS FOR USE OF PANAMA CANAL

§ 3791. Prescription of measurement rules and rates of tolls

The Commission may, subject to the provisions of this chapter, prescribe and from time to time change—

(1) the rules for the measurement of vessels for the Panama Canal; and

(2) the tolls that shall be levied for use of the Panama Canal.

(Pub. L. 96-70, title I, § 1601, Sept. 27, 1979, 93 Stat. 489; Pub. L. 104-106, div. C, title XXXV, § 3527, Feb. 10, 1996, 110 Stat. 641.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short

Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1996—Pub. L. 104-106 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) The President is authorized, subject to the provisions of this part, to prescribe and from time to time change—

“(1) the rules for the measurement of vessels for the Panama Canal; and

“(2) the tolls that shall be levied for the use of the Canal.

“(b) Such rules of measurement and tolls prevailing on October 1, 1979, shall continue in effect until changed as provided in this part.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3794 of this title.

§ 3792. Bases of tolls

(a) Tolls based on net vessel tons and on displacement tonnage

Tolls on merchant vessels, army and navy transports, colliers, tankers, hospital ships, supply ships, and yachts shall be based on net vessel tons of one hundred cubic feet each of actual earning capacity, or its equivalent, determined in accordance with the rules for the measurement of vessels for the Panama Canal, and tolls on other floating craft shall be based on displacement tonnage. The tolls on vessels in ballast without passengers or cargo may be less than the tolls for vessels with passengers or cargo.

(b) Toll rates prescribed to cover all costs of operation and maintenance of Panama Canal

Tolls shall be prescribed at rates calculated to produce revenues to cover as nearly as practicable all costs of maintaining and operating the Panama Canal (including costs authorized to be paid from the Panama Canal Dissolution Fund under section 3714a(c) of this title), together with the facilities and appurtenances related thereto, including unrecovered costs incurred on or after October 1, 1979, interest, depreciation, working capital, payments to the Republic of Panama pursuant to paragraph 5 of Article III and paragraph 4(a) and (b) of Article XIII of the Panama Canal Treaty of 1977, and capital for plant replacement, expansion, and improvements. Tolls shall not be prescribed at rates calculated to produce revenues sufficient to cover payments to the Republic of Panama pursuant to paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977.

(c) Payment of tolls by vessels of United States

Vessels operated by the United States, including vessels of war and auxiliary vessels, and ocean-going training ships owned by the United States and operated by State nautical schools, shall pay tolls.

(d) Levy of tolls

The levy of tolls is subject to the provisions of section 1 of Article III of the treaty between the United States of America and Great Britain signed November 18, 1901, of Article I of the treaty between the United States of America and the Republic of Colombia signed April 6, 1914,

and of Articles II, III, and VI of the Treaty Concerning Permanent Neutrality and Operation of the Panama Canal, between the United States of America and the Republic of Panama, signed September 7, 1977.

(Pub. L. 96-70, title I, §1602, Sept. 27, 1979, 93 Stat. 489; Pub. L. 100-203, title V, §5427, Dec. 22, 1987, 101 Stat. 1330-274; Pub. L. 102-484, div. C, title XXXV, §§3513, 3521(b)(2), Oct. 23, 1992, 106 Stat. 2655, 2657.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-484, §3513, inserted “, or its equivalent,” after “earning capacity”.

Subsec. (b). Pub. L. 102-484, §3521(b)(2), substituted “Panama Canal (including costs authorized to be paid from the Panama Canal Dissolution Fund under section 3714a(c) of this title)” for “Panama Canal”.

1987—Subsec. (b). Pub. L. 100-203 inserted “working capital,” after “depreciation.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3751, 3793, 3794 of this title; title 46 section 14302.

§ 3793. Interest on investments

(a) Calculation of interest

For purposes of sections 3721 and 3792 of this title, interest shall be computed, at a rate determined by the Secretary of the Treasury, on the investment of the United States in the Panama Canal as shown in the accounts of the Panama Canal Company at the close of business on the day preceding October 1, 1979, and as adjusted in accordance with subsections (b) and (c) of this section. Capital investment for interest purposes shall not include any interest during construction.

(b) Increases and decreases in investment of United States

The investment of the United States described in subsection (a) of this section—

(1) shall be increased by—

(A) the amount of expenditures from the Panama Canal Revolving Fund,¹ and

(B) the value of property transferred to the Commission by any other department or agency of the United States, as determined in accordance with subsection (c) of this section; and

(2) shall be decreased by—

(A) the amount of the funds deposited in the Panama Canal Revolving Fund,

(B) the value of property transferred to the Republic of Panama pursuant to this chapter or any other Act on or after October 1, 1979, and

(C) the value of property transferred by the Commission to any other department or agency of the United States.

(c) Value of property transferred to Commission

The value of property transferred to the Commission by any other department or agency of

¹ So in original.

the United States shall be determined by the Director of the Office of Management and Budget. In computing such value, such Director shall give due consideration to the cost and probable earning power of the transferred property, or the usable value to the Commission if clearly less than cost, and shall make adequate provisions for depreciation, obsolescence, and other determinable decreases in value. Insofar as practicable, the value of such transferred property shall exclude any portion of such value properly allocable to national defense.

(d) Payment and deposit of interest

The Panama Canal Commission shall pay to the Treasury of the United States interest on the investment of the United States, as determined under this section. Such interest shall be deposited in the general fund of the Treasury.

(Pub. L. 96-70, title I, §1603, Sept. 27, 1979, 93 Stat. 490; Pub. L. 99-195, §1(b), Dec. 23, 1985, 99 Stat. 1349; Pub. L. 100-203, title V, §5425(a), Dec. 22, 1987, 101 Stat. 1330-274.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(2)(B), was in the original "this Act", meaning Pub. L. 96-70, Sept. 27, 1979, 93 Stat. 452, known as the Panama Canal Act of 1979, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of this title and Tables.

AMENDMENTS

1987—Subsec. (b)(1)(A). Pub. L. 100-203, §5425(a)(1), substituted "the Panama Canal Revolving Fund," for "appropriations to the Commission made on or after October 1, 1979".

Subsec. (b)(2)(A). Pub. L. 100-203, §5425(a)(2), substituted "deposited in the Panama Canal Revolving Fund" for "covered into the Panama Canal Commission Fund pursuant to section 3712 of this title".

Subsec. (d). Pub. L. 100-203, §5425(a)(3), added subsec. (d).

1985—Subsec. (b)(2)(A). Pub. L. 99-195 substituted "Panama Canal Commission Fund" for "Treasury".

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100-203, set out as a note under section 3712 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-195 applicable only to tolls and other receipts of the Commission deposited in the Treasury on or after Dec. 23, 1985, see section 2 of Pub. L. 99-195, set out as a note under section 3712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3721, 3751 of this title.

§ 3794. Procedures

(a) Publication of notice of proposed changes in rules of measurement and rates of tolls in Federal Register; participation by interested parties; availability of analysis

The Commission shall publish in the Federal Register notice of any proposed change in the rules of measurement or rates of tolls referred to in section 3791 of this title. The Commission shall give interested parties an opportunity to

participate in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of publication of the notice. The notice shall include the substance of the proposed change and a statement of the time, place, and nature of the proceedings. At the time of publication of such notice, the Commission shall make available to the public an analysis showing the basis and justification for the proposed change, which, in the case of a change in rates of tolls, shall indicate the conformity of the existing and proposed rates of tolls with the requirements of section 3792 of this title, and the Commission's adherence to the requirement for full consideration of the following factors set forth in Understanding (1) incorporated in the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (adopted by the United States Senate on March 16, 1978):

(1) the costs of operating and maintaining the Panama Canal;

(2) the competitive position of the use of the Canal in relation to other means of transportation;

(3) the interests of the United States and the Republic of Panama in maintaining their domestic fleets;

(4) the impact of such a change in rates of tolls on the various geographical areas of each of the two countries; and

(5) the interests of both countries in maximizing their international commerce.

(b) Revision of proposed rules of measurement or rates of tolls

After consideration of the relevant matter presented, the Commission may revise the proposed rules of measurement or rates of tolls, as the case may be, except that, in the case of rates of tolls, if such revision proposes rates greater than those originally proposed, a new analysis of the proposed rates shall be made available to the public, and a new notice of the revised proposal shall be published in the Federal Register apprising interested persons of the opportunity to participate further in the proceedings through submission of written data, views, or arguments, and participation in a public hearing to be held not less than 30 days after the date of publication of the new notice. The procedure set forth in this subsection shall be followed for any subsequent revision of the proposed rates of tolls by the Commission which proposes rates higher than those in the preceding proposal.

(c) Publication of notice of changes in rules of measurement and rates of tolls in Federal Register

After the proceedings have been conducted pursuant to subsections (a) and (b) of this section, the Commission may change the rules of measurement or rates of tolls, as the case may be. The Commission shall publish notice of any such change in the Federal Register not less than 30 days before the effective date of the change.

(d) Judicial review

Action to change the rules of measurement for the Panama Canal or the rates of tolls for the

use of the Canal pursuant to this part shall be subject to judicial review in accordance with chapter 7 of title 5.

(Pub. L. 96-70, title I, §1604, Sept. 27, 1979, 93 Stat. 490; Pub. L. 104-106, div. C, title XXXV, §3528, Feb. 10, 1996, 110 Stat. 641.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106, §3528(1), substituted “3791” for “3791(a)”.

Subsec. (c). Pub. L. 104-106, §3528(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “After the proceedings have been conducted pursuant to subsections (a) and (b) of this section, the Commission shall publish in the Federal Register a notice of the changes in the rules of measurement or rates of tolls, as the case may be, to be recommended to the President.”

Subsec. (d). Pub. L. 104-106, §3528(3), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: “Upon publication of the notice pursuant to subsection (c) of this section, the Commission shall forward a complete record of the proceedings, with the recommendation of the Commission, to the President for his consideration. The President may approve, disapprove, or modify any or all of the changes in the rules of measurement or rates of tolls recommended by the Commission.”

Subsec. (e). Pub. L. 104-106, §3528(3), struck out subsec. (e) which read as follows: “Rules of measurement or rates of tolls prescribed by the President pursuant to this part shall take effect on a date prescribed by the President which is not less than 30 days after the President publishes such rules or rates in the Federal Register.”

Subsec. (f). Pub. L. 104-106, §3528(3), redesignated subsec. (f) as (d).

§ 3795. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(1), Sept. 23, 1996, 110 Stat. 2867

Section, Pub. L. 96-70, title I, §1605(a), Sept. 27, 1979, 93 Stat. 491, related to change in tolls for fiscal year beginning Oct. 1, 1979.

EFFECTIVE DATE

Section 1605(b) of Pub. L. 96-70 provided that this section was to take effect on Sept. 27, 1979, prior to repeal by Pub. L. 104-201, div. C, title XXXV, §3546(a)(1), Sept. 23, 1996, 110 Stat. 2867.

PART 7—GENERAL REGULATIONS

§§ 3801, 3802. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(2), (3), Sept. 23, 1996, 110 Stat. 2867

Section 3801, Pub. L. 96-70, title I, §1701, Sept. 27, 1979, 93 Stat. 492, related to authority of President to prescribe regulations applicable within areas and installations made available for operation and protection of Panama Canal.

Section 3802, Pub. L. 96-70, title I, §1702, Sept. 27, 1979, 93 Stat. 492, related to authority of Commission to prescribe regulations applicable within areas and installations made available for operation and protection of Panama Canal.

PART 8—SHIPPING AND NAVIGATION

SUBPART I—OPERATION OF CANAL

§ 3811. Operating regulations

The Commission may prescribe, and from time to time amend, regulations governing—

- (1) the operation of the Panama Canal;

- (2) the navigation of the harbors and other waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal;

- (3) the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto;

- (4) pilotage in the Panama Canal or the approaches thereto through the adjacent waters; and

- (5) the licensing of officers or other operators of vessels navigating the waters of the Panama Canal and areas adjacent thereto, including the ports of Balboa and Cristobal.

(Pub. L. 96-70, title I, §1801, Sept. 27, 1979, 93 Stat. 492; Pub. L. 104-201, div. C, title XXXV, §3545, Sept. 23, 1996, 110 Stat. 2867.)

AMENDMENTS

1996—Pub. L. 104-201 substituted “Commission” for “President” in introductory provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3772, 3776 of this title.

SUBPART II—INSPECTION OF VESSELS

§ 3821. Vessels subject to inspection

With the exception of private vessels merely transiting the Panama Canal, and of public vessels of all nations, vessels navigating the waters of the Panama Canal shall be subject to an annual inspection of hulls, boilers, machinery, equipment, and passenger accommodations.

(Pub. L. 96-70, title I, §1811, Sept. 27, 1979, 93 Stat. 492.)

§ 3822. Foreign vessels

With respect to a foreign vessel of a country which has inspection laws approximating those of the United States, any such vessel having an unexpired certificate of inspection duly issued by the authorities of such country shall not be subject to an inspection other than that necessary to determine whether the vessel, its boilers, and its lifesaving equipment are as stated in the certificate of inspection. A certificate of inspection may not be accepted as evidence of lawful inspection under this section unless similar privileges are granted to vessels of the United States under the laws of the country to which the vessel belongs.

(Pub. L. 96-70, title I, §1812, Sept. 27, 1979, 93 Stat. 493.)

§ 3823. Regulations governing inspection

The Commission shall prescribe, and from time to time may amend, regulations concerning the inspection of vessels conforming as nearly as practicable to the laws and regulations governing marine inspection by the United States Coast Guard.

(Pub. L. 96-70, title I, §1813, Sept. 27, 1979, 93 Stat. 493.)

CROSS REFERENCES

Marine inspection, see section 3301 et seq. of Title 46, Shipping.

SUBCHAPTER II—TREATY TRANSITION
PERIOD

PART 1—LAWS CONTINUED IN FORCE

§ 3831. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(4), Sept. 23, 1996, 110 Stat. 2868

Section, Pub. L. 96-70, title II, § 2101, Sept. 27, 1979, 93 Stat. 493, related to continuation in force of Canal Zone Code and other laws, regulations, and administrative authority of the United States for purpose of exercise of law enforcement and judicial jurisdiction during transition period.

PART 2—Courts

§§ 3841 to 3844. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(4), Sept. 23, 1996, 110 Stat. 2868

Section 3841, Pub. L. 96-70, title II, § 2201, Sept. 27, 1979, 93 Stat. 493, related to continuing jurisdiction during transition period of United States District Court for the District of the Canal Zone and magistrates' courts under the Canal Zone Code.

Section 3842, Pub. L. 96-70, title II, § 2202, Sept. 27, 1979, 93 Stat. 494, related to division and terms of United States District Court for the District of the Canal Zone.

Section 3843, Pub. L. 96-70, title II, § 2203(a), Sept. 27, 1979, 93 Stat. 494, related to extension of terms of office of district judge, magistrate, United States attorney, and United States marshal.

Section 3844, Pub. L. 96-70, title II, § 2206, Sept. 27, 1979, 93 Stat. 494, related to continuing operation during transition period of two magistrates' courts established under Canal Zone Code.

EFFECTIVE DATE

Section 2203(b) of Pub. L. 96-70 provided that section 3843 of this title was to take effect on Sept. 27, 1979, prior to repeal by Pub. L. 104-201, div. C, title XXXV, § 3546(a)(4), Sept. 23, 1996, 110 Stat. 2868.

PART 3—TRANSITION AUTHORITY

§§ 3851, 3852. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(4), Sept. 23, 1996, 110 Stat. 2868

Section 3851, Pub. L. 96-70, title II, § 2401, Sept. 27, 1979, 93 Stat. 495, related to vesting of authority in the President during transition period.

Section 3852, Pub. L. 96-70, title II, § 2402, Sept. 27, 1979, 93 Stat. 495, related to commitment of prisoners to custody of Attorney General or Commission.

SUBCHAPTER III—GENERAL PROVISIONS

PART 1—CEMETERIES

§ 3861. Repealed. Pub. L. 104-201, div. C, title XXXV, § 3546(a)(5), Sept. 23, 1996, 110 Stat. 2868

Section, Pub. L. 96-70, title III, § 3101, Sept. 27, 1979, 93 Stat. 496, related to disinterment, transportation, and reinterment of remains.

PART 2—ADMINISTRATION

§ 3871. Annual report

Until the termination of the Panama Canal Treaty of 1977, the President shall report annually on the status of the exercise of the rights and responsibilities of the United States under

that Treaty. Such report shall include a discussion of the following:

(1) The actions taken by the Government of the Republic of Panama with respect to the living conditions of persons who resided in the Canal Zone before October 1, 1979, and who continue to reside in those areas made available to the United States under the Agreement in Implementation of Article III of the Panama Canal Treaty.

(2) The terms, conditions, and charges for land-use licenses within the canal operating areas specified in the Agreement in Implementation of Article III of the Panama Canal Treaty.

(3) The condition of former employees (and their dependents) of the Panama Canal Company and the Canal Zone Government who reside in the Republic of Panama on or after October 1, 1979.

(Pub. L. 96-70, title III, § 3301, Sept. 27, 1979, 93 Stat. 497.)

DELEGATION OF FUNCTIONS

Functions vested in President by this section delegated to Secretary of State who shall perform such function in coordination with Secretary of Defense pursuant to section 1-401 of Ex. Ord. No. 12215, May 27, 1980, 45 F.R. 36044, set out as a note under section 3601 of this title.

REPORT TO CONGRESS ON CONDITION OF PANAMA CANAL AND CANAL OPERATIONS

Pub. L. 100-203, title V, § 5418, Dec. 22, 1987, 101 Stat. 1330-271, provided that: "Out of the funds authorized to be appropriated by this part [part 1, §§ 5411 to 5418, of subtitle E of Pub. L. 100-203], the Commission shall prepare and submit to the Congress a report on—

"(1) the condition of the Panama Canal and potential adverse effects on United States shipping and commerce;

"(2) the effect on canal operations of the military forces under General Noriega; and

"(3) the Commission's evaluation of the effect on canal operations if the Panamanian Government continues to withhold its consent to major factors in the United States Senate's ratification of the Panama Canal Treaties."

§ 3872. Notification requirements

The Panama Canal Commission shall provide written advance notification to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Armed Services of the Senate regarding—

(1) any proposed change in the rates of tolls for use of the Panama Canal;

(2) any payment estimated to be due the Republic of Panama under paragraph 4(c) of Article XIII of the Panama Canal Treaty of 1977, as provided by section 3751 of this title; and

(3) the initiation of any major capital acquisition or construction project exceeding \$10,000,000 unless the proposed acquisition or project was included in the budget estimates submitted to Congress for the fiscal year in which the acquisition or project is to be undertaken.

(Pub. L. 101-189, div. C, title XXXV, § 3503, Nov. 29, 1989, 103 Stat. 1689.)

CODIFICATION

Section enacted as part of the Panama Canal Commission Authorization Act, Fiscal Year 1990, and as

part of the National Defense Authorization Act for Fiscal Years 1990 and 1991, and not as part of the Panama Canal Act of 1979 which comprises this chapter.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on National Security of House of Representatives in case of provisions relating to interoceanic canals, Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 3873. Exemption from Metric Conversion Act of 1975

The Commission is exempt from the provisions of the Metric Conversion Act of 1975 (15 U.S.C. 205a et seq.).

(Pub. L. 96-70, title III, §3302, as added Pub. L. 104-201, div. C, title XXXV, §3547, Sept. 23, 1996, 110 Stat. 2868.)

REFERENCES IN TEXT

The Metric Conversion Act of 1975, referred to in section catchline and text, is Pub. L. 94-168, Dec. 23, 1975, 89 Stat. 1007, as amended, which is classified generally to subchapter II (§205a et seq.) of chapter 6 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 205a of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 3302 of Pub. L. 96-70, title III, Sept. 27, 1979, 93 Stat. 498, amended sections 305, 5102, 5316, 5342, 5343, 5348, 5373, 5504, 5533, 5541, 5583, 6301, 6323, 8146, and 8335 of Title 5, Government Organization and Employees, and sections 191, 195, and 196 of Title 50, War and National Defense, prior to general amendment by Pub. L. 104-201, div. C, title XXXV, §3547, Sept. 23, 1996, 110 Stat. 2868.

CHAPTER 52—FOREIGN SERVICE

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CODIFICATION

Provisions of this chapter are derived from the Foreign Service Act of 1946, former section 801 et seq. of this title, and related and miscellaneous provisions as follows:

<i>New</i>	<i>Old</i>
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3902	802
3903	861
3904	841
3905	807
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3928	811a, 821
3929	2384 note
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4055	1086
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4131-4138	1037a
4139	1037b
4140	1037c
4151-4159	
4171-4173	
4191-4215	1171-1195
4216	1197
4217	1198
4218-4222	1200-1204
4223	99
4224-4226	812-814

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.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 285a, 290g-1, 2901-2, 1474, 1928, 2021, 2024, 2385, 2391, 2396, 2504, 2506, 2582, 2588, 2605, 2664a, 2684, 3503, 4823 of this title; title 5 sections 5102, 5724; title 15 section 4721; title 38 section 707; title 42 section 5055.

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4153 of this title.

§ 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 personnel 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 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)"; and

(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, 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 Director of the United States International Development Cooperation Agency, 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. In accord with Section 402 of the Act (22 U.S.C. 3962), there are established the following salary classes with titles for the Senior Foreign Service (SFS), at basic rates of pay equivalent to that established from time to time for the Senior Executive Service (ES) under Section 5382 of Title 5 of the United States Code. Career Minister

(a) Basic rate of pay equivalent to ES 6.
Minister-Counselor

(a) Basic rate of pay equivalent to ES 6, or
(b) Basic rate of pay equivalent to ES 5, or
(c) Basic rate of pay equivalent to ES 4.

Counselor

(a) Basic rate of pay equivalent to ES 6, or
(b) Basic rate of pay equivalent to ES 5, or
(c) Basic rate of pay equivalent to ES 4, or
(d) Basic rate of pay equivalent to ES 3, or
(e) Basic rate of pay equivalent to ES 2, or
(f) Basic rate of pay equivalent to ES 1.

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 De-

fense 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 International Development Cooperation Agency, 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 International Development Cooperation Agency, 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].

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4141 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.)

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

¹ See References in Text note below.

United States Information Agency, Foreign Service Information officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2391, 3982, 4341 of this title; title 5 section 6301.

§ 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.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2664a, 4155, 4861 of this title; title 5 sections 7511, 8331, 8351, 8401.

§ 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 Diplomatic 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; report to Congress

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

(2) The Secretary shall transmit, to the Chairman of the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives, the Department’s reports on its equal employment opportunity and affirmative action programs and its minority recruitment programs, which reports are required by law, regulation, or directive to be submitted to the Equal Employment Opportunity Commission (EEOC) or the Office of Personnel Management (OPM). Each such report shall be transmitted to the Congress at least once annually, and shall be received by the Congress not later than 30 days after its original submission to the Equal Employment Opportunity Commission or the Office of Personnel Management.

(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.)

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101-246 inserted “geographic or educational affiliation within the United States,” after “marital status.”

1987—Subsec. (d)(2). Pub. L. 100-204 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Not later than January 31 of each year, the Secretary shall transmit to each House of the Congress a report,

signed by the Secretary, on the activities of the Secretary under paragraph (1). Such report shall include any affirmative action plans submitted by the Secretary under section 2000e-16 of title 42 and any data necessary to evaluate the effectiveness of the program under paragraph (1) for the preceding fiscal year, together with recommendations for administrative or legislative action the Secretary considers appropriate.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2719, 3929, 4141b of this title.

SUBCHAPTER II—MANAGEMENT OF SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4153 of this title.

§ 3921. Administration by Secretary of State

(a) Under the direction of the President, the Secretary of State shall administer and direct the Service and shall coordinate its activities with the needs of the Department of State and other agencies.

(b) The Secretary of State alone among the heads of agencies utilizing the Foreign Service personnel system shall perform the functions expressly vested in the Secretary of State by this chapter.

(Pub. L. 96-465, title I, § 201, Oct. 17, 1980, 94 Stat. 2078.)

REFERENCES IN TEXT

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 under section 3901 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3902, 3922 of this title.

§ 3922. Utilization of Foreign Service personnel system by other agencies

(a)(1) The Director of the United States Information Agency and the Director of the United States International Development Cooperation Agency may utilize the Foreign Service personnel system with respect to their respective agencies in accordance with this chapter.

(2) The Secretary of Agriculture may utilize the Foreign Service personnel system in accordance with this chapter—

(A) with respect to personnel of the Foreign Agricultural Service, and

(B) with respect to other personnel of the Department of Agriculture to the extent the President determines to be necessary in order to enable the Department of Agriculture to carry out functions which require service abroad.

(3) The Secretary of Commerce may utilize the Foreign Service personnel system in accordance with this chapter—

(A) with respect to the personnel performing functions transferred to the Department of Commerce from the Department of State by Reorganization Plan Numbered 3 of 1979, and

(B) with respect to other personnel of the Department of Commerce to the extent the President determines to be necessary in order to enable the Department of Commerce to carry out functions which require service abroad.

(b) Subject to section 3921(b) of this title—

(1) the agency heads referred to in subsection (a) of this section, and

(2) the head of any other agency (to the extent authority to utilize the Foreign Service personnel system is granted to such agency head under any other chapter),

shall in the case of their respective agencies exercise the functions vested in the Secretary by this chapter.

(Pub. L. 96-465, title I, § 202, Oct. 17, 1980, 94 Stat. 2078; Pub. L. 97-241, title III, § 303(b), Aug. 24, 1982, 96 Stat. 291.)

REFERENCES IN TEXT

Reorganization Plan Numbered 3 of 1979, referred to in subsec. (a)(3)(A), is Reorg. Plan No. 3 of 1979, 44 F.R. 69273, 93 Stat. 1381, which is set out in the Appendix to Title 5, Government Organization and Employees.

CHANGE OF NAME

“Director of the United States Information Agency” substituted for “Director of the International Communication Agency” in subsec. (a)(1), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

EXERCISE OF CERTAIN FUNCTIONS BY BOARD OF THE FOREIGN SERVICE AND BOARD OF EXAMINERS FOR THE FOREIGN SERVICE

The Board of the Foreign Service and the Board of Examiners for the Foreign Service were authorized to exercise with respect to Foreign Service personnel of the Department of Commerce, functions delegated to them by Ex. Ord. No. 11264, set out as a note under section 3930 of this title, respecting Foreign Service personnel of the Department of State, see section 1-104(c) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 991, set out as a note under section 2171 of Title 19, Customs Duties.

EX. ORD. NO. 10522. AUTHORITY OF THE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY

Ex. Ord. No. 10522, Mar. 26, 1954, 19 F.R. 1689, provided: SECTION 1. The Director of the United States Information Agency is hereby authorized to carry out the functions of the Board of the Foreign Service, provided for by the Foreign Service Act of 1946 (60 Stat. 999) [this chapter], with respect to personnel appointed or assigned for service in the United States Information Agency under the provisions of such Act, as amended [this chapter]: *Provided*, That nothing herein contained shall be construed as transferring to the said Director any function of the said Board relating to any Foreign Service Officer.

SEC. 2. The Director of the United States Information Agency is hereby authorized to prescribe such regulations and issue such orders and instructions, not inconsistent with law, as may be necessary or desirable for carrying out his functions under section 1 of this order.

DWIGHT D. EISENHOWER.

§ 3922a. Representation of minorities and women in Foreign Service

(a) Development of program

The head of each agency utilizing the Foreign Service personnel system shall develop, consistent with section 7201 of title 5, a plan designed

to increase significantly the number of members of minority groups and women in the Foreign Service in that agency.

(b) Emphasis on mid-levels

Each plan developed pursuant to this section shall, consistent with section 7201 of title 5, place particular emphasis on achieving significant increases in the numbers of minority group members and women who are in the mid-levels of the Foreign Service.

(Pub. L. 99-93, title I, §152, Aug. 16, 1985, 99 Stat. 428; Pub. L. 100-204, title I, §185(c)(3), Dec. 22, 1987, 101 Stat. 1366.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-204 struck out subsec. (c) which read as follows: “The head of each agency utilizing the Foreign Service personnel system shall report annually to the Congress on the plan developed pursuant to this section as part of the report required to be submitted pursuant to section 3905(d)(2) of this title. Subsequent reports pursuant to that section shall include reports on the implementation of these plans, giving particular attention to the progress being made in increasing, through advancement and promotion, the numbers of members of minority groups and women in the mid-levels of the Foreign Service.”

MID-LEVEL WOMEN AND MINORITY PLACEMENT PROGRAM

Pub. L. 103-236, title I, §178, Apr. 30, 1994, 108 Stat. 414, provided that:

“(a) PURPOSE.—It is the purpose of this section to promote the acquisition and retention of highly qualified, trained, and experienced women and minority personnel within the Foreign Service, to provide the maximum opportunity for the Foreign Service to meet staffing needs and to acquire the services of experienced and talented women and minority personnel, and to help alleviate the impact of downsizing, reduction-in-force, and budget restrictions occurring in the defense and national security-related agencies of the United States.

“(b) ESTABLISHMENT.—For each of the fiscal years 1994 and 1995, the Secretary of State shall to the maximum extent practicable appoint to the Foreign Service qualified women and minority applicants who are participants in the priority placement program of the Department of Defense, the Department of Defense outplacement referral program, the Office of Personnel Management Automated Applicant Referral System, or the Office of Personnel Management Interagency Placement Program. The Secretary shall make such appointments through the mid-level entry program of the Department of State under section 306 of the Foreign Service Act of 1980 [22 U.S.C. 3946].

“(c) REPORT.—Not later than 180 days after the date of enactment of this Act [Apr. 30, 1994], the Secretary of State shall prepare and submit a report concerning the implementation of subsection (a) to the Chairman of the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives. Such report shall include recommendations on methods to improve implementation of the purpose of this section.”

WOMEN AND MINORITIES IN FOREIGN SERVICE

Section 183 of Pub. L. 100-204 provided that:

“(a) FINDINGS.—The Congress finds that the Department of State and other Foreign Service agencies have not been successful in their efforts—

“(1) to recruit and retain members of minority groups in order to increase significantly the number of members of minority groups in the Foreign Service; and

“(2) to provide adequate career advancement for women and members of minority groups in order to increase significantly the numbers of women and members of minority groups in the senior levels of the Foreign Service.

“(b) A MORE REPRESENTATIVE FOREIGN SERVICE.—The Secretary of State and the head of each of the other agencies utilizing the Foreign Service personnel system—

“(1) shall substantially increase their efforts to implement effectively the plans required by section 152(a) of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 [22 U.S.C. 3922a(a)], so that the Foreign Service becomes truly representative of the American people throughout all levels of the Foreign Service; and

“(2) shall ensure that those plans effectively address the need to promote increased numbers of qualified women and members of minority groups into the senior levels of the Foreign Service.

“(c) DEPARTMENT OF STATE HIRING PRACTICES OF MINORITIES AND WOMEN.—The Secretary of State shall include annually as part of the report required to be submitted pursuant to section 105(d)(2) of the Foreign Service Act of 1980 [22 U.S.C. 3905(d)(2)]—

“(1) a report on the progress made at the Assistant Secretary and Bureau level of the Department of State in increasing the presence of minorities and women at all levels in the Foreign Service and Civil Service workforces of the Department of State, and

“(2) the specific actions taken to address the lack of Hispanic Americans, Asian Americans, and Native Americans in the Senior Executive Service and Senior Foreign Service of the Department of State.”

§ 3923. Compatibility among agencies utilizing Foreign Service personnel system

(a) The Service shall be administered to the extent practicable in a manner that will assure maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system. To this end, the other heads of such agencies shall consult regularly with the Secretary of State.

(b) Nothing in this subchapter shall be construed as diminishing the authority of the head of any agency authorized by law to utilize the Foreign Service personnel system.

(Pub. L. 96-465, title I, §203, Oct. 17, 1980, 94 Stat. 2079.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4001 of this title.

§ 3924. Uniform and consolidated administration of Service

The Secretary shall on a continuing basis consider the need for uniformity of personnel policies and procedures and for consolidation (in accordance with section 2695 of this title) of personnel functions among agencies utilizing the Foreign Service personnel system. Where feasible, the Secretary of State shall encourage (in consultation with the other heads of such agencies) the development of uniform policies and procedures and consolidated personnel functions.

(Pub. L. 96-465, title I, §204, Oct. 17, 1980, 94 Stat. 2079.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4001 of this title.

§ 3925. Compatibility between Foreign Service and other Government personnel systems

The Service shall be administered to the extent practicable in conformity with general policies and regulations of the Government. The Secretary shall consult with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget, and the heads of such other agencies as the President shall determine, in order to assure compatibility of the Foreign Service personnel system with other Government personnel systems to the extent practicable.

(Pub. L. 96-465, title I, § 205, Oct. 17, 1980, 94 Stat. 2079.)

DELEGATION OF FUNCTIONS

Functions of President under this section 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.

CONSULTATION WITH OTHER FEDERAL DEPARTMENTS AND AGENCIES

For authority for the Secretary of State to consult with the Secretary of Agriculture, the Secretary of Commerce, the Director of the United States Information Agency, the Director of the United States International Development Cooperation Agency, the Director of the Office of Personnel Management, and the Director of the Office of Management and Budget to ensure compatibility between the Foreign Service personnel system and other government personnel systems, see section 2 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as note under section 3901 of this title.

§ 3926. Regulations; delegation of functions

(a) The Secretary may prescribe such regulations as the Secretary deems appropriate to carry out functions under this chapter.

(b) The Secretary may delegate functions under this chapter which are vested in the Secretary to any employee of the Department or any member of the Service.

(Pub. L. 96-465, title I, § 206, Oct. 17, 1980, 94 Stat. 2079.)

REGULATIONS REGARDING FOREIGN LANGUAGE COMPETENCE WITHIN FOREIGN SERVICE

Pub. L. 103-236, title I, § 191(a), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103-415, § 1(u), Oct. 25, 1994, 108 Stat. 4302, provided that: "Not later than 180 days after the date of enactment of this Act [Apr. 30, 1994], the Secretary of State shall promulgate regulations—

"(1) establishing hiring preferences for Foreign Service Officer candidates competent in languages, with priority preference given to those languages in which the Department of State has a deficit;

"(2) establishing a standard that employees will not receive long-term training in more than 3 languages, and requiring that employees achieve full professional proficiency (S4/R4) in 1 language as a condition for training in a third, with exceptions for priority needs of the service at the discretion of the Director General;

"(3) requiring that employees receiving long-term training in a language, or hired with a hiring preference for a language, serve at least 2 tours in jobs requiring that language, with exceptions for certain limited-use languages and priority needs of the service at the discretion of the Director General;

"(4) requiring that significant consideration be given to foreign language competence and use in the evaluation, assignment, and promotion of all Foreign

Service Officers of the Department of State, the Agency for International Development, and the United States Information Agency;

"(5) requiring the identification of appropriate Washington, D.C. metropolitan area positions as language-designated; and

"(6) requiring remedial training and suspension of language differential payments for employees receiving such payments who have failed to maintain required levels of proficiency."

§ 3927. Chief of mission

(a) Duties

Under the direction of the President, the chief of mission to a foreign country—

(1) shall have full responsibility for the direction, coordination, and supervision of all Government executive branch employees in that country (except for employees under the command of a United States area military commander); and

(2) shall keep fully and currently informed with respect to all activities and operations of the Government within that country, and shall insure that all Government executive branch employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(b) Duties of agencies with employees in foreign countries

Any executive branch agency having employees in a foreign country shall keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country, and shall insure that all of its employees in that country (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission.

(c) Promotion of United States goods and services

Each chief of mission to a foreign country shall have as a principal duty the promotion of United States goods and services for export to such country.

(Pub. L. 96-465, title I, § 207, Oct. 17, 1980, 94 Stat. 2079; Pub. L. 97-241, title I, § 123, Aug. 24, 1982, 96 Stat. 281; Pub. L. 100-204, title I, § 136, Dec. 22, 1987, 101 Stat. 1345.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-204, § 136(1), (2), inserted "executive branch" after "Government" in par. (1) and after second reference to "Government" in par. (2).

Subsec. (b). Pub. L. 100-204, § 136(3), inserted "executive branch" after "Any".

1982—Subsec. (c). Pub. L. 97-241 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4341, 4342 of this title; title 15 section 4721; title 49 section 44934; title 50 section 403-4.

§ 3928. Director General of Foreign Service

The President shall appoint, by and with the advice and consent of the Senate, a Director General of the Foreign Service, who shall be a

current or former career member of the Foreign Service. The Director General should assist the Secretary of State in the management of the Service and perform such functions as the Secretary of State may prescribe.

(Pub. L. 96-465, title I, §208, Oct. 17, 1980, 94 Stat. 2080; Pub. L. 103-236, title I, §163, Apr. 30, 1994, 108 Stat. 411.)

AMENDMENTS

1994—Pub. L. 103-236 amended section generally. Prior to amendment, section read as follows: "There shall be a Director General of the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, from among the career members of the Senior Foreign Service. The Director General shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State may prescribe."

§ 3929. Inspector General

(a) Appointment; supervision by Secretary of State; prohibition against interference by State Department with certain duties; inspections, audits, and other functions; removal from office

(1) There shall be an Inspector General of the Department of State and the Foreign Service, who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations, or their knowledge and experience in the conduct of foreign affairs. The Inspector General shall report to and be under the general supervision of the Secretary of State. Neither the Secretary of State nor any other officer of the Department shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation. The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State, and shall perform such other functions as the Secretary of State may prescribe, except that the Secretary of State shall not assign to the Inspector General any general program operating responsibilities.

(2) The Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(b) Subject matter of inspections, investigations, and audits

Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of—

(1) whether financial transactions and accounts are properly conducted, maintained, and reported;

(2) whether resources are being used and managed with the maximum degree of efficiency, effectiveness, and economy;

(3) whether the administration of activities and operations meets the requirements of applicable laws and regulations and, specifically, whether such administration is consistent with the requirements of section 3905 of this title;

(4) whether there exist instances of fraud or other serious problems, abuses, or deficiencies, and whether adequate steps for detection, correction, and prevention have been taken; and

(5) whether policy goals and objectives are being effectively achieved and whether the interests of the United States are being accurately and effectively represented.

(c) Policies and procedures governing inspection and audit activities; coordination and cooperation with Comptroller General; report to Attorney General on criminal law violations

(1) The Inspector General shall develop and implement policies and procedures for the inspection and audit activities carried out under this section. These policies and procedures shall be consistent with the general policies and guidelines of the Government for inspection and audit activities and shall comply with the standards established by the Comptroller General of the United States for audits of Government agencies, organizations, programs, activities, and functions.

(2) In carrying out the duties and responsibilities established under this section, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward insuring effective coordination and cooperation.

(3) In carrying out the duties and responsibilities established under this section, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(d) Reports by Inspector General and Secretary of State

(1) The Inspector General shall keep the Secretary of State fully and currently informed, by means of the reports required by paragraphs (2) and (3) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of activities and operations administered or financed by the Department of State.

(2) The Inspector General shall, not later than April 30 of each year, prepare and furnish to the Secretary of State an annual report summarizing the activities of the Inspector General. Such report shall include—

(A) a description of significant problems, abuses, and deficiencies relating to the administration of activities and operations of Foreign Service posts, and bureaus and other operating units of the Department of State, which were disclosed by the Inspector General within the reporting period;

(B) a description of the recommendations for corrective action made by the Inspector General during the reporting period with respect

to significant problems, abuses, or deficiencies described pursuant to subparagraph (A);

(C) an identification of each significant recommendation described in previous annual reports on which corrective action has not been completed;

(D) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted; and

(E) a listing of each audit report completed by the Inspector General during the reporting period.

The Secretary of State shall transmit a copy of such annual report within 30 days after receiving it to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees, together with a report of the Secretary of State containing any comments which the Secretary of State deems appropriate. Within 60 days after transmitting such reports to those committees, the Secretary of State shall make copies of them available to the public upon request and at a reasonable cost.

(3) The Inspector General shall report immediately to the Secretary of State whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of activities and operations of Foreign Service posts or bureaus or other operating units of the Department of State. The Secretary of State shall transmit any such report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives and to other appropriate committees within 7 days after receiving it, together with a report by the Secretary of State containing any comments the Secretary of State deems appropriate.

(4) Nothing in this subsection shall be construed to authorize the public disclosure by any individual of any information which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(e) Applicability of powers and responsibilities under other statutory provisions; assignment of Service employees to Inspector General

(1) The Inspector General shall have the same authority in carrying out the provisions of this section as is granted under section 6 of the Inspector General Act of 1978 to each Inspector General of an establishment (as defined in section 11(2) of such Act) for carrying out the provisions of that Act, and the responsibilities of other officers of the Government to the Inspector General shall be the same as the responsibilities of the head of an agency or establishment under section 6(b) and (c) of such Act.

(2) At the request of the Inspector General, employees of the Department and members of the Service may be assigned as employees of the Inspector General. The individuals so assigned and individuals appointed pursuant to paragraph (1) shall be responsible solely to the Inspector General, and the Inspector General or his or her designee shall prepare the performance evaluation reports for such individuals.

(f) Reception and investigation of complaints or information; disclosure of identity of informer

(1) The Inspector General may receive and investigate complaints or information from a member of the Service or employee of the Department concerning the possible existence of an activity constituting a violation of laws or regulations, constituting mismanagement, gross waste of funds, or abuse of authority, or constituting a substantial and specific danger to public health or safety.

(2) The Inspector General shall not, after receipt of a complaint or information from a member of the Service or employee of the Department, disclose the identity of such individual without the consent of such individual, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(g) Review of activities and operations of chiefs of mission

Under the general supervision of the Secretary of State, the Inspector General may review activities and operations performed under the direction, coordination, and supervision of chiefs of mission for the purpose of ascertaining their consonance with the foreign policy of the United States and their consistency with the responsibilities of the Secretary of State and the chief of mission.

(Pub. L. 96-465, title I, §209, Oct. 17, 1980, 94 Stat. 2080; Pub. L. 99-399, title IV, §413(a)(6), Aug. 27, 1986, 100 Stat. 868; Pub. L. 99-529, title IV, §405, Oct. 24, 1986, 100 Stat. 3020.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (e)(1), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in Title 5, Appendix, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-529 repealed §413(a)(6) of Pub. L. 99-399 and reenacted last sentence which had been struck out by Pub. L. 99-399.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3929a, 4102, 4861 of this title.

§ 3929a. Abolishment of Inspector General of Department of State and Foreign Service

Notwithstanding section 3929 of this title, the Inspector General of the Department of State and the Foreign Service is hereby abolished.

(Pub. L. 99-93, title I, §150(b), Aug. 16, 1985, 99 Stat. 427; Pub. L. 99-399, title IV, §413(c), Aug. 27, 1986, 100 Stat. 868.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

Another subsec. (c) of section 413 of Pub. L. 99-399 is classified to section 4861(c) of this title.

AMENDMENTS

1986—Pub. L. 99-399 substituted provision abolishing the Inspector General of the Department of State and the Foreign Service for provision limiting the authority of the Inspector General to such functions as necessary to carry out section 3929(g) of this title.

CROSS REFERENCES

Inspector General Act, see Title 5, Appendix, Government Organization and Employees.

§ 3930. Board of Foreign Service

The President shall establish a Board of the Foreign Service to advise the Secretary of State on matters relating to the Service, including furtherance of the objectives of maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system and compatibility between the Foreign Service personnel system and the other personnel systems of the Government. The Board of the Foreign Service shall be chaired by an individual appointed by the President and shall include one or more representatives of the Department of State, the United States Information Agency, the United States International Development Cooperation Agency, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Office of Personnel Management, the Office of Management and Budget, the Equal Employment Opportunity Commission, and such other agencies as the President may designate.

(Pub. L. 96-465, title I, § 210, Oct. 17, 1980, 94 Stat. 2082; Pub. L. 97-241, title III, § 303(b), Aug. 24, 1982, 96 Stat. 291; Pub. L. 99-93, title I, § 153, Aug. 16, 1985, 99 Stat. 428.)

AMENDMENTS

1985—Pub. L. 99-93 substituted “shall be chaired by an individual appointed by the President” for “shall be chaired by a career member of the Senior Foreign Service designated by the Secretary of State”.

CHANGE OF NAME

“United States Information Agency” substituted in text for “International Communication Agency” pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

EXECUTIVE ORDER No. 11264

Ex. Ord. No. 11264, Dec. 31, 1965, 31 F.R. 67, as amended by Ex. Ord. No. 11434, Nov. 8, 1968, 33 F.R. 16485; Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, which provided for the establishment, functions, etc., of the Board of the Foreign Service and Board of Examiners for the Foreign Service, was revoked by Ex. Ord. No. 12363, May 21, 1982, 47 F.R. 22497. See sections 6 and 9 of Ex. Ord. No. 12293, as amended, set out as a note under section 3901 of this title.

EXECUTIVE ORDER No. 11434

Ex. Ord. No. 11434, Nov. 8, 1968, 33 F.R. 16485, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, which related to administration of foreign service personnel systems, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 3931. Board of Examiners

(a) Establishment; membership; chairman

The President shall establish a Board of Examiners for the Foreign Service to develop, and supervise the administration of, examinations prescribed under section 3941(b) of this title to be given to candidates for appointment in the Service. The Board shall consist of 15 members appointed by the President (no fewer than 5 of whom shall be appointed from among individuals who are not Government employees and who shall be qualified for service on the Board by virtue of their knowledge, experience, or training in the fields of testing or equal employment opportunity). The Board shall include representatives of agencies utilizing the Foreign Service personnel system and representatives of other agencies which have responsibility for employment testing. The Board shall be chaired by a member of the Board, designated by the President, who is a member of the Service.

(b) Review of examinations; report to Secretary of State

The Board of Examiners shall periodically review the examinations prescribed under section 3941(b) of this title in order to determine—

- (1) whether any such examination has an adverse impact on the hiring, promotion, or other employment opportunity of members of any race, sex, or ethnic group;
- (2) methods of minimizing any such adverse impact;
- (3) alternatives to any examinations which have such an adverse impact; and
- (4) whether such examinations are valid in relation to job performance.

The Board of Examiners shall annually report its findings under this subsection to the Secretary of State and shall furnish to the Secretary of State its recommendations for improvements in the development, use, and administration of the examinations prescribed under section 3941(b) of this title.

(c) Vacancies

Any vacancy or vacancies on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(Pub. L. 96-465, title I, § 211, Oct. 17, 1980, 94 Stat. 2083.)

ESTABLISHMENT OF BOARD OF EXAMINERS

For establishment of the Board of Examiners for the Foreign Service and appointment of its members, see section 6 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13970, set out as note under section 3901 of this title.

SUBCHAPTER III—APPOINTMENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4010a, 4153 of this title.

§ 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.)

AMENDMENTS

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

EFFECTIVE DATE OF 1987 AMENDMENT

Section 179(b) of Pub. L. 100-204 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, provided that: “The Secretary of State shall enter into a contract with a private organization for a comprehensive review and evaluation of the Foreign Service examination. Such review and evaluation shall—

“(1) identify any cultural, racial, ethnic, and sexual bias;

“(2) evaluate the ability of the examination to measure an individual’s aptitude for and potential in the Foreign Service;

“(3) consider the relevance of the Foreign Service examination to the work of a Foreign Service officer;

“(4) make recommendations for the removal of any element of bias in the examination; and

“(5) make recommendations for improvements to achieve an examination free of any bias.

Not more than 18 months after the date of the enactment of this Act [Feb. 16, 1990], the Secretary of State shall prepare and submit a report to the Congress which contains the findings of such 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. Such report shall take into consideration the current efforts by the Department of State to review its Foreign Service examination.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3931 of this title; title 10 section 1599c.

§ 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 of this chapter 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 of this chapter, 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.)

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 of this chapter, 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.”

EFFECTIVE DATE OF 1987 AMENDMENT

Section 177(c) of Pub. L. 100-204 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.”

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3903, 3943, 3946, 3948, 3961, 4001, 4006, 4046, 4053 of this title.

§ 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3903, 3946, 3948, 3951, 4001, 4006 of this title.

§ 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 431(8) of title 2, 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.

(c) Foreign language competency report

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.

(Pub. L. 96-465, title I, § 304, Oct. 17, 1980, 94 Stat. 2085.)

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 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) of this section.

(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.

(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.)

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

Section 119(c) of Pub. L. 99-93 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."

EFFECTIVE DATE

Section effective Feb. 15, 1981, with an exception that appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and limitation in subsec. (b) of this section until Oct. 1, 1985, which was repealed by section 119(b) of Pub. L. 99-93, see section 2403 of Pub. L. 96-465, set out as a note under section 3901 of this title.

§ 3946. Career appointments**(a) Trial period under limited appointment**

Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 3943 of this title, or

(2) to recommend to the President that the candidate be given a career appointment under section 3942 of this title.

(b) Decisions by Secretary

Decisions by the Secretary under subsection (a) of this section shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

(c) Foreign Service Grievance Board decisions

Nothing in this section shall be construed to limit the authority of the Secretary or the Foreign Service Grievance Board under section 4137 of this title.

(Pub. L. 96-465, title I, § 306, Oct. 17, 1980, 94 Stat. 2086; Pub. L. 100-204, title I, § 181(c), Dec. 22, 1987, 101 Stat. 1363.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100-204 added subsec. (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 181(e) of Pub. L. 100-204 provided that: “The amendments made by this section [amending this section and sections 4010 and 4137 of this title] shall not apply with respect to any grievance in which the Board has issued a final decision pursuant to section 1107 of the Foreign Service Act of 1980 (22 U.S.C. 4137) before the date of enactment of this Act [Dec. 22, 1987].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3948, 4043, 4071b, 4131 of this title.

§ 3947. Entry levels for Foreign Service officer candidates

A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 3964 of this title to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications (including foreign language competence) and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career

appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

(Pub. L. 96-465, title I, § 307, Oct. 17, 1980, 94 Stat. 2086.)

§ 3948. Recall and reappointment of career members**(a) Retired career members**

Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

(b) Former career members

Former career members of the Service may be reappointed under section 3942(a)(1) or 3943 of this title, without regard to section 3946 of this title, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

(Pub. L. 96-465, title I, § 308, Oct. 17, 1980, 94 Stat. 2086.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4049, 4054, 4063 of this title.

§ 3949. Limited appointments

(a) A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in subsection (b) of this section, may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

(b) A limited appointment may be extended for continued service—

(1) as a consular agent;

(2) in accordance with section 3951(a) of this title;

(3) as a career candidate, if continued service is determined appropriate to remedy a matter that would be cognizable as a grievance under subchapter XI of this chapter;

(4) as a career employee in another Federal personnel system serving in a Foreign Service position on detail from another agency; and

(5) as a foreign national employee.

(Pub. L. 96-465, title I, § 309, Oct. 17, 1980, 94 Stat. 2086; Pub. L. 100-204, title I, § 176, Dec. 22, 1987, 101 Stat. 1361; Pub. L. 103-236, title I, § 180(a)(1), Apr. 30, 1994, 108 Stat. 415; Pub. L. 103-415, § 1(hh), Oct. 25, 1994, 108 Stat. 4303.)

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103-236, as amended by Pub. L. 103-415, added par. (5).

1987—Pub. L. 100-204 designated existing provisions as subsec. (a), substituted “subsection (b) of this section” for “section 3951(a) of this title”, and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1928, 2506, 2582 of this title; title 5 section 3597.

§ 3950. Reemployment rights following limited appointment

Any employee of an agency who accepts a limited appointment in the Service with the consent of the head of the agency in which the employee is employed shall be entitled, upon the termination of such limited appointment, to be reemployed in accordance with section 3597 of title 5.

(Pub. L. 96-465, title I, § 310, Oct. 17, 1980, 94 Stat. 2087.)

ENTITLEMENT TO BENEFITS FOR SERVICES PERFORMED OUTSIDE UNITED STATES; SERVICE EXCEEDING THIRTY MONTHS

Persons appointed, employed, or assigned after May 19, 1959, under former section 1787(c) of this title or section 2385(d) of this title for the purpose of performing functions under the Mutual Security Act of 1954 (see Short Title note set out under section 1754 of this title) and the Foreign Assistance Act of 1961 (section 2151 et seq. of this title) outside the United States shall not, unless otherwise agreed by the agency in which such benefits may be exercised, be entitled to the benefits provided for by this section in cases in which their service under the appointment, employment, or assignment exceeds thirty months. See Ex. Ord. No. 12163, § 1-602(b), Sept. 29, 1979, 44 F.R. 56677, as amended, set out as a note under section 2381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2385, 2454, 2506, 3945, 3965 of this title.

§ 3951. United States citizens hired abroad

(a) Appointment of family members

The Secretary, under section 3943 of this title, may appoint United States citizens, who are family members of government employees assigned abroad or are hired for service at their post of residence, for employment in positions customarily filled by Foreign Service officers, Foreign Service personnel, and foreign national employees.

(b) Family nexus as affirmative hiring factor

The fact that an applicant for employment in a position referred to in subsection (a) of this section is a family member of a Government employee assigned abroad shall be considered an affirmative factor in employing such person.

(c) Compensation of family and non-family member employees

(1) Non-family members employed under this section for service at their post of residence shall be paid in accordance with local compensation plans established under section 3968 of this title.

(2) Family members employed under this section shall be paid in accordance with the Foreign Service Schedule or the salary rates established under section 3967 of this title.

(3) In exceptional circumstances, non-family members may be paid in accordance with the

Foreign Service Schedule or the salary rates established under section 3967 of this title, if the Secretary determines that the national interest would be served by such payments.

(d) Non-family member employees ineligible for certain benefits

Nonfamily member United States citizens employed under this section shall not be eligible by reason of such employment for benefits under subchapter VIII of this chapter, or under chapters¹ 83 or 84 of title 5.

(Pub. L. 96-465, title I, § 311, Oct. 17, 1980, 94 Stat. 2087; Pub. L. 103-236, title I, § 180(a)(2), Apr. 30, 1994, 108 Stat. 415; Pub. L. 103-415, § 1(h)(1), Oct. 25, 1994, 108 Stat. 4300.)

AMENDMENTS

1994—Pub. L. 103-415 substituted “United States citizens hired abroad” for “Employment of family members of Government employees” as section catchline and inserted “by reason of such employment” after “eligible” in subsec. (d).

Pub. L. 103-236 amended section generally. Prior to amendment, section read as follows:

“(a) The Secretary, when employing individuals abroad in positions to which career members of the Service are not customarily assigned (including, when continuity over a long term is not a significant consideration, vacant positions normally filled by foreign national employees), shall give equal consideration to employing available qualified family members of members of the Service or of other Government employees assigned abroad. Family members so employed shall serve under renewable limited appointments in the Service and may be paid either in accordance with the Foreign Service Schedule or a local compensation plan established under section 3968 of this title.

“(b) Employment of family members in accordance with this section may not be used to avoid fulfilling the need for full-time career positions.”

CROSS REFERENCES

Compensation plans for employees who are family members of Government personnel, see section 3968 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3949, 3968, 3984, 4010, 4024, 4083, 4102, 4131 of this title.

§ 3952. Diplomatic and consular missions

(a) Recommendations by Secretary of State; appointment by President; vice consul; performance of official functions under commission

The Secretary of State may recommend to the President that a member of the Service who is a citizen of the United States be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such member of the Service as a diplomatic or consular officer or both. The Secretary of State may commission as a vice consul a member of the Service who is a citizen of the United States. All official functions performed by a diplomatic or consular officer, including a vice consul, shall be performed under such a commission.

(b) Function of commissioned Service members

Members of the Service commissioned under this section may, in accordance with their com-

¹ So in original. Probably should be “chapter”.

missions, perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform.

(c) Limits of consular districts

The Secretary of State shall define the limits of consular districts.

(Pub. L. 96-465, title I, § 312, Oct. 17, 1980, 94 Stat. 2087.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6301.

SUBCHAPTER IV—COMPENSATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3942, 3981, 4153 of this title; title 5 section 5948.

§ 3961. Salaries of chiefs of mission

(a) Except as provided in section 3942(b) of this title, each chief of mission shall receive a salary, as determined by the President, at one of the annual rates payable for levels II through V of the Executive Schedule under sections 5313 through 5316 of title 5, except that the total compensation, exclusive of danger pay, for any chief of mission shall not exceed the annual rate payable for level I of such Executive Schedule.

(b) The salary of a chief of mission shall commence upon the effective date of appointment to that position. The official services of a chief of mission are not terminated by the appointment of a successor, but shall continue for such additional period, not to exceed 50 days after relinquishment of charge of the mission, as the Secretary of State may determine. During that period, the Secretary of State may require the chief of mission to perform such functions as the Secretary of State deems necessary in the interest of the Government.

(Pub. L. 96-465, title I, § 401, Oct. 17, 1980, 94 Stat. 2087; Pub. L. 100-204, title I, § 177(a), Dec. 22, 1987, 101 Stat. 1362; Pub. L. 102-138, title I, § 142(b), Oct. 28, 1991, 105 Stat. 668.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-138 substituted “Except as provided in section 3942(b) of this title, each” for “Each” and “level I of such” for “level II of such”.

1987—Subsec. (a). Pub. L. 100-204 substituted “Each chief” for “Except as provided in section 3942(b) of this title, each chief”, and inserted before period at end “, except that the total compensation, exclusive of danger pay, for any chief of mission shall not exceed the annual rate payable for level II of such Executive Schedule”.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable to salary of any individual serving under Presidential appointment under section 3942 of this title immediately before Dec. 22, 1987, during the period such individual continues to serve in such position, see section 177(c) of Pub. L. 100-204, set out as a note under section 3942 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287, 2021 of this title.

§ 3962. Salaries of Senior Foreign Service members

(a) Prescription by President; basic salary rates; adjustments; determinations by Secretary

(1) The President shall prescribe salary classes for the Senior Foreign Service and shall prescribe an appropriate title for each class. The President shall also prescribe one or more basic salary rates for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

(2) The Secretary shall determine which of the basic salary rates prescribed by the President under paragraph (1) for any salary class shall be paid to each member of the Senior Foreign Service who is appointed to that class. The Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.

(b) Career appointees in Senior Executive Service accepting limited appointment in Senior Foreign Service; adjustment

(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5 and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5 immediately prior to such appointment.

(Pub. L. 96-465, title I, § 402, Oct. 17, 1980, 94 Stat. 2087; Pub. L. 97-241, title I, § 124, Aug. 24, 1982, 96 Stat. 281.)

AMENDMENTS

1982—Subsec. (a). Pub. L. 97-241 designated existing provisions as par. (1), inserted provision authorizing the President to prescribe one or more basic salary rates for each class, and added par. (2).

EFFECTIVE DATE

Section effective Feb. 15, 1981, except that subsec. (a), for purposes of implementing section 4151 of this title, is effective Oct. 17, 1980, see section 2403(a) and (d)(2) of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

ESTABLISHMENT OF SALARY CLASSES WITH TITLES FOR SENIOR FOREIGN SERVICE

For establishment of salary classes with titles for the Senior Foreign Service, at basic rates of pay equivalent to that established from time to time for the Senior Executive Service under section 5382 of Title 5, Government Organization and Employees, see section 4 of Ex.

Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287, 287n, 290a, 2021, 2385, 2506, 3945, 3965, 4153 of this title.

§ 3963. Foreign Service Schedule

The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this subchapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay prescribed for GS-15 of the General Schedule under section 5332 of title 5. Salary rates established under this section shall be adjusted in accordance with section 5303 of title 5.

(Pub. L. 96-465, title I, § 403, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1439.)

AMENDMENTS

1990—Pub. L. 101-509 substituted “section 5303” for “subchapter I of chapter 53”.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title I, § 305] of Pub. L. 101-509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Feb. 15, 1981, except that for purposes of implementing section 4151 of this title it is effective Oct. 17, 1980, see section 2403(a) and (d)(2) of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

ADJUSTMENT OF FOREIGN SERVICE SCHEDULE EFFECTIVE FOR PAY PERIODS BEGINNING ON OR AFTER JANUARY 1, 1997

Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, set out as a note under section 5332 of Title 5, Government Organization and Employees, provided in part for an adjustment of the Foreign Service Schedule pay rates effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1997. See Schedule set out as follows:

SCHEDULE 2

Foreign Service Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1997)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	\$70,894	\$57,446	\$46,548	\$37,718	\$30,563	\$27,322	\$24,425	\$21,835	\$19,520
2	73,021	59,169	47,944	38,850	31,480	28,142	25,158	22,490	20,106
3	75,211	60,944	49,383	40,015	32,424	28,986	25,912	23,165	20,709
4	77,468	62,773	50,864	41,215	33,397	29,855	26,690	23,860	21,330
5	79,792	64,656	52,390	42,452	34,399	30,751	27,491	24,575	21,970
6	82,186	66,596	53,962	43,725	35,431	31,674	28,315	25,313	22,629
7	84,651	68,594	55,581	45,037	36,494	32,624	29,165	26,072	23,308
8	87,191	70,651	57,248	46,388	37,589	33,603	30,040	26,854	24,007
9	89,806	72,771	58,966	47,780	38,716	34,611	30,941	27,660	24,727
10	92,161	74,954	60,735	49,213	39,878	35,649	31,869	28,490	25,469
11	92,161	77,203	62,557	50,690	41,074	36,718	32,825	29,344	26,233
12	92,161	79,519	64,433	52,211	42,306	37,820	33,810	30,225	27,020
13	92,161	81,904	66,366	53,777	43,576	38,955	34,824	31,131	27,831
14	92,161	84,361	68,357	55,390	44,883	40,123	35,869	32,065	28,666

EXECUTIVE ORDER NO. 12249

Ex. Ord. No. 12249, Oct. 25, 1980, 45 F.R. 71347, which provided for a Foreign Service Schedule, was superseded by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12330

Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12496

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12578

Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12622

Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER NO. 12663

Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12698

Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12736

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12786

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12826

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12944

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, formerly set out as a note under section 5332 of Title 5.

EXECUTIVE ORDER No. 12984

Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, which provided for adjustments in the Foreign Service Schedule, was superseded by Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, set out as a note under section 5332 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287, 287n, 290a, 2021, 2385, 2506, 4066, 4152 of this title; title 5 section 5302.

§ 3964. Assignments to salary class

(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 3967 of this title or section 3968 of this title) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under subchapter V of this chapter.

(2) Except as authorized by subchapter I of chapter 35 of title 5, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with subchapter VI of this chapter. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5 and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

(Pub. L. 96-465, title I, §404, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 103-236, title I, §180(a)(3), Apr. 30, 1994, 108 Stat. 415.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-236 struck out “who are family members of Government employees paid in accordance with a local compensation plan established under” after “section 3967 of this title or”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3947, 4001 of this title.

§ 3965. Performance pay**(a) Eligibility; additional lump sum payment; excessive compensation not precluding award**

Members of the Senior Foreign Service who are serving—

- (1) under career or career candidate appointments, or
- (2) under limited appointments with reemployment rights under section 3950 of this title as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 3962 of this title and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

(b) Criteria; limitations

Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5 and rank awards under section 4507 of title 5. Awards of performance pay under this section shall be subject to the following limitations:

- (1) Not more than 50 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.
- (2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.
- (3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed \$10,000 in any fiscal year, except that payments of up to \$20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.

(4) Any award under this section shall be subject to the limitation on certain payments under section 5307 of title 5.

(5) The Secretary of State shall prescribe regulations, consistent with section 5582 of title 5, under which payment under this section shall be made in the case of any individual whose death precludes payment under paragraph (4) of this subsection.

(c) Determination of amount by Secretary; distribution on basis of selection board recommendations

The Secretary shall determine the amount of performance pay available under subsection (b)(2) of this section each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 4002 of this title.

(d) Recommendations for meritorious or distinguished service awards

The President may grant awards of performance pay under subsection (b)(3) of this section on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

(Pub. L. 96-465, title I, § 405, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 100-204, title I, § 175(b), Dec. 22, 1987, 101 Stat. 1361; Pub. L. 103-236, title I, § 173(d), Apr. 30, 1994, 108 Stat. 412.)

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103-236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5 as in effect at the end of that fiscal year. Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.”

1987—Subsec. (b)(4), (5). Pub. L. 100-204 inserted at end of par. (4) “Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.” and added par. (5).

SENIOR FOREIGN SERVICE PERFORMANCE PAY

Section 173(a)-(c) of Pub. L. 103-236, as amended by Pub. L. 103-415, § 1(gg), Oct. 25, 1994, 108 Stat. 4303, provided that:

“(a) PROHIBITION ON AWARDS.—Notwithstanding any other provision of law, the Secretary of State may not award or pay performance payments for fiscal years 1994 and 1995 under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965), unless the Secretary awards or pays performance awards to other Federal employees for such fiscal years.

“(b) AWARDS IN SUBSEQUENT FISCAL YEARS.—The Secretary may not make a performance award or payment in any fiscal year after a fiscal year referred to in subsection (a) for the purpose of providing an individual with a performance award or payment to which the in-

dividual would otherwise have been entitled in a fiscal year referred to in such subsection but for the prohibition described in such subsection.

“(c) APPLICATION TO USIA, AID, AND ACDA.—Subsections (a) and (b) shall apply to the United States Information Agency, the Agency for International Development, and the United States Arms Control and Disarmament Agency in the same manner as such subsections apply to the Department of State, except that the Director of the United States Information Agency, the Administrator of the Agency for International Development, and the Director of the United States Arms Control and Disarmament Agency shall be subject to the limitations and authority of the Secretary of State under subsections (a) and (b) for their respective agencies.”

REVIEW OF PERFORMANCE PAY PROGRAMS

Section 175(a) of Pub. L. 100-204 provided that:

“(1) SUSPENSION OF AWARDS DURING REVIEW.—During the period beginning on the date of enactment of this Act [Dec. 22, 1987], and ending on the date on which the Inspector General of the Department of State reports to the Congress pursuant to paragraph (2), performance pay may not be awarded under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965) to any member of the Senior Foreign Service in the Department of State.

“(2) REVIEW BY INSPECTOR GENERAL.—The Inspector General of the Department of State shall conduct a complete and thorough review of—

“(A) the procedures in the Department of State under which performance pay recipients are chosen to determine whether the procedures and award determinations are free from bias and reflect fair standards; and

“(B) the adequacy of the criteria and the equity of the criteria actually applied in making those awards. The review should be conducted in accordance with generally accepted Government auditing standards. The Inspector General shall report the results of this review to the Secretary of State and to the Congress no later than May 1, 1988.

“(3) REPORT BY SECRETARY OF STATE.—No later than 60 days after the report of the Inspector General is submitted to the Secretary of State under paragraph (2), the Secretary shall submit to the Congress a report containing the comments of the Secretary on the report of the Inspector General and describing the actions taken and proposed to be taken by the Secretary as a result of the report.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4002, 4006, 4153 of this title.

§ 3966. Within-class salary increases

(a) Time period; limitation

Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

- (1) 52 calendar weeks of service in each of salary steps 1 through 9, and
- (2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 4002 of this title to fall below the standards of performance for his or her salary class.

(b) Additional increase for meritorious service

The Secretary may grant, on the basis of especially meritorious service, to any member of the

Service receiving an increase in salary under subsection (a) of this section, an additional salary increase to any higher step in the salary class in which the member is serving.

(Pub. L. 96-465, title I, § 406, Oct. 17, 1980, 94 Stat. 2089.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4002, 4006 of this title.

§ 3967. Salaries for Foreign Service personnel abroad who perform routine duties

(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule for the Foreign Service personnel described in subsection (b) of this section. The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to class 9 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a) of this section.

(Pub. L. 96-465, title I, § 407, Oct. 17, 1980, 94 Stat. 2090.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3951, 3964, 4011 of this title.

§ 3968. Local compensation plans

(a) Establishment; rates of pay; leaves of absence; supplemental payments; transfer from Civil Service Retirement and Disability Fund

(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service and United States citizens employed under section 3951(c)(1) of this title. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to United States citizens at a rate which is no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29. Any compensation plan established under this section may include provision for (A) leaves of absence with pay for employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, (B) programs for voluntary transfers of such leave and voluntary leave banks, which shall, to the extent practicable, be established in a manner consistent with the provisions of subchapters III and IV, respectively, of chapter 63 of title 5, and (C) payments by the Government and employees to a trust or other fund in a financial institution in order to finance future benefits

for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees. For United States citizens under a compensation plan, the Secretary shall (A) provide such citizens with a total compensation package (including wages, allowances, benefits, and other employer payments, such as for social security) that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B) define those allowances and benefits provided under United States law which shall be included as part of this total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act [42 U.S.C. 301 et seq.] or title 26.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(3)(A) Whenever a foreign national employee so elects during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the Treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan certified by the United States Government under a local compensation plan established for foreign national employees pursuant to this section (excluding local social security plans).

(B) For purposes of subparagraph (A), the phrase "employee's interest in the Civil Service Retirement and Disability Fund" means the total contributions of the employee and the employing agency with respect to such employee, pursuant to sections 8331(8) and 8334(a)(1) of title 5, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.

(C) Any such transfer shall void any annuity rights or entitlement to lump-sum credit under subchapter III of chapter 83 of such title.

(b) Employment programs

For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals, are United States citizens employed in the Service abroad who were hired

while residing abroad, or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this chapter.

(c) Regulations

The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

(Pub. L. 96-465, title I, § 408, Oct. 17, 1980, 94 Stat. 2090; Pub. L. 98-164, title I, § 127(a), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 101-246, title I, § 141(a), Feb. 16, 1990, 104 Stat. 35; Pub. L. 102-138, title I, §§ 148, 152, Oct. 28, 1991, 105 Stat. 670, 672; Pub. L. 103-236, title I, § 180(a)(4), Apr. 30, 1994, 108 Stat. 415.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and 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 under section 3901 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-236, § 180(a)(4)(D), inserted at end “For United States citizens under a compensation plan, the Secretary shall (A) provide such citizens with a total compensation package (including wages, allowances, benefits, and other employer payments, such as for social security) that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B) define those allowances and benefits provided under United States law which shall be included as part of this total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act or title 26.”

Pub. L. 103-236, § 180(a)(4)(B), (C), in second sentence struck out “employed in the Service abroad who were hired while residing abroad and to those family members of Government employees who are paid in accordance with such plans” after “United States citizens” and in third sentence struck out “foreign national” before “employees” wherever appearing.

Pub. L. 103-236, § 180(a)(4)(A), inserted first sentence and struck out former first sentence which read as follows: “The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, United States citizens employed in the Service abroad who were hired while residing abroad, and for United States citizens employed in the Service abroad who are family members of Government employees.”

1991—Subsec. (a)(1). Pub. L. 102-138, § 152(a), inserted “United States citizens employed in the Service abroad who were hired while residing abroad,” after “employees of the Service,” and “to United States citizens employed in the Service abroad who were hired while residing abroad and” after “payment of wages”.

Pub. L. 102-138, § 148, added cl. (B) and redesignated former cl. (B) as (C).

Subsec. (b). Pub. L. 102-138, § 152(b), inserted “, are United States citizens employed in the Service abroad who were hired while residing abroad,” after “foreign nationals”.

1990—Subsec. (a)(3). Pub. L. 101-246 added par. (3).

1983—Subsec. (a)(1). Pub. L. 98-164 designated existing provisions as cl. (A) and added cl. (B).

DATE OF TRANSFER FROM CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Section 141(c) of Pub. L. 101-246 provided that: “The transfer of an employee’s interest in the Civil Service Retirement and Disability Fund shall occur after October 1, 1990.”

FOREIGN NATIONAL PAY PLANS

Pub. L. 96-60, title I, § 107(a), Aug. 15, 1979, 93 Stat. 397, provided that: “It is the sense of the Congress that the Secretary of State should—

“(1) improve coordination between the Department of State and the Department of Defense and other departments and agencies of the United States operating outside the United States with respect to foreign national pay systems and wage schedules to the extent that—

“(A) joint wage surveys and compatible pay schedules are adopted in countries where two or more departments or agencies of the United States directly employ foreign nationals, and

“(B) Department of Defense wage rates are included in wage surveys of the Department of State where the Department of Defense operates under indirect-hire arrangements;

“(2) monitor the establishment of wage rates outside the United States more closely to insure that United States missions—

“(A) operate under salary schedules that reflect private sector average pay or average pay ranges,

“(B) include the cost of severance in making pay adjustments, and

“(C) survey jobs in the private sector which represent as closely as possible the work force of the mission; and

“(3) substitute, whenever possible, prevailing local retirement plans for civil service retirement with respect to the retirement of foreign nationals employed by the United States.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3951, 3964, 4011 of this title; title 2 section 143a; title 5 sections 6325, 8345.

§ 3969. Salaries of consular agents

The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

(Pub. L. 96-465, title I, § 409, Oct. 17, 1980, 94 Stat. 2091.)

§ 3970. Compensation for imprisoned foreign national employees

(a) Eligibility; rates of compensation; terms and conditions of payment; applicability of powers under other statutory provisions

The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any foreign national who is or was employed under a personal services contract, who is or has been

imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5 to the extent that such powers are consistent with this section.

(b) Time spent imprisoned considered as period of employment

Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, unless the individual was employed by the Government at the time of his or her imprisonment.

(c) Time of filing of claims

No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

(d) Regulations

The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

(Pub. L. 96-465, title I, § 410, Oct. 17, 1980, 94 Stat. 2091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8332.

§ 3971. Temporary service as principal officer

For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5535 and 5536 of title 5, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the dif-

ference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

(Pub. L. 96-465, title I, § 411, Oct. 17, 1980, 94 Stat. 2091.)

§ 3972. Special differentials

(a) Additional work requirements

The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

(b) Repealed. Pub. L. 103-236, title I, § 139(6), Apr. 30, 1994, 108 Stat. 398

(c) Compensatory time off

Nothing in this chapter, or in subchapter V of chapter 55 of title 5 shall preclude the granting of compensatory time off for Foreign Service officers.

(Pub. L. 96-465, title I, § 412, Oct. 17, 1980, 94 Stat. 2092; Pub. L. 103-236, title I, § 139(6), Apr. 30, 1994, 108 Stat. 398.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236 struck out subsec. (b) which read as follows: "Before implementing any proposal to limit either the number of Foreign Service officers who may receive a special differential under subsection (a) of this section or the amounts of such special differentials, the Secretary shall submit such proposal to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4024, 4046 of this title.

§ 3973. Death gratuities

(a) Criteria; amount; payment deemed gift

The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year's salary at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

(b) Eligibility to elect monthly compensation as condition to payment

A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) of this section is entitled to elect monthly compensation under section 8133 of title 5, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) Order of payment

A death gratuity payment under this section shall be made as follows:

- (1) First, to the widow or widower.
- (2) Second, to the child, or children in equal shares, if there is no widow or widower.
- (3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) Definitions

As used in this section—

- (1) the term “Foreign Service employee” means any member of the Service or United States representative to an international organization or commission; and
- (2) each of the terms “widow”, “widower”, “child”, and “parent” shall have the same meaning given each such term by section 8101 of title 5.

(Pub. L. 96-465, title I, § 413, Oct. 17, 1980, 94 Stat. 2092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1489; title 50 section 403k.

SUBCHAPTER V—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3942, 3964, 4131, 4153 of this title.

§ 3981. Authority of Secretary

The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, in relation to the salaries established under subchapter IV of this chapter. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

(Pub. L. 96-465, title I, § 501, Oct. 17, 1980, 94 Stat. 2092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3982, 4001, 4102, 4155 of this title.

§ 3982. Assignments to Foreign Service positions

(a) Positions assignable; basis for assignment

(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 3981 of this title in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a

post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Filling of positions by members of Service; employment of members of State Department and other agencies

Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

- (1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and
- (2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) Charge d'affaires

The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 3902(a)(3)¹ of this title by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

(d) Competitive ability with respect to chief of mission positions and for assignments outside areas of specialization

The Secretary of State, in conjunction with the heads of the other agencies utilizing the Foreign Service personnel system, shall implement policies and procedures to insure that Foreign Service officers and members of the Senior Foreign Service of all agencies are able to compete for chief of mission positions and have opportunities on an equal basis to compete for assignments outside their areas of specialization.

(Pub. L. 96-465, title I, § 502, Oct. 17, 1980, 94 Stat. 2093; Pub. L. 98-164, title I, § 130(b), Nov. 22, 1983, 97 Stat. 1027.)

REFERENCES IN TEXT

Section 3902(a)(3) of this title, referred to in subsec. (c), was redesignated section 3902(3) of this title pursuant to Pub. L. 98-164, which struck out the designation “(a)” and subsec. (b) of section 3902.

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-164 added subsec. (d).

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) 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.

REPORT RESPECTING POLICIES AND PROCEDURES ADOPTED TO IMPROVE COMPETITIVE ABILITY OF PERSONNEL

Section 130(c) of Pub. L. 98-164 directed Secretary of State, not later than one year after Nov. 22, 1983, to submit a report to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate describing policies and procedures adopted pursuant to the amendment made by section 130(b) of Pub. L. 98-164, adding subsec. (d) of this section, prior to repeal by Pub. L. 103-236, title I, § 139(10), Apr. 30, 1994, 108 Stat. 398.

¹ See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3902, 3903 of this title.

§ 3983. Assignments to non-Service and other positions

(a) Positions assignable

The Secretary may (with the concurrence of the agency, organization, or other body concerned) assign a member of the Service for duty—

(1) in a non-Foreign Service (including Senior Executive Service) position in the Department or another agency, or with an international organization, international commission, or other international body;

(2) with a domestic or international trade, labor, agricultural, scientific, or other conference, congress, or gathering;

(3) for special instruction, training, or orientation at or with a public or private organization; and

(4) in the United States (or in any territory or possession of the United States or in the Commonwealth of Puerto Rico), with a State or local government, a public or private nonprofit organization (including an educational institution), or a Member or office of the Congress.

(b) Salary; travel and other expenses

(1) The salary of a member of the Service assigned under this section shall be the higher of the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) of this section to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Length of assignment

Assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

(Pub. L. 96-465, title I, § 503, Oct. 17, 1980, 94 Stat. 2093.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1767.

§ 3984. Service in United States and abroad

(a) Obligation to serve abroad; length of stay in United States

Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regula-

tion limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Intermittent duty within United States

Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States (other than those employed in accordance with section 3951 of this title) to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) Sabbaticals

The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, which apply to sabbaticals granted to members of the Senior Executive Service.

(Pub. L. 96-465, title I, § 504, Oct. 17, 1980, 94 Stat. 2094; Pub. L. 103-236, title I, § 180(a)(5), Apr. 30, 1994, 108 Stat. 416.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236 inserted “(other than those employed in accordance with section 3951 of this title)” after “citizen of the United States”.

§ 3985. Temporary details

A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this subchapter.

(Pub. L. 96-465, title I, § 505, Oct. 17, 1980, 94 Stat. 2094.)

SUBCHAPTER VI—PROMOTION AND RETENTION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3964, 4153 of this title.

§ 4001. Promotions

(a) Method of promotion

Career members of the Senior Foreign Service are promoted by appointment under section 3942(a) of this title to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments are promoted by appointment under section 3943 of this title to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the Foreign Service Schedule, are promoted by appointment under section 3942(a)

of this title as career members of the Senior Foreign Service or by assignment under section 3964 of this title to a higher salary class in the Foreign Service Schedule.

(b) Recommendations and rankings of selection boards

Except as provided in section 4006(a) of this title, promotions of—

- (1) members of the Senior Foreign Service, and
- (2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 4002 of this title, except that the Secretary may by regulation specify categories of career members, categories of career candidates, and other members of the Service assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c) Eligibility; request for promotion; time of consideration; withdrawal of request; basis for decision; affidavits

(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class 1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 4007(a) of this title) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

- (A) a regular, predictable flow of recruitment in the Service;
- (B) effective career development patterns to meet the needs of the Service; and
- (C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5 shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

(4) Not later than March 1 of each year, the Secretary of State shall submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate which shall—

- (A) describe the steps taken and planned in furtherance of—

- (i) maximum compatibility among agencies utilizing the Foreign Service personnel system, as provided for in section 3923 of this title, and

- (ii) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 3924 of this title;

(B) specify the upper and lower limits planned by each such agency for recruitment, advancement, and retention of members of the Service, as provided for in paragraph (2), including, with respect to each of the relevant promotion competition groups, the projected ranges of rates of appointment, promotion, and attrition over each of the next 5 fiscal years, as well as a comparison of such projections with the projections for the preceding year and with actual rates of appointment, promotion, and attrition, including a full explanation of any deviations from projections reported in the preceding year; and

(C) specify the numbers of members of the Service who are assigned to positions classified under section 3981 of this title which are more than one grade higher or lower than the personal rank of the member.

(Pub. L. 96-465, title I, §601, Oct. 17, 1980, 94 Stat. 2094; Pub. L. 100-204, title I, §185(b), Dec. 22, 1987, 101 Stat. 1366; Pub. L. 103-236, title I, §180(a)(6), Apr. 30, 1994, 108 Stat. 416.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236, which directed amendment of par. (2) by striking “and” the last place it appears and by inserting “and other members of the Service” after “categories of career candidates,” was executed by striking “and” after “categories of career members,” and making the insertion in concluding provisions below par. (2), to reflect the probable intent of Congress.

1987—Subsec. (c)(4). Pub. L. 100-204 added par. (4).

REPORTS ELIMINATED

Pub. L. 104-66, title II, §2241, Dec. 21, 1995, 109 Stat. 733, provided that: “Notwithstanding section 601(c)(4) of the Foreign Service Act of 1980 (22 U.S.C. 4001(c)(4)), the reports otherwise required under such section shall not cover the activities of the United States Information Agency.”

LANGUAGE TRAINING IN FOREIGN SERVICE

Pub. L. 102-138, title I, §155, Oct. 28, 1991, 105 Stat. 675, provided that: “The Department of State, the Department of Commerce, and the United States Information Agency shall ensure that the precepts for promotion of Foreign Service employees provide that end-of-training reports for employees in full-time language training shall be weighed as heavily as the annual employee efficiency reports, in order to ensure that employees in language training are not disadvantaged in the promotion process.”

FOREIGN SERVICE PROMOTION PANELS

Pub. L. 101-246, title I, §163, Feb. 16, 1990, 104 Stat. 47, provided that: “It is the sense of the Congress that, to the greatest extent possible, Foreign Service promotion panels should—

- “(1) only promote candidates to the Senior Foreign Service who have demonstrated foreign language proficiency in at least one language at the General Professional Speaking Proficiency level, as defined by the Foreign Service Institute;

- “(2) strive for the objective stipulated in the Foreign Service Manual ‘to be able to use two foreign

languages at a minimum professional level of proficiency of S-3/R-3, which is the general professional speaking proficiency level"; and

"(3) have at least one person on each Foreign Service promotion panel who has attained at least the General Professional Speaking Proficiency level in one language level."

[Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.]

LANGUAGE PROFICIENCY IN EMPLOYEE EVALUATION REPORT

Pub. L. 101-246, title I, §164, Feb. 16, 1990, 104 Stat. 47, required revision of employee and officer evaluation reports for Foreign Service officers of Department of State and Agency for International Development to include separate assessment of employee's effectiveness in using foreign language and required that precedence in promotion be given to officers achieving certain levels of proficiency in foreign language, prior to repeal by Pub. L. 103-236, title I, §191(b), Apr. 30, 1994, 108 Stat. 418. See section 191(a) of Pub. L. 103-236, set out as a note under section 3926 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4002, 4173 of this title.

§ 4002. Establishment of selection boards

(a) Evaluation of performance; recommendations

The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

- (1) promotions in accordance with section 4001 of this title;
- (2) awards of performance pay under section 3965(c) of this title;
- (3) denials of within-class step increases under section 3966(a) of this title;
- (4) offer or renewal of limited career extensions under section 4007(b) of this title; and
- (5) such other actions as the Secretary may prescribe by regulation.

(b) Public members; appointment of women and minority groups

All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

(c) Disqualification for service on foreign service selection boards

No public members appointed pursuant to this section may be, at the time of their appointment or during their appointment, an agent of a foreign principal (as defined by section 611(b) of this title) or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2) or receive income from a government of a foreign country.

(Pub. L. 96-465, title I, §602, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 101-246, title I, §142, Feb. 16, 1990, 104 Stat. 36; Pub. L. 104-65, §12(c), Dec. 19, 1995, 109 Stat. 701.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-65 inserted "or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2)" before "or receive income".

1990—Subsec. (c). Pub. L. 101-246 added subsec. (c).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3965, 3966, 4001, 4007, 4131 of this title.

§ 4003. Recommendations and rankings

(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of language test scores from the Foreign Service Institute, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service.

(Pub. L. 96-465, title I, §603, Oct. 17, 1980, 94 Stat. 2095.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4004 of this title.

§ 4004. Confidentiality of records

The records described in section 4003(a) of this title shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to

inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

(Pub. L. 96-465, title I, § 604, Oct. 17, 1980, 94 Stat. 2096.)

§ 4005. Implementation of selection board recommendations

(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a) of this section, in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

(Pub. L. 96-465, title I, § 605, Oct. 17, 1980, 94 Stat. 2096.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4006, 4105 of this title.

§ 4006. Other bases for promoting or increasing pay

(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 3942(a) of this title;

(2) promote a member of the Service under section 3943 of this title;

(3) grant performance pay to a member of the Senior Foreign Service under section 3965(c) of this title; or

(4) grant a within-class salary increase under section 3966 of this title to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 4005(b) of this title, the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

(Pub. L. 96-465, title I, § 606, Oct. 17, 1980, 94 Stat. 2096.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4001 of this title.

§ 4007. Retirement for expiration of time in class

(a) Maximum time

(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Limited career extension

Members of the Service whose maximum time in class under subsection (a) of this section expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 4002 of this title. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Members subject to retirement; reception of retirement benefits

Any member of the Service—

(1) whose maximum time in class under subsection (a) of this section expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) of this section expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 4009 of this title, subject to any career extension under subsection (d) of this section.

(d) Extensions

Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) of this section expires, or whose limited career extension under subsection (b) of this section expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

(Pub. L. 96-465, title I, § 607, Oct. 17, 1980, 94 Stat. 2096.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4001, 4002, 4009, 4071d, 4131, 4136, 4153 of this title.

§ 4008. Retirement based on failure to meet standard of performance

(a) The Secretary shall prescribe regulations concerning the standards of performance to be met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) of this section substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 4009 of this title.

(Pub. L. 96-465, title I, § 608, Oct. 17, 1980, 94 Stat. 2097.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4071d, 4136, 4156 of this title.

§ 4009. Retirement benefits

(a) Entitlement

A member of the Service—

(1) who is retired under section 4007(c)(2) of this title; or

(2) who is retired under section 4007(c)(1) or 4008(b) or 4010a of this title—

(A) after becoming eligible for voluntary retirement under section 4051 of this title, or

(B) from the Senior Foreign Service or while assigned to class 1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 4046 of this title.

(b) Computation of amount; refund; death of member

Any member of the Service (other than a member to whom subsection (a) of this section applies) who is retired under section 4007(c)(1) or 4008(b) or 4010a of this title shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2) a refund as provided in section 4055 of this title of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 4046 of this title, commencing at age 60.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60, his or her death shall be considered a death in service within the meaning of section 4049 of this title.

(Pub. L. 96-465, title I, § 609, Oct. 17, 1980, 94 Stat. 2098; Pub. L. 103-236, title I, § 181(a)(3), Apr. 30, 1994, 108 Stat. 417.)

AMENDMENTS

1994—Subsecs. (a)(2), (b). Pub. L. 103-236 inserted “or 4010a” after “4008(b)”.

SPECIAL ANNUITY FOR CERTAIN FOREIGN SERVICE OFFICERS

Pub. L. 95-105, title IV, § 411, Aug. 17, 1977, 91 Stat. 855, as amended by Pub. L. 95-426, title IV, § 412(b), Oct. 7, 1978, 92 Stat. 981, provided that:

“(a) Subject to the conditions established in subsection (b), any Foreign Service officer—

“(1) who was retired under section 633(a)(1) of the Foreign Service Act of 1946 [former section 1003(a)(1) of this title, see section 4007(a) of this title] before the date of enactment of this section, [Aug. 17, 1977];

“(2) who was not in class 1, 2, or 3 at the time of retirement;

“(3) who was 40 years of age or older at the time of retirement; and

“(4) who had at least 20 years of service, exclusive of credit for unused sick leave, creditable for pur—

poses of section 821 of such Act [former section 1076 of this title, see section 4046 of this title] at the time of retirement;

shall be entitled to receive retirement benefits in accordance with the provisions of such section 821 [former section 1076 of this title, see section 4046 of this title] in lieu of any retirement benefits which the officer may be entitled to elect under section 634(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section]. Such retirement benefits shall be paid from the Foreign Service Retirement and Disability Fund and shall be effective on the date the officer reaches age 50, the date of enactment of this section [Aug. 17, 1977], or October 1, 1977, whichever date is latest.

“(b) Retirement benefits may not be paid under this section unless (1) any refund of contributions paid to the officer under section 634(b)(2) of the Foreign Service Act of 1946 [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] is repaid to the Foreign Service Retirement and Disability Fund, with interest, in accordance with sections 811(d) and (f) of such Act [former section 1071(d) and (f) of this title, see section 4045(d) and (f) of this title]; and (2) the service forming the basis for such retirement benefits is not used as the basis for any other retirement benefits under any retirement system.

“(c) In the event that an officer who is entitled to retirement benefits under this section dies before reaching the age of fifty, but after the date of enactment of this section [Aug. 17, 1977], his or her death shall be considered a death in service within the meaning of section 832 of the Foreign Service Act of 1946 [former section 1082 of this title, see section 4049 of this title], except that no survivor’s annuity (other than a survivor’s annuity which would be payable under the first complete sentence in section 634(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] but for the enactment of this section) shall become effective before October 1, 1977.

“(d) An officer entitled to retirement benefits under this section may make the election described in section 821(b) or (f), as appropriate, of the Foreign Service Act of 1946 [former section 1076(b) or (f) of this title, see section 4046(b) and (f) of this title] at any time before reaching the age of fifty or before the end of the sixty-day period beginning on the date of enactment of this section [Aug. 17, 1977], whichever is later.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4007, 4008, 4010a, 4047, 4060, 4153 of this title; title 5 sections 5595, 8501.

§ 4010. Separation for cause

(a) Authorization of Secretary; hearing prior to separation; waiver of hearing; suspension pending final resolution

(1) The Secretary may separate any member from the Service for such cause as will promote the efficiency of the Service.

(2) A member of the Service (other than a United States citizen employed under section 3951 of this title who is not a family member) who is a member of the Senior Foreign Service or is assigned to a salary class in the Foreign Service Schedule and who either (A) is serving under a career appointment, or (B) if separation is to be by reason of misconduct, is serving under a limited appointment, shall not be separated from the Service under this section until the member has been granted a hearing before the Foreign Service Grievance Board and the cause for separation established at such hearing, unless the member waives in writing the right to a hearing or, notwithstanding section 4136(8) of this title, unless the member has been con-

victed of a crime related to the cause for separation, subject to reinstatement with back pay (for any period during which separation for cause had not been established by such a hearing) if such conviction is reversed on appeal. If such cause is not established at such hearing, the Grievance Board shall have the authority to direct the Department to pay reasonable attorneys fees to the extent and in the manner provided by section 4137(b)(5) of this title. The hearing provided under this paragraph shall be in accordance with the hearing procedures applicable to grievances under section 4136 of this title and shall be in lieu of any other administrative procedure authorized or required by this or any other law. Section 4140 of this title shall apply to proceedings under this paragraph.

(3) Notwithstanding the hearing required by this section, or procedures under any other provision of law, where a member has been convicted of a crime for which a sentence of imprisonment may be imposed, and there is a nexus to the efficiency of the Service, the Secretary, or his designee, may suspend such member without pay pending final resolution of the underlying matter, subject to reinstatement with back pay if cause for separation is not established in a hearing before the Board.

(4) Any member suspended pursuant to subsection (a)(3) of this section shall be entitled to—

(A) advance written notice of the specific reasons for such suspension;

(B) a reasonable time, not less than seven days, to answer orally and in writing;

(C) be represented by an attorney or other representative; and

(D) a final written decision.

(5) Any member suspended pursuant to subsection (a)(3) of this section shall be entitled to grieve such action in accordance with procedures applicable to grievances under subchapter XI of this chapter. The Board review, however, shall be limited only to a determination of whether the conviction requirements of subsection (a)(3) of this section have been fulfilled, and whether there is a nexus between the conduct and the efficiency of the Service.

(b) Refund of contributions to Fund; annuity election

Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) of this section shall be entitled to receive a refund as provided in section 4055 of this title of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 4046 of this title, commencing at age 60.

(Pub. L. 96-465, title I, §610, Oct. 17, 1980, 94 Stat. 2098; Pub. L. 100-204, title I, §181(d), Dec. 22, 1987, 101 Stat. 1364; Pub. L. 101-167, title V, §586(b),

Nov. 21, 1989, 103 Stat. 1252; Pub. L. 101-246, title I, § 143, Feb. 16, 1990, 104 Stat. 36; Pub. L. 102-138, title I, § 143(a), Oct. 28, 1991, 105 Stat. 668; Pub. L. 103-415, § 1(h)(2), Oct. 25, 1994, 108 Stat. 4300.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103-415 inserted “(other than a United States citizen employed under section 3951 of this title who is not a family member)” after “A member of the Service”.

1991—Subsec. (a)(3). Pub. L. 102-138, § 143(a)(1), substituted “a member has been convicted of a crime” for “there is reasonable cause to believe that a member has committed a crime”.

Subsec. (a)(4)(A). Pub. L. 102-138, § 143(a)(2), substituted “suspension” for “suspension, including the grounds for reasonable cause to believe a crime has been committed”.

Subsec. (a)(5). Pub. L. 102-138, § 143(a)(3), substituted “the conviction requirements of subsection (a)(3) of this section have been fulfilled” for “there exists reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed”.

1990—Subsec. (a)(2). Pub. L. 101-246 inserted before period at end of first sentence “or, notwithstanding section 4136(8) of this title, unless the member has been convicted of a crime related to the cause for separation, subject to reinstatement with back pay (for any period during which separation for cause had not been established by such a hearing) if such conviction is reversed on appeal” and inserted sentence at end that section 4140 of this title apply to proceedings under this paragraph.

1989—Subsec. (a)(3) to (5). Pub. L. 101-167 added pars. (3) to (5).

1987—Subsec. (a)(2). Pub. L. 100-204 inserted after first sentence “If such cause is not established at such hearing, the Grievance Board shall have the authority to direct the Department to pay reasonable attorneys fees to the extent and in the manner provided by section 4137(b)(5) of this title.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to section 4137 of this title before Dec. 22, 1987, see section 181(e) of Pub. L. 100-204, set out as a note under section 3946 of this title.

DEFINITION OF “REASONABLE CAUSE”

Section 586(c) of Pub. L. 101-167 provided that for purposes of amendments by section 586(a) and (b) of Pub. L. 101-167, which amended this section and section 4136 of this title, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed was to be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for, a job-related crime, prior to repeal by Pub. L. 102-138, title I, § 143(c), Oct. 28, 1991, 105 Stat. 668.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4011, 4071d, 4136 of this title.

§ 4010a. Reductions in force

(a) Authorization and regulations

The Secretary may conduct reductions in force and shall prescribe regulations for the separation of members of the Service holding a career or career candidate appointment under subchapter III of this chapter, under such reductions in force which give due effect to the following:

- (1) Organizational changes.

- (2) Documented employee knowledge, skills, or competencies.

- (3) Tenure of employment.

- (4) Documented employee performance.

- (5) Military preference, subject to section 3501(a)(3) of title 5.

(b) Applicability of retirement benefits

The provisions of section 4009 of this title shall be applicable to any member of the Service holding a career or career candidate appointment under subchapter III of this chapter, who is separated under the provisions of this section.

(c) Grievance procedure

An employee against whom action is taken under this section may elect either to file a grievance under subchapter XI of this chapter or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under subchapter XI of this chapter shall be limited to cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section.

(Pub. L. 96-465, title I, § 611, as added Pub. L. 103-236, title I, § 181(a)(2), Apr. 30, 1994, 108 Stat. 417; amended Pub. L. 103-415, § 1(ii), Oct. 25, 1994, 108 Stat. 4303.)

PRIOR PROVISIONS

A prior section 611 of Pub. L. 96-465 was renumbered section 612 and is classified to section 4011 of this title.

AMENDMENTS

1994—Pub. L. 103-415 made technical amendment relating to style of section catchline.

EMPLOYMENT ASSISTANCE REFERRAL SYSTEM FOR CERTAIN MEMBERS OF FOREIGN SERVICE

Section 179 of Pub. L. 103-236, as amended by Pub. L. 103-415, § 1(g), Oct. 25, 1994, 108 Stat. 4300, provided that: “(a) REFERRAL SYSTEM.—Certain members of the Foreign Service (as described in subsection (b)), may participate in the Office of Personnel Management's Interagency Placement programs or any successor program. Such members of the Foreign Service shall be treated in the same manner as employees participating in such a program as of the effective date of this Act [Apr. 30, 1994].

“(b) CERTAIN MEMBERS OF THE FOREIGN SERVICE.—For purposes of this section, the term ‘members of the Foreign Service’ means any individuals holding career or career candidate appointments under chapter 3 of the Foreign Service Act of 1980 [22 U.S.C. 3941 et seq.]”

CONSULTATION WITH DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT PRIOR TO PRESCRIBING REGULATIONS FOR REDUCTIONS IN FORCE

Section 181(c) of Pub. L. 103-236, as amended by Pub. L. 103-415, § 1(i), Oct. 25, 1994, 108 Stat. 4301, provided that: “The Secretary of State (or in the case of any other agency authorized by law to utilize the Foreign Service personnel system, the head of that agency) shall consult with the Director of the Office of Personnel Management before prescribing regulations for reductions in force under section 611 of the Foreign Service Act of 1980 [22 U.S.C. 4010a] (as added by subsection (a) of this section), and shall publish such regulations.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4105, 4136 of this title.

§ 4011. Termination of limited appointments

Except as provided in section 4010(a)(2) of this title, the Secretary may terminate at any time

the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title.

(Pub. L. 96-465, title I, § 612, formerly § 611, Oct. 17, 1980, 94 Stat. 2099; renumbered § 612 and amended Pub. L. 103-236, title I, §§ 180(a)(7), 181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

PRIOR PROVISIONS

A prior section 612 of Pub. L. 96-465 was renumbered section 613 and is classified to section 4012 of this title.

AMENDMENTS

1994—Pub. L. 103-236, § 180(a)(7), substituted “or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title.” for “, or who is a family member of a Government employee serving under a local compensation plan established under section 3968 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4131 of this title.

§ 4012. Termination of appointments of consular agents and foreign national employees

(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

(Pub. L. 96-465, title I, § 613, formerly § 612, Oct. 17, 1980, 94 Stat. 2099; renumbered § 613, Pub. L. 103-236, title I, § 181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

PRIOR PROVISIONS

A prior section 613 of Pub. L. 96-465 was renumbered section 614 and is classified to section 4013 of this title.

§ 4012a. Foreign national employees separation pay

(a) Establishment

There is established in the Treasury of the United States a fund to provide separation pay for foreign national employees of agencies of the United States Government, other than the Department of Defense.

(b) Funding

There shall be deposited in such account—

(1) all amounts previously obligated for accrued separation pay of foreign national employees of such agencies of the United States Government; and

(2) amounts obligated for fiscal years after 1991 by such agencies for the current and future costs of separation pay of foreign national employees.

(c) Availability

Amounts shall be deposited in the fund annually and are authorized to be available until expended.

(d) Expenditures from fund

Amounts deposited in the fund shall be available for expenditure to make separation payments to foreign national employees in countries in which such pay is legally authorized.

(Pub. L. 102-138, title I, § 151, Oct. 28, 1991, 105 Stat. 672.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

§ 4013. Foreign Service awards

The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involves distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health.

(Pub. L. 96-465, title I, § 614, formerly § 613, Oct. 17, 1980, 94 Stat. 2099; renumbered § 614, Pub. L. 103-236, title I, § 181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

DELEGATION OF FUNCTIONS

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

SUBCHAPTER VII—CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4153 of this title.

§ 4021. Institution for training

(a) Institution or center for training

The Secretary of State shall maintain and operate an institution or center for training (hereinafter in this subchapter referred to as the “institution”), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The institution shall be headed by a Director, who shall be appointed by the Secretary of State.

(b) Provision of training

To the extent practicable, the Secretary of State shall provide training under this subchapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the institution and otherwise.

(c) Training and instruction to citizens of Trust Territory of the Pacific Islands

Training and instruction may be provided at the Institute¹ for not to exceed sixty citizens of the Trust Territory of the Pacific Islands in order to prepare them to serve as members of the foreign services of the Federated States of Micronesia, the Marshall Islands, and Palau. The authority of this subsection shall expire when the Compact of Free Association is approved by the Congress.

(d) Training and instruction of employees of foreign governments

(1) The Secretary of State is authorized to provide for special professional foreign affairs training and instruction of employees of foreign governments through the institution.

(2) Training and instruction under paragraph (1) shall be on a reimbursable or advance-of-funds basis. Such reimbursements or advances to the Department of State may be provided by an agency of the United States Government or by a foreign government and shall be credited to the currently available applicable appropriation account.

(3) In making such training available to employees of foreign governments, priority consideration should be given to officials of newly emerging democratic nations and then to such other countries as the Secretary determines to be in the national interest of the United States.

(4) The authorities of section 4024 of this title shall apply to training and instruction provided under this section.

(Pub. L. 96-465, title I, §701, Oct. 17, 1980, 94 Stat. 2099; Pub. L. 98-164, title I, §126, Nov. 22, 1983, 97 Stat. 1026; Pub. L. 103-236, title I, §126(2), (3), Apr. 30, 1994, 108 Stat. 393, 394; Pub. L. 103-415, §1(y), Oct. 25, 1994, 108 Stat. 4302.)

REFERENCES IN TEXT

Section 701 of the Foreign Service Act of 1946, referred to in subsec. (a), which was classified to section 1041 of this title, was repealed by Pub. L. 96-465, title II, §2205(1), Oct. 17, 1980, 94 Stat. 2159.

AMENDMENTS

1994—Pub. L. 103-415 made technical amendment relating to style of section catchline.

Pub. L. 103-236, §126(2)(A), substituted “Institution for training” for “Foreign Service Institute” as section catchline.

Subsec. (a). Pub. L. 103-236, §126(2)(B), inserted heading, substituted “an institution or center for training (hereinafter in this subchapter referred to as the ‘institution’)” for “the Foreign Service Institute (hereinafter in this subchapter referred to as the ‘Institute’),”, and substituted “institution shall” for “Institute shall”.

Subsec. (b). Pub. L. 103-236, §126(3), substituted “institution” for “Institute”.

Subsec. (d). Pub. L. 103-236, §126(2)(C), added subsec. (d).

1983—Subsec. (c). Pub. L. 98-164 added subsec. (c).

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DESIGNATION OF FOREIGN LANGUAGE RESOURCES COORDINATOR

Section 192 of Pub. L. 103-236 provided that:

“(a) POLICY.—It is the sense of the Congress that—

“(1) the Department of State, by virtue of the Secretary’s overall responsibility under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4011(a) [22 U.S.C. 4021(a)]) for training and instruction in the field of foreign relations to meet the needs of all Federal agencies, should take the lead in this inter-agency effort; and

“(2) in order to promote efficiency and quality in the training provided by the Secretary of State and other Federal agencies, the Secretary should call upon other agencies to share in the joint management and coordination of Federal foreign language resources.

“(b) FOREIGN LANGUAGE RESOURCES COORDINATOR.—

“(1) The Secretary of State should appoint a Foreign Language Resources Coordinator (in this subsection referred to as the ‘Coordinator’) who shall be responsible—

“(A) for coordinating the efforts of the appropriate agencies of Government—

“(i) to strengthen mechanisms for sharing of foreign language resources; and

“(ii) to identify Federal foreign language resource requirements in the areas of diplomacy, military preparedness, international security, and other foreign policy objectives; and

“(B) for making recommendations to the Secretary of State as to which Federal foreign language assets, if any, should be made available to the private sector in support of national global economic competitiveness goals.

“(2) All appropriate United States Government agencies maintaining and utilizing Federal foreign language training and related resources shall cooperate fully with any Coordinator.”

FOREIGN SERVICE INSTITUTE FACILITIES

Pub. L. 99-93, title I, §123, Aug. 16, 1985, 99 Stat. 413, as amended by Pub. L. 100-204, title I, §135, Dec. 22, 1987, 101 Stat. 1345; Pub. L. 102-138, title I, §124, Oct. 28, 1991, 105 Stat. 659, provided that:

“(a) PURPOSE.—The purpose of this section is to promote comprehensive training to meet the foreign relations and national security objectives of the United States and to provide facilities designed for that purpose to assure cost efficient training.

“(b) CONSTRUCTION OF TRAINING FACILITIES.—The Administrator of General Services may construct a consolidated training facility for the Foreign Service Institute on a site made available by the Secretary of State or acquired by the Administrator of General Services. Such site shall be located outside the District of Columbia but within reasonable proximity to the Department of State. The Administrator of General Services may carry out this subsection only to the extent that funds are provided in advance in appropriation Acts to the Department of State and are transferred to the Administrator of General Services for carrying out this section.

“(c) USE OF FUNDS.—(1)(A) Of amounts authorized to be appropriated to the Department of State for fiscal years 1986 and 1987 for ‘Administration of Foreign Affairs’ by section 101(1) [Pub. L. 99-93, §101(1), which is not classified to the Code], a total of not to exceed \$11,000,000 may be transferred by the Secretary of State to the Administrator of General Services for carrying out feasibility studies, site acquisition, and design, architectural, and engineering planning under subsection (b) of this section.

“(B) Of the amounts authorized to be appropriated to the Department of State for fiscal years beginning after September 30, 1987, the Secretary of State may transfer a total not to exceed \$11,000,000 for ‘Administration of Foreign Affairs’ to the Administrator of General Services for carrying out feasibility studies, site

¹ So in original. Probably should be “institution”.

preparation, and design, architectural, and engineering planning under subsection (b).

“(2) Of amounts authorized to be appropriated to the Department of State for fiscal years beginning after September 30, 1987, for ‘Administration of Foreign Affairs’, a total not to exceed \$70,000,000 may be transferred by the Secretary of State to the Administrator of General Services for carrying out construction under subsection (b) of this section.

“(3) Funds may not be obligated for construction of a facility under this section before the end of the period of 30 days of continuous session of Congress beginning on the date on which plans and estimates developed to carry out this section are submitted to the Committees on Foreign Affairs and Public Works and Transportation of the House of Representatives and the Committees on Foreign Relations and Environment and Public Works of the Senate. In determining days of continuous session of Congress for purposes of this paragraph—

“(A) continuity of session is broken only by an adjournment of Congress sine die; and

“(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the determination.

If both Houses of Congress are not in session on the day any plans and estimates are submitted to such committees, such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If all such committees do not receive a submittal on the same day, such period shall not begin until the date on which all such committees have received it.

“(d) JURISDICTION AND CUSTODY.—The facility constructed under this section and the site of such facility shall be under jurisdiction and in the custody of the Administrator of General Services.

“(e) OPERATION, MAINTENANCE, SECURITY, ALTERATION, AND REPAIR.—(1) The Administrator of General Services shall delegate, in accordance with section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486) and section 15 of the Public Buildings Act of 1959 (40 U.S.C. 614), to the Secretary of State responsibility for the operation, maintenance, and security of and alterations and repairs to the facility constructed pursuant to this section, provided the facility is used by the Secretary for the purposes authorized by this section.

“(2) Not later than three months after occupancy of such facility, the Secretary of State and the Administrator of General Services shall each submit a report to the Committee on Foreign Affairs [now Committee on International Relations] and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives, and to the Committee on Foreign Relations and the Committee on Environment and Public Works of the Senate, on the delegation of responsibility, pursuant to paragraph (1), for the operation, maintenance, and security of and alterations and repairs to the facility constructed pursuant to this section.

“(f) EXEMPTION FROM PAYMENT OF CHARGES.—(1) Except as provided in paragraph (2), the Department of State shall be exempt from the charges required by section 210(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(j)) for the use of the facility constructed under this section for the Foreign Service Institute.

“(2) The Administrator of General Services shall charge the Department of State under such section 210(j) for the costs of any operation, maintenance, repairs, or alterations of such facility carried out by the Administrator of General Services.”

LANGUAGE TRAINING FOR FAMILY MEMBERS OF FOREIGN SERVICE PERSONNEL

Pub. L. 95-105, title IV, §414, Aug. 17, 1977, 91 Stat. 857, as amended by Pub. L. 97-241, title V, §505(a)(3), (b)(1), Aug. 24, 1982, 96 Stat. 299, provided that: “It is the sense of Congress that, in order to increase the effectiveness

of United States diplomatic representation abroad, the Secretary of State should make greater use of his authority under section 701 of the Foreign Service Act of 1946 [former section 1041 of this title] in order to increase the language training opportunities available to the family members of Foreign Service personnel.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2002.

§ 4022. Foreign language requirements

(a) The Secretary shall establish foreign language proficiency requirements for members of the Service who are to be assigned abroad in order that Foreign Service posts abroad will be staffed by individuals having a useful knowledge of the language or dialect common to the country in which the post is located.

(b) The Secretary of State shall arrange for appropriate language training of members of the Service by the institution or otherwise in order to assist in meeting the requirements established under subsection (a) of this section.

(Pub. L. 96-465, title I, §702, Oct. 17, 1980, 94 Stat. 2099; Pub. L. 103-236, title I, §126(3), Apr. 30, 1994, 108 Stat. 394.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236 substituted “institution” for “Institute”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4171 of this title.

§ 4023. Career development program

(a) Establishment; primary attention and emphasis

The Secretary shall establish a professional development program to assure that members of the Service obtain the skills and knowledge required at the various stages of their careers. With regard to Foreign Service officers, primary attention shall be given to training for career candidate officers and for midcareer officers, both after achieving tenure and as they approach eligibility for entry to the Senior Foreign Service, to enhance and broaden their qualifications for more senior levels of responsibility in the Service. Training for other members of the Service shall emphasize programs designed to enhance their particular skills and expert knowledge, including development of the management skills appropriate to their occupational categories.

(b) Primary direction for Junior Foreign Service officer training and midcareer training

Junior Foreign Service officer training shall be directed primarily toward providing expert knowledge in the basic functions of analysis and reporting as well as in consular, administrative, and linguistic skills relevant to the full range of future job assignments. Midcareer training shall be directed primarily toward development and perfection of management, functional, negotiating, and policy development skills to prepare the officers progressively for more senior levels of responsibility.

(c) Purpose; completion of training as condition for placement or appointment

At each stage the program of professional development should be designed to provide mem-

bers of the Service with the opportunity to acquire skills and knowledge relevant to clearly established professional standards of expected performance. Career candidates should satisfactorily complete candidate training prior to attainment of career status. Members of the Service should satisfactorily complete midcareer training before appointment to the Senior Foreign Service.

(d) University degree credit

In formulating programs under this section, the Secretary should establish a system to provide, insofar as possible, credit toward university degrees for successful completion of courses comparable to graduate-level, university courses.

(e) Institutions conducting training

Training provided under this section shall be conducted by the Department and by other governmental and nongovernmental institutions as the Secretary may consider appropriate.

(Pub. L. 96-465, title I, § 703, Oct. 17, 1980, 94 Stat. 2100; Pub. L. 100-204, title I, § 185(c)(1), Dec. 22, 1987, 101 Stat. 1366.)

AMENDMENTS

1987—Subsec. (f). Pub. L. 100-204 struck out subsec. (f) which related to report to Congress and President.

§ 4024. Functions of Secretary

(a) Nature and correlation of training and instruction; encouragement of complementary programs; employment of personnel; acquisition of property and equipment

In the exercise of functions under this subchapter, the Secretary of State may—

(1) provide for the general nature of the training and instruction to be furnished by the institution, including functional and geographic area specializations;

(2) correlate training and instruction furnished by the institution with courses given at other Government institutions and at private institutions which furnish training and instruction useful in the field of foreign affairs;

(3) encourage and foster programs complementary to those furnished by the institution, including through grants and other gratuitous assistance to nonprofit institutions cooperating in any of the programs under this subchapter;

(4)(A) employ in accordance with the civil service laws such personnel as may be necessary to carry out the provisions of this subchapter, and

(B) if and to the extent determined to be necessary by the Secretary of State, obtain without regard to the provisions of law governing appointments in the competitive service, by appointment or contract (subject to the availability of appropriations), the services of individuals to serve as language instructors, linguists, and other academic and training specialists (including, in the absence of suitably qualified United States citizens, qualified individuals who are not citizens of the United States); and

(5) acquire such real and personal property and equipment as may be necessary for the es-

tablishment, maintenance, and operation of the facilities necessary to carry out the provisions of this subchapter without regard to section 5 of title 41 and section 252 of title 41.

(b) Payment of salary, tuition, and other expenses; special monetary or other incentives

In furtherance of the objectives of this chapter, the Secretary may—

(1) pay the tuition and other expenses of members of the Service and employees of the Department who are assigned or detailed in accordance with law for special instruction or training, including orientation, language, and career development training;

(2) pay the salary (excluding premium pay or any special differential under section 3972 of this title) of members of the Service selected and assigned for training; and

(3) provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service.

(c) Orientation and training for family members

The Secretary may provide to family members of members of the Service or of employees of the Department or other agencies, in anticipation of their assignment abroad or while abroad—

(1) appropriate orientation and language training; and

(2) functional training for anticipated prospective employment under section 3951 of this title.

(Pub. L. 96-465, title I, § 704, Oct. 17, 1980, 94 Stat. 2100; Pub. L. 97-241, title I, § 125(1), Aug. 24, 1982, 96 Stat. 281; Pub. L. 103-236, title I, § 126(3), Apr. 30, 1994, 108 Stat. 394.)

REFERENCES IN TEXT

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 under section 3901 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(1) to (3). Pub. L. 103-236 substituted “institution” for “Institute”.

1982—Subsec. (b)(2). Pub. L. 97-241 substituted “section 3972 of this title” for “section 3971 of this title”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4021 of this title.

§ 4025. Training grants

(a) Family members attending approved programs of study; limitations

To facilitate training provided to members of families of Government employees under this subchapter, the Secretary may make grants (by advance payment or by reimbursement) to family members attending approved programs of study. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance.

(b) Compensation for individuals unable to participate in language training furnished by Government

If a member of the Service who is assigned abroad, or a member of his or her family, is un-

able to participate in language training furnished by the Government through the institution or otherwise, the Secretary may compensate that individual for all or part of the costs of language training, related to the assignment abroad, which is undertaken at a public or private institution.

(Pub. L. 96-465, title I, §705, Oct. 17, 1980, 94 Stat. 2101; Pub. L. 103-236, title I, §126(3), Apr. 30, 1994, 108 Stat. 394.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236 substituted “institution” for “Institute” after “through the”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1605; title 37 section 431.

§ 4026. Career counseling

(a) Facilitation of transition from Service

In order to facilitate their transition from the Service, the Secretary may provide (by contract or otherwise, subject to the availability of appropriations) professional career counseling, advice, and placement assistance to members of the Service, and to former members of the Service who were assigned to receive counseling and assistance under this subsection before they were separated from the Service, other than those separated for cause.

(b) Facilitation of employment of spouses of members; establishment of family liaison office

(1) The Secretary may facilitate the employment of spouses of members of the Service by—

(A) providing regular career counseling for such spouses;

(B) maintaining a centralized system for cataloging their skills and the various governmental and nongovernmental employment opportunities available to them; and

(C) otherwise assisting them in obtaining employment.

(2) The Secretary shall establish a family liaison office to carry out this subsection and such other functions as the Secretary may determine.

(Pub. L. 96-465, title I, §706, Oct. 17, 1980, 94 Stat. 2101.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 4027. Visiting Scholars Program

(a) Establishment of program

There is authorized to be established at the institution a program whereby selected scholars would participate fully in the educational and training activities of the institution. This program may be referred to as the “Visiting Scholars Program”.

(b) Selection and appointment of scholars

(1) Scholars participating in the Visiting Scholars Program shall be selected by a five-

member board described in subsection (c) of this section.

(2) Each visiting scholar shall serve a term of one year, except that such term may be extended for one additional one-year period.

(c) Establishment of selection board

The board referred to in subsection (b) of this section shall be composed of the Director of the institution, who shall serve as chairperson, and four other members appointed by the Secretary of State.

(Pub. L. 96-465, title I, §707, as added Pub. L. 101-246, title I, §144(a), Feb. 16, 1990, 104 Stat. 36; amended Pub. L. 103-236, title I, §126(3), Apr. 30, 1994, 108 Stat. 394.)

AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103-236 substituted “institution” for “Foreign Service Institute” and “Institute” in subsec. (a) and “institution” for “Foreign Service Institute” in subsec. (c).

SUBCHAPTER VIII—FOREIGN SERVICE RETIREMENT AND DISABILITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3951, 4084, 4153, 4156, 4159 of this title.

PART I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4044, 4054, 4055, 4071b, 4071c, 4071d, 4071j of this title; title 5 section 8402.

§ 4041. Administration

In accordance with such regulations as the President may prescribe, the Secretary of State shall administer the Foreign Service Retirement and Disability System (hereinafter in this part referred to as the “System”), originally established pursuant to section 18 of the Act of May 24, 1924 (43 Stat. 144).

(Pub. L. 96-465, title I, §801, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609.)

REFERENCES IN TEXT

Section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 21 of this title, was repealed by act Aug. 13, 1946, ch. 957, title XI, §1131(44), 60 Stat. 1038.

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Subchapter effective Feb. 15, 1981, except regarding the rights of former spouses to any annuity under section 4054(a) of this title or except to the extent provided in section 4159 of this title, regarding rights of former spouses to receive survivor annuities under this subchapter, see section 2403(a) and (e) of Pub. L. 96-465, set out as a note under section 3901 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section 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.

TERMINATION OF RETIREMENT BENEFITS FOR FOREIGN NATIONAL EMPLOYEES ENGAGING IN HOSTILE INTELLIGENCE ACTIVITIES

Pub. L. 100-204, title I, § 158, Dec. 22, 1987, 101 Stat. 1355, provided that:

“(a) **TERMINATION.**—The Secretary of State shall exercise the authorities available to him to ensure that the United States does not provide, directly or indirectly, any retirement benefits of any kind to any present or former foreign national employee of a United States diplomatic or consular post against whom the Secretary has convincing evidence that such employee has engaged in intelligence activities directed against the United States. To the extent practicable, the Secretary shall provide due process in implementing this section.

“(b) **WAIVER.**—The Secretary of State may waive the applicability of subsection (a) on a case-by-case basis with respect to an employee if he determines that it is vital to the national security of the United States to do so and he reports such waiver to the appropriate committees of the Congress.”

TEMPORARY RETIREMENT CONTRIBUTIONS AND PROCEDURES FOR CERTAIN PARTICIPANTS

For temporary provisions providing modified contributions and procedures for members of the Service participating in the Foreign Service Retirement and Disability System who are also required to pay employment taxes relating to benefits under title II of the Social Security Act, 42 U.S.C. 401 et seq., until they are covered by a new Government retirement system or Jan. 1, 1986, whichever is earlier, see title II of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees.

§ 4042. Maintenance of Fund

The Secretary of the Treasury shall maintain the special fund known as the Foreign Service Retirement and Disability Fund (hereinafter in this part referred to as the “Fund”), originally created by section 18 of the Act of May 24, 1924 (43 Stat. 144).

(Pub. L. 96-465, title I, § 802, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, § 402(a)(2), June 6, 1986, 100 Stat. 609.)

REFERENCES IN TEXT

Section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to in text, which was classified to section 21 of this title, was repealed by act Aug. 13, 1946, ch. 957, title XI, § 1131(44), 60 Stat. 1038.

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4043. Participants

(a) Career appointees or candidates; chiefs of mission

Except as provided in subsection (d) of this section, the following members of the Service

(hereinafter in this part referred to as “participants”) shall be entitled to the benefits of the System:

(1) Every member who is serving under a career appointment or as a career candidate under section 3946 of this title—

(A) in the Senior Foreign Service, or

(B) assigned to a salary class in the Foreign Service Schedule.

(2) Every chief of mission, who is not a participant under paragraph (1), who—

(A) has served as chief of mission for an aggregate period of 20 years or more, and

(B) has paid into the Fund a special contribution for each year of such service in accordance with section 4045 of this title.

(b) Executive branch appointees

Any otherwise eligible member of the Service who is appointed to a position in the executive branch by the President, by and with the advice and consent of the Senate, or by the President alone, shall not by virtue of the acceptance of such appointment cease to be eligible to participate in the System.

(c) Binational Center Grantees

In addition to the individuals who are participants in the System under subsection (a) of this section, any individual who was appointed as a Binational Center Grantee and who completed at least 5 years of satisfactory service as such a grantee or under any other appointment under the Foreign Service Act of 1946 may become a participant in the System, and shall receive credit for such service if an appropriate special contribution is made to the Fund in accordance with section 4045(d) or (f) of this title.

(d) Exclusion

An individual subject to the Foreign Service Pension System (described in part II of this subchapter) is not a participant in this System.

(Pub. L. 96-465, title I, § 803, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, §§ 402(a)(2), 414, June 6, 1986, 100 Stat. 609, 614.)

REFERENCES IN TEXT

The Foreign Service Act of 1946, referred to in subsection (c), 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.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-335, §§ 402(a)(2), 414(1), substituted “Except as provided in subsection (d) of this section, the” for “The” and “part” for “subchapter” in provisions preceding par. (1).

Subsec. (d). Pub. L. 99-335, § 414(2), added subsec. (d).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4071b, 4159 of this title.

§ 4044. Definitions

As used in this part, unless otherwise specified, the term—

(1) "annuitant" means any individual, including a former participant or survivor, who meets all requirements for an annuity from the Fund under this chapter or any other Act and who has filed a claim for such annuity;

(2) "child" means an individual—

(A) who—

(i) is an offspring or adopted child of the participant,

(ii) is a stepchild or recognized natural child of the participant and who received more than one-half support from the participant, or

(iii) lived with the participant, for whom a petition of adoption was filed by the participant, and who is adopted by the surviving spouse of the participant after the death of the participant;

(B) who is unmarried; and

(C) who—

(i) is under the age of 18 years,

(ii) is a student under the age of 22 years (for purposes of this clause, an individual whose 22d birthday occurs before July 1 or after August 31 of the calendar year in which that birthday occurs, and while the individual is a student, is deemed to become 22 years of age on the first July 1 which occurs after that birthday), or

(iii) is incapable of self-support because of a physical or mental disability which was incurred before the individual reached the age of 18 years;

(3) "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined by section 1301(3) of title 25;

(4) "court order" means any court decree of divorce or annulment, or any court order or court approved property settlement agreement incident to any court decree of divorce or annulment;

(5) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military and naval service;

(6) "former spouse" means a former wife or husband of a participant or former participant who was married to such participant for not less than 10 years during periods of service by that participant which are creditable under section 4056 of this title;

(7) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value, plus

(B) the cash balance of the Fund on the books of the Treasury;

(8) "lump-sum credit" means the compulsory and special contributions to the credit of a participant or former participant in the Fund plus interest on such contributions at 4 percent a year compounded annually to December 31, 1976, and after such date, for a par-

ticipant who separates from the Service after completing at least 1 year of civilian service and before completing 5 years of such service, at the rate of 3 percent per year to the date of separation (except that interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity);

(9) "military and naval service" means honorable active service—

(A) in the Armed Forces of the United States,

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960, or

(C) as a commissioned officer of the National Oceanic and Atmospheric Administration, or a predecessor organization, after June 30, 1961,

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(10) "pro rata share", in the case of any former spouse of any participant or former participant, means a percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the creditable service (creditable under part I or II of this subchapter) of that participant is of (B) the total number of years of such creditable service (creditable under part I or II of this subchapter);

(11) "spousal agreement" means any written agreement between—

(A) a participant or former participant; and

(B) his or her spouse or former spouse;

(12) "student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution (for purposes of this paragraph, a child who is a student shall not be deemed to have ceased to be a student during any period between school years, semesters, or terms if the period of nonattendance does not exceed 5 calendar months and if the child shows to the satisfaction of the Secretary of State that he or she has a bona fide intention of continuing to pursue his or her course of study during the school year, semester, or term immediately following such period);

(13) "surviving spouse" means the surviving wife or husband of a participant or annuitant who was married to the participant or annuitant for at least 9 months immediately preceding his or her death or is a parent of a child born of the marriage, except that the requirement for at least 9 months of marriage shall be deemed satisfied in any case in which the participant or annuitant dies within the applicable 9-month period, if—

(A) the death of such participant or annuitant was accidental; or

(B) the surviving spouse of such individual had been previously married to the individ-

ual and subsequently divorced and the aggregate time married is at least 9 months; and

(14) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund under this part over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 4061 of this title, plus

(C) the Fund balance as of the date the unfunded liability is determined.

(Pub. L. 96-465, title I, § 804, Oct. 17, 1980, 94 Stat. 2102; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 403, 404(a), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, § 211, Jan. 8, 1988, 101 Stat. 1773.)

REFERENCES IN TEXT

This chapter, referred to in par. (1), 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.

AMENDMENTS

1988—Par. (13). Pub. L. 100-238, § 211(1), which directed the amendment of par. (13) by striking out “, in the case of death in service or marriage after retirement,” was executed by striking out “, in the case of a death in service or marriage after retirement,” after “annuitant who”, as the probable intent of Congress.

Pub. L. 100-238, § 211(2), (3), substituted “9 months” for “one year” and inserted before semicolon at end “, except that the requirement for at least 9 months of marriage shall be deemed satisfied in any case in which the participant or annuitant dies within the applicable 9-month period, if—

“(A) the death of such participant or annuitant was accidental; or

“(B) the surviving spouse of such individual had been previously married to the individual and subsequently divorced and the aggregate time married is at least 9 months”.

1986—Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter” in provision preceding par. (1).

Par. (3). Pub. L. 99-335, § 403, substituted “, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court as defined in section 1301(3) of title 25” for “or of the District of Columbia”.

Par. (10). Pub. L. 99-335, § 404(a), inserted “(creditable under part I or II of this subchapter)” after “creditable service” in two places.

Par. (14). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund” in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4055, 4057, 4060, 4071a, 4159 of this title.

§ 4045. Contributions to Fund

(a) Rates and sources; deposits in Fund

(1) Except as provided in subsection (h) of this section, 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

(2) Notwithstanding the percentage limitation contained in paragraph (1) of this subsection—

(A) the Department shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed in the same manner as that of a law enforcement officer pursuant to section 8339(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8334(a)(1) of title 5. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amount deducted and withheld from basic salary and amounts contributed by the Department.

(B) The Department shall deduct and withhold from the basic pay of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who is qualified to have his annuity computed pursuant to section 8415(d) of title 5, an amount equal to that to be withheld from a law enforcement officer pursuant to section 8422(a)(2)(B) of title 5. The amounts so deducted shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and amounts contributed by the Department.

(b) Consent to deduction; discharge and acquittance of claims and demands

Each participant shall be deemed to consent and agree to such deductions from basic salary. Payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which the participant shall be entitled under this chapter, notwithstanding any law, rule, or regulation affecting the salary of the individual.

(c) Transfer of contributions from other Government retirement fund

(1) If a member of the Service who is under another retirement system for Government employees becomes a participant in the System by direct transfer, the total contributions and deposits of that member that would otherwise be refundable on separation (except voluntary contributions), including interest thereon, shall be transferred to the Fund effective as of the date such member becomes a participant in the System. Each such member shall be deemed to consent to the transfer of such funds, and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered by such member prior to becoming a participant in the System.

(2) A member of the Service whose contributions are transferred to the Fund pursuant to paragraph (1) shall not be required to make additional contributions for periods of service for which required contributions were made to the other Government retirement fund; nor shall any refund be made to any such member on account of contributions made during any period to the other Government retirement fund at a higher rate than that fixed by subsection (d) of this section.

(d) Contribution for civilian service; creditability of interim service

(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited,

may make a special contribution to the Fund. Special contributions for purposes of subparagraph (A) shall equal the following percentages of basic salary received for such service:

Time of service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant.

(2) Notwithstanding paragraph (1), a special contribution for prior nondeposit service as a National Guard technician which would be creditable toward retirement under subchapter III of chapter 83 of title 5, and for which a special contribution has not been made, shall be equal to the special contribution for such service computed in accordance with the schedule in paragraph (1) multiplied by the percentage of such service that is creditable under section 4056 of this title.

(3) Special contributions under this subsection shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution

or commencing date of annuity, whichever is earlier. ¹Interest shall be compounded at the annual rate of 4 percent to December 31, 1976, and 3 percent thereafter. No interest shall be charged on special contributions for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments (including by allotment of pay) when authorized by the Secretary of State.

(4) Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of a participant described in section 4071b(c) of this title shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent.

(5) Notwithstanding paragraph (1), a special contribution for past service as a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development which would have been creditable toward retirement under either section 8336(c) or 8412(d) of title 5, and for which a special contribution has not been made shall be equal to the difference between the amount actually contributed pursuant to either this section or section 4071e of this title and the amount that should have been contributed pursuant to either section 8334 or 8422 of title 5.

(e) Contribution for military or naval service

(1) Each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this part is based may pay to the Secretary a special contribution equal to 7 percent of the amount of the basic pay paid under section 204 of title 37, to the participant for each period of military or naval service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or if the Secretary determines sufficient evidence has not been so provided to adequately determine basic pay for military or naval service, such payment shall be based upon estimates of such basic pay provided to the Department under paragraph (4).

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) October 17, 1983, or

(B) the date on which the participant making the deposit first became a participant in a Federal staff retirement system for civilian employees,—

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (d) of this section.

(3) Any payment received by the Secretary under this section shall be remitted to the Fund.

¹ See Amendment of Section note below.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Secretary as the Secretary may determine to be necessary for the administration of this subsection.

(f) Exemption for certain military or naval service

Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under subsection (e) of this section and section 4056(a) of this title, except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 4056 of this title for periods of internment during World War II.

(g) Time of payment; offset against initial annuity accruals

A participant or survivor may make a special contribution at any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

(h) Computation of contributions for participants with certain creditable civilian service

Effective with respect to pay periods beginning after December 31, 1986, in administering this section with respect to a participant described in section 4071b(c) of this title whose service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, contributions to the Fund and interest thereon shall be computed as if section 8334(k) of title 5 were applicable.

(Pub. L. 96-465, title I, § 805, Oct. 17, 1980, 94 Stat. 2104; Ex. Ord. No. 12446, § 4(a), Oct. 17, 1983, 48 F.R. 48444; Pub. L. 99-335, title IV, §§ 402(a)(2), 405, June 6, 1986, 100 Stat. 609, 610; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-238, title II, § 212, Jan. 8, 1988, 101 Stat. 1773; Pub. L. 102-499, § 4(a), (b), Oct. 24, 1992, 106 Stat. 3265.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the second sentence of subsec. (d)(3) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

REFERENCES IN TEXT

Sections 206(b)(3) and 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment

Act of 1983, referred to in subsec. (d)(4), are set out as a note under section 8331 of Title 5, Government Organization and Employees.

The Social Security Act, referred to in subsec. (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-499, § 4(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(5). Pub. L. 102-499, § 4(b), added par. (5).

1988—Subsec. (d)(1). Pub. L. 100-238, in concluding provisions, substituted "Fund. Special contributions for purposes of subparagraph (A) shall equal" for "Fund equal to" and inserted "Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant."

1986—Subsec. (a). Pub. L. 99-335, § 405(a)(1), inserted "Except as provided in subsection (h) of this section," before "7 percent".

Subsec. (d)(4). Pub. L. 99-335, § 405(b), added par. (4).

Subsec. (e)(1). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

Subsec. (h). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Pub. L. 99-335, § 405(a)(2), added subsec. (h).

1983—Subsecs. (e) to (g). Ex. Ord. No. 12446 added subsecs. (e) and (f), struck out former subsec. (e), and redesignated former subsec. (f) as (g). Prior to amendment, subsec. (e) read as follows: "Contributions shall not be required for any period of military and naval service or for any period for which credit is allowed to individuals of Japanese ancestry under section 4056 of this title for periods of internment during World War II."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4043, 4046, 4051, 4055, 4056, 4061, 4062, 4063, 4071c of this title.

§ 4046. Computation of annuities

(a)¹ Measurements; reduction for special contributions; Foreign Service investigator/in-spectors

(1) The annuity of a participant shall be equal to 2 percent of his or her average basic salary for the highest 3 consecutive years of service multiplied by the number of years, not exceeding 35, of service credit obtained in accordance with sections 4056 and 4057 of this title, except that the highest 3 years of service shall be used in computing the annuity of any participant

¹ See Amendment of Section note below.

who serves an assignment in a position, as described in section 3942(b) of this title, to which the participant was appointed by the President and whose continuity of service in that position is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 percent of any special contribution described in section 4045(d) of this title which is due for service for which no contributions were made and which remains unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

(2) Notwithstanding the percentage limitation contained in paragraph (1) of this subsection—

(A) utilizing the definition of average pay contained in section 8331(4) of title 5, the annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development, who was appointed to a law enforcement position, as defined in section 8331(20) of title 5, prior to January 1, 1984, and would have been eligible to retire pursuant to section 8336(c) of that title, after attaining 50 years of age and completing 20 years as a law enforcement officer had the employee remained in the civil service shall be computed in the same manner as that of a law enforcement officer pursuant to section 8339(d) of that title, except as provided in paragraph (3); and

(B) the annuity of a Foreign Service criminal investigator/inspector of such office, who was appointed to a law enforcement position as defined in section 8401(17) of that title on or after January 1, 1984, and who would have been eligible to retire pursuant to section 8412(d) of that title, after attaining 50 years of age and completing 20 years of service as such a law enforcement officer, had the employee remained in the civil service, shall be computed in the same manner as that of a law enforcement officer pursuant to section 8415(d) of that title.

(3) The annuity of a Foreign Service investigator/inspector of the Office of the Inspector General, Agency for International Development, appointed to a law enforcement position prior to January 1, 1984, who exercised election rights under section 4071i of this title, shall be computed as follows: for the period prior to election the annuity shall be computed in accordance with section 8339(d) of title 5; for the period following election the annuity shall be computed in accordance with section 8415(d) of that title.

(4) All service in a law enforcement position, as defined in section 8331(20) or 8401(17) of that title, as applicable, in any agency or combination of agencies shall be included in the computation of time for purposes of this paragraph.

(5) The annuity of a Foreign Service criminal investigator/inspector of the Office of the Inspector General of the Agency for International Development who has not completed 20 years of service as a law enforcement officer, as defined in section 8331(20) or 8401(17) of that title, shall be computed in accordance with paragraph (1).

(6) For purposes of paragraphs (2), (3), and (4) of this subsection, the term "basic pay" includes pay as provided in accordance with section 3972 of this title or section 5545(c)(2) of title 5.

(b) Married participants

(1)(A) Except to the extent provided otherwise under a written election under subparagraph (B) or (C), if at the time of retirement a participant or former participant is married (or has a former spouse who has not remarried before attaining age 60), the participant shall receive a reduced annuity and provide a survivor annuity for his or her spouse under this subsection or former spouse under section 4054(b) of this title, or a combination of such annuities, as the case may be.

(B) At the time of retirement, a married participant or former participant and his or her spouse may jointly elect in writing to waive a survivor annuity for that spouse under this section (or under section 4054(b) of this title if the spouse later qualifies as a former spouse under section 4044(6) of this title), or to reduce such survivor annuity under this section (or section 4054(b) of this title) by designating a portion of the annuity of the participant as the base for the survivor benefit. In the event the marriage is dissolved following an election for such a reduced annuity and the spouse qualifies as a former spouse, the base used in calculating any annuity of the former spouse under section 4054(b) of this title may not exceed the portion of the participant's annuity designated under this subparagraph.

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect by spousal agreement under section 4060(b)(1) of this title to waive a survivor annuity under section 4054(b) of this title for that former spouse if the election is made (i) before the end of the 24-month period after the divorce or annulment involving that former spouse becomes final or (ii) at the time of retirement, whichever occurs first.

(D) The Secretary of State may prescribe regulations under which a participant or former participant may make an election under subparagraph (B) or (C) without the participant's spouse or former spouse if the participant establishes to the satisfaction of the Secretary of State that the participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse or former spouse.

(2) The annuity of a participant or former participant providing a survivor benefit under this section (or section 4054(b) of this title), excluding any portion of the annuity not designated or committed as a base for any survivor annuity, shall be reduced by 2½ percent of the first \$3,600 plus 10 percent of any amount over \$3,600. The reduction under this paragraph shall be calculated before any reduction under section 4054(a)(5) of this title.

(3)(A) If a former participant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 percent of the full amount of the participant's annuity computed under subsection (a) of

this section, or 55 percent of any lesser amount elected as the base for the survivor benefit under paragraph (1)(B).

(B) Notwithstanding subparagraph (A), the amount of the annuity calculated under subparagraph (A) for a surviving spouse in any case in which there is also a surviving former spouse of the participant who qualifies for an annuity under section 4054(b) of this title may not exceed 55 percent of the portion (if any) of the base for survivor benefits which remains available under section 4054(b)(4)(B) of this title.

(C) An annuity payable from the Fund under this part to a surviving spouse under this paragraph shall commence on the day after the participant dies and shall terminate on the last day of the month before the surviving spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(c) Surviving children

(1) If an annuitant who was a participant dies and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

- (A) \$900, or
- (B) \$2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

- (A) \$1,080, or
- (B) \$3,240 divided by the number of children.

(3) The amounts specified in this subsection are subject to—

- (A) cost-of-living adjustments as specified under section 4066(c)(3) of this title, and
- (B) the minimum specified in subsection (1)(2) of this section.

(d) Recomputation for remaining children

On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the participant. If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

(e) Payment period for child

The annuity payable to a child under subsection (c) or (d) of this section shall begin on the day after the participant dies, or if the child is not then qualified, on the first day of the month in which the child becomes eligible. The annuity of a child shall terminate on the last day of the month which precedes the month in which eligibility ceases.

(f) Unmarried participants

At the time of retirement an unmarried participant who does not have a former spouse for whose benefit a reduction is made under subsection (b) of this section may elect to receive a reduced annuity and to provide for an annuity equal to 55 percent of the reduced annuity payable after his or her death to a beneficiary whose name is designated in writing to the Secretary of State. The annuity payable to a participant making such election shall be reduced by 10 percent of an annuity computed under subsection (a) of this section and by 5 percent of an annuity so computed for each full 5 years the designated beneficiary is younger than the retiring participant, but such total reduction shall not exceed 40 percent. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant has satisfactorily passed a physical examination as prescribed by the Secretary of State. The annuity payable to a beneficiary under this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the death of the beneficiary. An annuity which is reduced under this subsection (or any similar prior provision of law) shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(g) Marriage after retirement

A participant or former participant who was unmarried at retirement and who later marries may, within one year after such marriage, irrevocably elect in writing to receive a reduced annuity and to provide a survivor annuity for the spouse (if such spouse qualifies as a surviving spouse under section 4044(13) of this title). Receipt by the Secretary of State of notice of an election under this subsection voids prospectively any election previously made under subsection (f) of this section. The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined in accordance with subsections (b)(2) and (3) of this section. The annuity reduction or recomputation shall be effective the first day of the month beginning one year after the date of marriage.

(h) Election of benefits

A surviving spouse or surviving former spouse of any participant or former participant shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund under this part unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees on the basis of a marriage to someone other than that participant.

(i) Reversion to retired status

(1) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 4063 of this title shall, unless the annuitant and his or her spouse jointly elect in writing to the contrary at that time, have the supplemental annuity reduced by 10

percent to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 percent of the supplemental annuity of the annuitant and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or whom the annuitant subsequently married.

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 4063 of this title in any case in which an annuitant has a former spouse who was married to the participant at any time during a period of recall service and who qualifies for an annuity under this part.

(j) Recomputation upon dissolution of marriage; election after remarriage

An annuity which is reduced under this section or any similar prior provision of law to provide a survivor benefit for a spouse shall, if the marriage of the participant to such spouse is dissolved, be recomputed and paid for each full month during which an annuitant is not married (or is remarried if there is no election in effect under the following sentence) as if the annuity had not been so reduced, subject to any reduction required to provide a survivor benefit under section 4054(b) or (c) of this title. Upon remarriage the retired participant may irrevocably elect, by means of a signed writing received by the Secretary within one year after such remarriage, to receive during such marriage a reduction in annuity for the purpose of allowing an annuity for the new spouse of the annuitant in the event such spouse survives the annuitant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage (unless such reduction is adjusted under section 4054(b)(5) of this title), and shall be effective the first day of the first month beginning one year after the date of remarriage. A survivor annuity elected under this subsection shall be treated in all respects as a survivor annuity under subsection (b) of this section.

(k) Informing of rights by Secretary

The Secretary of State shall, on an annual basis—

(1) inform each participant of his or her right of election under subsections (g) and (j) of this section; and

(2) to the maximum extent practicable, inform spouses or former spouses of participants or former participants of their rights under this section and section 4054 of this title.

(l) Repealed. Pub. L. 100-238, title II, § 217(c)(1), Jan. 8, 1988, 101 Stat. 1775

(m) Offset of Social Security benefits

The retirement, disability, or survivor annuity payable to any person based on the service of an individual subject to section 4045(h) of this title beginning with the first day of the month for which such person first becomes—

(1) eligible for an annuity under this part based on the service of such individual, and

(2) entitled, or would, upon proper application, be entitled to old age, disability, or sur-

vivor benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], based on the service of such individual under this part,

shall be computed as if section 8349 of title 5 were applicable.

(n) 18-month period to elect survivor annuity

(1)(A) A participant—

(i) who, at the time of retirement, is married; and

(ii) who elects at such time (in accordance with subsection (b) of this section) to waive a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a reduction under subsection (b) of this section made in the annuity of the participant (or in such portion thereof as the participant may designate) in order to provide a survivor annuity for the spouse of such participant.

(B) A participant—

(i) who, at the time of retirement, is married, and

(ii) who at such time designates (in accordance with subsection (b) of this section) that a limited portion of the annuity of such participant is to be used as the base for a survivor annuity,

may, during the 18-month period beginning on the date of the retirement of such participant, elect to have a greater portion of the annuity of such participant so used.

(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the former participant commences and the date of the election) between the amount paid to such former participant under this part and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing the later election; and

(ii) interest on the additional cost determined under clause (i)(I) of this subparagraph computed using the interest rate specified or determined under section 4045(d)(3) of this title for the calendar year in which the amount to be deposited is determined.

(3) An election by a participant under this subsection voids prospectively any election previously made in the case of such participant under subsection (b) of this section.

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the participant whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the participant involved elected such annuity at the time of retiring.

(Pub. L. 96-465, title I, § 806, Oct. 17, 1980, 94 Stat. 2106; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 406, 407, June 6, 1986, 100 Stat. 609-611; Pub. L. 99-556, title IV, § 402, Oct. 27, 1986, 100 Stat. 3136; Pub. L. 100-238, title II, §§ 213, 214(a), 217(c)(1), Jan. 8, 1988, 101 Stat. 1774, 1775; Pub. L. 101-513, title V, § 587(a), Nov. 5, 1990, 104 Stat. 2055; Pub. L. 102-499, § 4(d), Oct. 24, 1992, 106 Stat. 3266.)

AMENDMENT OF SECTION

Section 1(b) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsection (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under section 4056(a) of this title any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (m)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102-499 substituted “section 5545(c)(2)” for “section 5545(a)(2)”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added pars. (2) to (6).

1988—Subsec. (b)(1)(C). Pub. L. 100-238, § 213(a), substituted “24-month” for “12-month”.

Subsec. (c)(1), (2). Pub. L. 100-238, § 214(a)(1), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant” after “survived by a spouse”.

Subsec. (d). Pub. L. 100-238, § 214(a)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: “If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant.”

Subsec. (i)(2). Pub. L. 100-238, § 213(b), substituted “this part” for “section 4054(b) of this title”.

Subsec. (l). Pub. L. 100-238, § 217(c)(1), struck out subsec. (l) which set minimum rates for annuities paid under this part.

1986—Subsecs. (b)(3)(C), (h). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (l)(1), (2). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (m). Pub. L. 99-556, § 402, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: “The annuity or survivor annuity payable to any individual subject to section 4045(h) of this title beginning with the first month for which such individual both—

“(1) attains the minimum age for old-age benefits under title II of the Social Security Act, and

“(2) first becomes entitled, or would upon proper application become entitled, for disability or survivor benefits under title II of the Social Security Act based on the service of any individual under this part, shall be computed as if section 8349 of title 5 were applicable.”

Pub. L. 99-335, § 406, added subsec. (m).

Subsec. (n). Pub. L. 99-335, § 407, added subsec. (n).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 408 of title IV of Pub. L. 99-556 provided that: “This title and the amendments made by this title [enacting section 4069 of this title and amending this section and sections 4064, 4071c, 4071d, and 4071j of this title] shall take effect on January 1, 1987. The amendment made by section 403 [amending section 4064 of this title] shall apply to any individual in a reemployed status on or after January 1, 1987.”

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

Section 417 of Pub. L. 99-335 provided that:

“(a) REGULATIONS.—Notwithstanding section 702 of this Act [5 U.S.C. 8401 note], the authority of the Secretary of State to issue regulations under subchapter II of title 8 [probably means subchapter II of chapter 8 of title I] of the Foreign Service Act of 1980 [part II of this subchapter] shall take effect on the date of enactment of this Act [June 6, 1986].

“(b) 18-MONTH PERIOD TO ELECT SURVIVOR ANNUITY.—(1) Notwithstanding section 702 of this Act, the amendment made by section 407 [enacting subsec. (n) of this section] shall take effect 3 months after the date of enactment of this Act.

“(2)(A) Subject to subparagraph (B), the amendment made by section 407 shall apply with respect to participants and former participants who retire before, on, or after such amendment first takes effect.

“(B) For the purpose of applying the provisions of paragraph (1) of section 806(n) of the Foreign Service Act of 1980 (as added by section 407) to former participants who retire before the date on which the amendment first takes effect—

“(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

“(ii) the amount referred to in paragraph (2) of such section 806(n) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

“(3) For purposes of this subsection, the term ‘participant’ has the meaning given that term in section 803 of the Foreign Service Act of 1980 (22 U.S.C. 4043).”

ELECTION TO PROVIDE SURVIVOR ANNUITY FOR CERTAIN SPOUSES ACQUIRED BEFORE EFFECTIVE DATE OF FOREIGN SERVICE ACT OF 1980

Section 203 of title II of Pub. L. 100-238 provided that:

“(a) ELECTION.—A former participant who married his or her current spouse before the effective date of the

Foreign Service Act of 1980 [see Effective Date note set out under section 3901 of this title] and who married such spouse after retirement under the Foreign Service Retirement and Disability System and who was unable to provide a survivor annuity for such spouse because—

“(1) the participant was married at the time of retirement and elected not to provide a survivor annuity for that spouse at the time of retirement, or

“(2) subject to subsection (e), the participant failed to notify the Secretary of State of the participant’s post-retirement marriage within one year after the marriage,

may make the election described in subsection (b).

“(b) ELECTION DESCRIBED.—

“(1) The election referred to in subsection (a) is an election in writing—

“(A) to provide for a survivor annuity for such spouse under section 806(g) of the Foreign Service Act of 1980 (22 U.S.C. 4046(g));

“(B) to have his or her annuity reduced under section 806(b)(2) of such Act; and

“(C) to deposit in the Foreign Service Retirement and Disability Fund an amount determined by the Secretary of State, as nearly as may be administratively feasible, to reflect the amount by which such participant’s annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest computed under paragraph (2).

“(2) For the purposes of paragraph (1), the annual rate of interest shall be 6 percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced.

“(c) OFFSET.—If the participant does not make the deposit referred to in subsection (b)(1)(C), the Secretary of State shall collect such amount by offset against such participant’s annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such participant. Such participant is deemed to consent to such offset.

“(d) NOTICE.—The Secretary of State shall provide for notice to the general public of the right to make an election under this section.

“(e) PROOF OF ATTEMPTED ELECTION.—In any case in which subsection (a)(2) applies, the retired employee or Member shall provide the Secretary of State with such documentation as the Secretary of State shall decide is appropriate, to show that such participant attempted to elect a reduced annuity with survivor benefit for his or her current spouse and that such election was rejected by the Secretary of State because it was untimely filed.

“(f) DEPOSIT.—A deposit required by this subsection may be made by the surviving spouse of the participant.

“(g) LIMITATION.—The election authorized in subsection (a) may only be made within one year after the date of enactment of this title [Jan. 8, 1988] in accordance with procedures prescribed by the Secretary of State.

“(h) DEFINITIONS.—For the purposes of this section, the terms ‘participant’ and ‘surviving spouse’ have the same meaning given such terms in subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4010, 4047, 4048, 4049, 4050, 4051, 4052, 4053, 4054, 4055, 4056, 4063, 4066, 4069a, 4069a-1, 4069b, 4069b-1, 4159 of this title.

§ 4047. Payment of annuity

(a) Commencement of annuity

(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

(A) separation from the Service occurs; or

(B) pay ceases and the service and age requirements for entitlement to annuity are met.

(2) The annuity of—

(A) a participant who is retired and is eligible for benefits under section 4009(a) of this title or a participant who is retired under section 4053 of this title or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency,

(B) a participant retiring under section 4048 of this title due to a disability, and

(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met.

(b) Survivor’s annuity; application; proof of eligibility; payment to estate

The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application for such annuity, supported by such proof of eligibility as the Secretary of State may require. If such application or proof of eligibility is not submitted during the lifetime of an otherwise eligible individual, no annuity shall be due or payable to his or her estate.

(c) Waiver

An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary of State. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(d) Recovery of overpayment

Recovery of overpayments under this part may not be made from an individual when, in the judgment of the Secretary of State, the individual is without fault and recovery would be against equity and good conscience or administratively infeasible.

(e) Alternate forms of annuities

(1) The Secretary of State shall prescribe regulations under which any participant who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this part (other than under section 4048 of this title), elect annuity benefits under this section instead of any other benefits under this part (including survivor benefits) based on the service of the participant.

(2) Subject to paragraph (3), the Secretary of State shall by regulation provide for such alternative forms of annuities as the Secretary considers appropriate, except that among the alternatives offered shall be—

(A) an alternative which provides for—

(i) payment of the lump-sum credit (excluding interest) to the participant; and

(ii) payment of an annuity to the participant for life; and

(B) in the case of a participant who is married at the time of retirement, an alternative which provides for—

- (i) payment of the lump-sum credit (excluding interest) to the participant; and
 (ii) payment of an annuity to the participant for life, with a survivor annuity payable for the life of a surviving spouse.

(3) Each alternative provided for under paragraph (2) shall, to the extent practicable, be designed such that the total value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the value of the annuity which would otherwise be provided the participant under this part, as computed under section 4046(a) of this title.

(4) A participant who, at the time of retiring under this part—

(A) is married, shall be ineligible to make an election under this section unless a waiver is made under section 4046(b)(1)(B) of this title; or

(B) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under this part (based on the service of the participant) unless a waiver has been made under section 4046(b)(1)(C) of this title.

(5) A participant who is married at the time of retiring under this part and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 4046(n) of this title, subject to the deposit requirement thereunder.

(6) Notwithstanding any other provision of law, any lump-sum credit provided pursuant to an election under this subsection shall not preclude an individual from receiving any other benefits under this subsection.

(Pub. L. 96-465, title I, § 807, Oct. 17, 1980, 94 Stat. 2109; Ex. Ord. No. 12446, § 3(a), Oct. 17, 1983, 48 F.R. 48443; Pub. L. 99-335, title IV, §§ 402(a)(2), 408, June 6, 1986, 100 Stat. 609, 612; Pub. L. 103-66, title XI, § 11002(b), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (e)(1). Pub. L. 103-66 substituted “any participant who has a life-threatening affliction or other critical medical condition” for “a participant”.

1986—Subsec. (d). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (e). Pub. L. 99-335, § 408, added subsec. (e).

1983—Subsec. (a). Ex. Ord. No. 12446 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for an annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under this chapter shall become effective on the day he or she attains age 60.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103-66, set out as a note under section 8343a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective 30 days after Oct. 17, 1983, see section 3(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4048. Retirement for disability or incapacity

(a) Causes; service credit

Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall, upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 4046 of this title. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age 60.

However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of title 5) or Department of Veterans Affairs pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this part excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5 or the Department of Veterans Affairs pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this part in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this part.

(b) Physical examination; reinstatement or reappointment upon recovery; fees and expenses; duration and suspension of annuity

Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has attained age 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was

servicing at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

(c) Benefits upon discontinuance of annuity

If a recovered annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he or she shall be considered to have been separated within the meaning of section 4050 of this title as of the date of retirement for disability or incapacity and shall, after the discontinuance of the annuity, be entitled to the benefits of that section or of section 4055 of this title, except that he or she may elect voluntary retirement if eligible under section 4051 of this title.

(d) Election of benefits; concurrent benefits allowed

No participant shall be entitled to receive an annuity under this part and compensation for injury or disability to himself or herself under subchapter I of chapter 81 of title 5, covering the same period of time, except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5. This subsection shall not bar the right of any claimant to the greater benefit conferred by either this part or subchapter I of such chapter 8¹ for any part of the same period of time. Neither this subsection nor any provision of subchapter I of such chapter 8¹ shall be construed to deny the right of any participant to receive an annuity under this part and to receive concurrently any payment under subchapter I of such chapter 8¹ by reason of the death of any other individual.

(e) Lump sum disability payments

Notwithstanding any other law, the right of any individual entitled to an annuity under this part shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such individual receives such annuity, he or she shall—

(1) refund to the Department of Labor the amount representing such commuted payments for such extended period, or

(2) authorize the deduction of such amount from the annuity payable under this part, which amount shall be transmitted to the Department of Labor for reimbursement to such Fund.

Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever the Secretary of Labor finds that the financial circumstances of the annuitant warrant deferred refunding.

(f) Time of filing application; waiver

A claim may be allowed under this section only if the application is filed with the Secretary of State before the participant is separated from the Service or within one year thereafter. This time limitation may be waived by the Secretary of State for a participant who at the date of separation from the Service or within one year thereafter is mentally incompetent, if the application is filed with the Secretary of State within one year from the date of restoration of the participant to competency or the appointment of a fiduciary, whichever is earlier.

(Pub. L. 96-465, title I, §808, Oct. 17, 1980, 94 Stat. 2110; Ex. Ord. No. 12289, §2, Feb. 14, 1981, 46 F.R. 12693; Pub. L. 99-335, title IV, §402(a)(2), (b), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §215(a), Jan. 8, 1988, 101 Stat. 1774; Pub. L. 102-54, §13(h)(2), June 13, 1991, 105 Stat. 275.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-54 substituted "Department of Veterans Affairs" for "Veterans' Administration" in two places in second par.

1988—Subsecs. (a), (b). Pub. L. 100-238 substituted "60" for "65".

1986—Subsec. (a). Pub. L. 99-335, §402(a)(2), substituted "part" for "subchapter" in three places.

Subsec. (d). Pub. L. 99-335, §402(b)(1), substituted "subchapter I of such chapter 8" for "such subchapter" in three places and "part" for "chapter" in three places.

Subsec. (e). Pub. L. 99-335, §402(b)(2), substituted "part" for "chapter" in two places.

1981—Subsec. (a). Ex. Ord. No. 12289 added second par. relating to computation of annuity for participant retiring under this section and receiving retired or retiree pay.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Ex. Ord. No. 12289 effective Feb. 15, 1981, see section 3 of Ex. Ord. No. 12289, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4047, 4056, 4071h of this title; title 26 section 104.

¹ So in original. Probably should be chapter "81".

§ 4049. Death in service**(a) Lump-sum credit**

If a participant dies and no claim for annuity is payable under this part, the lump-sum credit shall be paid in accordance with section 4055 of this title.

(b) Surviving spouse

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or former spouse qualifying for an annuity under section 4054(b) of this title, such surviving spouse shall be entitled to an annuity equal to 55 percent of the annuity computed in accordance with subsections (e) and (g) of this section and section 4046(a) of this title and any surviving former spouse shall be entitled to an annuity under section 4054(b) of this title as if the participant died after being entitled to an annuity under this part. If the participant had less than 3 years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

(c) Surviving spouse or former spouse, and children

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 4046 of this title.

(d) Surviving children

If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 4046 of this title.

(e) Service credit; presumption of qualification

If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) of this section shall be computed in accordance with section 4046 of this title on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of death.

(f) Recall service

If an annuitant entitled to a reduced annuity dies in service after being recalled under section

3948 of this title and is survived by a spouse or former spouse entitled to a survivor annuity based on the service of such annuitant, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the annuity of the deceased had been resumed in accordance with section 4063 of this title. If such death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse or surviving former spouse who was married to the participant at any time during a period of recall service shall be entitled to elect, in addition to any other benefits and in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 4046(i) of this title as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse or such a surviving former spouse may elect, in lieu of any other survivor benefit under this subchapter, to have the rights of the annuitant redetermined and to receive a survivor annuity computed under subsection (b) of this section on the basis of the total service of the annuitant.

(g) Limitation on surviving spouse's annuity

Notwithstanding subsection (b) of this section, if the participant or former participant had a former spouse qualifying for an annuity under section 4054(b) of this title, the annuity of the spouse under this section shall be subject to the limitation of section 4046(b)(3)(B) of this title.

(h) Commencement, termination, and resumption of annuities

Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b)(4), (e), or (h) of section 4046 of this title, as appropriate.

(Pub. L. 96-465, title I, §809, Oct. 17, 1980, 94 Stat. 2111; Pub. L. 99-335, title IV, §402(a)(2), (c), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §§214(b), 215(b), Jan. 8, 1988, 101 Stat. 1774.)

AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-238, §214(b), inserted “or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant,” after “spouse”.

Subsec. (e). Pub. L. 100-238, §215(b), substituted “60” for “65”.

1986—Subsec. (a). Pub. L. 99-335, §402(c), substituted “part” for “chapter”.

Subsec. (b). Pub. L. 99-335, §402(a)(2), substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4056, 4066 of this title.

§ 4050. Discontinued service retirement

Any participant who voluntarily separates from the Service after obtaining at least 5 years of service credit toward retirement under the System (excluding military and naval service) may upon separation from the Service or at any time prior to becoming eligible for an annuity elect to have his or her contributions to the Fund returned in accordance with section 4055 of this title, or to leave his or her contributions in the Fund and receive an annuity, computed under section 4046 of this title, commencing at age 60.

(Pub. L. 96-465, title I, § 810, Oct. 17, 1980, 94 Stat. 2112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4048 of this title.

§ 4051. Voluntary retirement

Any participant who is at least 50 years of age and has 20 years of creditable service, including at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 4046 of this title. The Secretary shall withhold consent for retirement under this section by any participant who has not been a member of the Service for 5 years. Any participant who voluntarily separates from the Service before completing 5 years in the System and who, on the date of separation, would be eligible for an annuity, based on a voluntary separation, under section 8336 or 8338 of title 5, if the participant had been covered under the Civil Service Retirement System rather than subject to this subchapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, if all contributions transferred to the Fund under section 4045(c)(1) of this title, as well as all contributions withheld from the participant's pay or contributed by the employer, and deposited into the Fund during the period he or she was subject to this subchapter, including interest on these amounts, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service.

(Pub. L. 96-465, title I, § 811, Oct. 17, 1980, 94 Stat. 2112; Pub. L. 100-238, title II, § 216, Jan. 8, 1988, 101 Stat. 1774.)

AMENDMENTS

1988—Pub. L. 100-238 inserted last two sentences relating to withholding consent to retirement and to certain participants who voluntarily separate from the Service before completing 5 years in the System.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4048, 4071d of this title.

§ 4052. Mandatory retirement

(a)(1) Except as provided in subsection (b) of this section, any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit toward retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 4046 of this title.

(2) Notwithstanding paragraph (1), a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d) of title 5, as applicable, had the employee remained in civil service, shall be separated from the Service on the last day of the month in which that Foreign Service criminal investigator/inspector attains 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee attains 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(b)(1) Any participant who is otherwise required to retire under subsection (a) of this section while occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, may continue to serve until that appointment is terminated.

(2) Whenever the Secretary determines it to be in the public interest, any participant who is otherwise required to retire under subsection (a) of this section may be retained on active service for a period not to exceed 5 years.

(3) Any participant who completes a period of service authorized by this subsection shall be retired at the end of the month in which such authorized service is completed.

(Pub. L. 96-465, title I, § 812, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 101-513, title V, § 587(b), Nov. 5, 1990, 104 Stat. 2056; Pub. L. 102-499, § 4(c), Oct. 24, 1992, 106 Stat. 3265.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102-499 substituted “57” for “55”.

1990—Subsec. (a). Pub. L. 101-513 designated existing provisions as par. (1) and added par. (2).

CROSS REFERENCES

Officer retired under this section not barred from employment in a civil service position, see section 3323 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071d of this title; title 5 section 3323.

§ 4053. Reassignment and retirement of former Presidential appointees

(a) Reassignment or retirement of participants not eligible for retirement

A participant, who completes an assignment under section 3942(b) of this title in a position to which the participant was appointed by the President, and is not otherwise eligible for retirement—

(1) shall be reassigned within 90 days after the termination of such assignment and any period of authorized leave, or

(2) if the Secretary of State determines that reassignment is not in the interest of the Foreign Service, shall be retired from the Service and receive retirement benefits in accordance with section 4046 or 4071d of this title, as appropriate.

(b) Retirement of participants eligible for retirement

A participant who completes an assignment under section 3942(b) of this title in a position to which the participant was appointed by the President and is eligible for retirement and is not reassigned within 90 days after the termination of such assignment and any period of authorized leave, shall be retired from the Service and receive retirement benefits in accordance with section 4046 of this title or section 4071d of this title, as appropriate.

(c) Retirement of reemployed participants

A participant who is retired under subsection (a)(2) of this section and is subsequently employed by the United States Government, thereafter, shall be eligible to retire only under the terms of the applicable retirement system.

(Pub. L. 96-465, title I, § 813, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 102-138, title I, § 149, Oct. 28, 1991, 105 Stat. 670; Pub. L. 103-236, title I, § 174, Apr. 30, 1994, 108 Stat. 413.)

AMENDMENTS

1994—Pub. L. 103-236 added subsecs. (a) to (c) and struck out former subsecs. (a) to (c) which read as follows:

“(a) Except as provided under subsection (b) of this section, a participant, who completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President, shall be offered reassignment within 90 days after the termination of such assignment and any period of authorized leave.

“(b) Subsection (a) of this section shall not apply with respect to a participant, if the Secretary of State determines that reassignment of the participant is not in the interest of the United States and the Foreign Service.

“(c) A participant who is not reassigned under subsection (a) of this section shall be retired from the Service and receive retirement benefits in accordance with section 4046 or 4071d of this title, as appropriate.”

1991—Pub. L. 102-138 inserted “Reassignment and” in section catchline and amended text generally. Prior to amendment, text read as follows: “If a participant completes an assignment under section 3942(b) of this title in a position to which he or she was appointed by the President and has not been reassigned within 3 months after the termination of such assignment (plus any period of authorized leave), the participant shall be retired from the Service and receive retirement benefits in accordance with section 4046 of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4047, 4071d of this title.

§ 4054. Former spouses

(a) Living Service members

(1) Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, a former spouse of a participant or former participant is entitled to an annuity if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and—

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

For the purposes of this paragraph, the term “creditable service” means service which is creditable under part I or II of this subchapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) The annuity of a former spouse under this subsection commences on the later of the day the participant upon whose service the annuity is based becomes entitled to an annuity under this part or the first day of the month in which the divorce or annulment involved becomes final. The annuity of such former spouse and the right thereto terminate on—

(A) the last day of the month before the former spouse dies or remarries before 60 years of age; or

(B) the date the annuity of the participant terminates (except in the case of an annuity subject to paragraph (5)(B)).

(4) No spousal agreement or court order under section 4060(b)(1) of this title involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than 24 months after the date the divorce or annulment involved becomes final.

(5)(A) The annuity payable to any participant shall be reduced by the amount of an annuity under this subsection paid to any former spouse based upon the service of that participant. Such reduction shall be disregarded in calculating the survivor annuity for any spouse, former spouse, or other survivor under this part, and in calculating any reduction in the annuity of the participant to provide survivor benefits under subsection (b) of this section or section 4046(b)(3) of this title.

(B) If any annuitant whose annuity is reduced under subparagraph (A) is recalled to service under section 3948 of this title, or reinstated or

reappointed in the Service in the case of a recovered disability annuitant or if any annuitant is reemployed as provided for under section 4064 of this title, the salary of that annuitant shall be reduced by the same amount as the annuity would have been reduced if it had continued. Amounts equal to the reductions under this subparagraph shall be deposited in the Treasury of the United States to the credit of the Fund.

(6) Notwithstanding paragraph (3), in the case of any former spouse of a disability annuitant—

(A) the annuity of that former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for an annuity under this part (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(7) An annuity under this subsection shall be treated the same as a survivor annuity under subsection (b) of this section for purposes of section 4046(h) of this title or any comparable provision of law.

(b) Deceased Service members

(1) Subject to any election under section 4046(b)(1)(C) of this title and unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, if a former participant who is entitled to receive an annuity is survived by a former spouse, the former spouse shall be entitled to a survivor annuity—

(A) if married to the participant throughout the creditable service of the participant, equal to 55 percent of the full amount of the participant's annuity, as computed under section 4046(a) of this title; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 55 percent of the full amount of such annuity.

For the purposes of this paragraph, the term "creditable service" means service which is creditable under part I or II of this subchapter.

(2) A former spouse shall not be qualified for an annuity under this subsection if before the commencement of that annuity the former spouse remarries before becoming 60 years of age.

(3) An annuity payable from the Fund under this part to a surviving former spouse under this subsection shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60. If such a survivor annuity is terminated because of remarriage, it shall be restored at the same rate commencing on the date such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the Fund.

(4)(A) The maximum survivor annuity or combination of survivor annuities under this section (and section 4046(b)(3) of this title) with respect to any participant or former participant may not exceed 55 percent of the full amount of the participant's annuity, as calculated under section 4046(a) of this title.

(B) Once a survivor annuity has been provided for under this subsection for any former spouse, a survivor annuity may thereafter be provided for under this subsection (or section 4046(b)(3) of this title) with respect to a participant or former participant only for that portion (if any) of the maximum available which is not committed for survivor benefits for any former spouse whose prospective right to such annuity has not terminated by reason of death or remarriage.

(C) After the death of a participant or former participant, a court order under section 4060(b)(1) of this title may not adjust the amount of the annuity of any former spouse under this section.

(5)(A) For each full month after a former spouse of a participant or former participant dies or remarries before attaining age 60, the annuity of the participant, if reduced to provide a survivor annuity for that former spouse, shall be recomputed and paid as if the annuity had not been so reduced, unless an election is in effect under subparagraph (B).

(B) Subject to paragraph (4)(B), the participant may elect in writing within one year after receipt of notice of the death or remarriage of the former spouse to continue the reduction in order to provide a higher survivor annuity under section 4046(b)(3) of this title for any spouse of the participant.

(c) Additional survivor annuity

(1) In the case of any participant or former participant providing a survivor annuity benefit under subsection (b) of this section for a former spouse—

(A) such participant may elect, or

(B) a spousal agreement or court order under section 4060(b)(1) of this title may provide for,

an additional survivor annuity under this subsection for any other former spouse or spouse surviving the participant, if the participant satisfactorily passes a physical examination as prescribed by the Secretary of State.

(2) Neither the total amount of survivor annuity or annuities under this subsection with respect to any participant or former participant, nor the survivor annuity or annuities for any one surviving spouse or former spouse of such participant under this section and section 4046 of this title, shall exceed 55 percent of the full amount of the participant's annuity, as computed under section 4046(a) of this title.

(3)(A) In accordance with regulations which the Secretary of State shall prescribe, the participant involved may provide for any annuity under this subsection—

(i) by a reduction in the annuity or an allotment from the salary of the participant,

(ii) by a lump sum payment or installment payments to the Fund, or

(iii) by any combination thereof.

(B) The present value of the total amount to accrue to the Fund under subparagraph (A) to provide any annuity under this subsection shall be actuarially equivalent in value to such annuity, as calculated upon such tables of mortality as may from time to time be prescribed for this purpose by the Secretary of State.

(C) If a former spouse predeceases the participant or remarries before attaining age 60 (or, in

the case of a spouse, the spouse does not qualify as a former spouse upon dissolution of the marriage)—

(i) if an annuity reduction or salary allotment under subparagraph (A) is in effect for that spouse or former spouse, the annuity shall be recomputed and paid as if it had not been reduced or the salary allotment terminated, as the case may be, and

(ii) any amount accruing to the Fund under subparagraph (A) shall be refunded, but only to the extent that such amount may have exceeded the actuarial cost of providing benefits under this subsection for the period such benefits were provided, as determined under regulations prescribed by the Secretary of State.

(D) Under regulations prescribed by the Secretary of State, an annuity shall be recomputed (or salary allotment terminated or adjusted), and a refund provided (if appropriate), in a manner comparable to that provided under subparagraph (C), in order to reflect a termination or reduction of future benefits under this subsection for a spouse in the event a former spouse of the participant dies or remarries before attaining age 60 and an increased annuity is provided for that spouse in accordance with this part.

(4) An annuity payable under this subsection to a spouse or former spouse shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age 60.

(5) Section 4066 of this title shall not apply to any annuity under this subsection, unless authorized under regulations prescribed by the Secretary of State.

(Pub. L. 96-465, title I, § 814, Oct. 17, 1980, 94 Stat. 2113; Pub. L. 97-241, title I, § 125(2), Aug. 24, 1982, 96 Stat. 282; Pub. L. 99-335, title IV, §§ 402(a)(2), (3), 404(b), June 6, 1986, 100 Stat. 609, 610; Pub. L. 100-238, title II, § 217(a), (b), (c)(2), Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-238, § 217(a), which directed the amendment of par. (1) by inserting “if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and” after “annuity”, was executed by inserting the new language after “annuity” in introductory provisions, as the probable intent of Congress.

Subsec. (a)(4). Pub. L. 100-238, § 217(b), substituted “24” for “12”.

Subsec. (d). Pub. L. 100-238, § 217(c)(2), struck out subsec. (d) which read as follows: “Section 4046(l) of this title shall not apply—

“(1) to any annuity payable under subsection (a) or (b) of this section to any former spouse if the amount of that annuity varies by reason of a spousal agreement or court order under section 4060(b)(1) of this title, or an election under section 4046(b)(1)(B) of this title, from the amount which would be calculated under subsection (a)(1) or (b)(1) of this section, as the case may be, in the absence of such spousal agreement, court order, or election; and

“(2) to any annuity payable under subsection (c) of this section.”

1986—Subsec. (a)(1). Pub. L. 99-335, § 404(b)(1), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (a)(3), (5)(A), (6)(A). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

Subsec. (b)(1). Pub. L. 99-335, § 404(b)(2), inserted provision defining “creditable service” as service creditable under part I or II of this subchapter.

Subsec. (b)(3). Pub. L. 99-335, § 402(a)(3), inserted “under this part” after “payable from the Fund”.

Subsec. (c)(3)(D). Pub. L. 99-335, § 402(a)(2), substituted “part” for “subchapter”.

1982—Subsec. (a)(3). Pub. L. 97-241 substituted “or the first” for “on the first” in provision preceding subpar. (A).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 261 of title II of Pub. L. 100-238 provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title [enacting sections 4069-1 to 4069c-1 of this title, amending this section and sections 4044 to 4046, 4048, 4049, 4051, 4055, 4066, 4071a, 4071c, and 4084 of this title, and enacting provisions set out as a note under section 4046 of this title] shall take effect 90 days after the date of enactment of this title [Jan. 8, 1988].

“(b) EXCEPTIONS.—

“(1) The amendments made by section 202 [enacting section 4069-1 of this title] shall apply to any individual who, on or after the date of enactment of this title [Jan. 8, 1988], is married to a participant or former participant.

“(2) The amendment made by section 217(a) [amending this section] shall not apply with respect to the former spouse of a participant or former participant who is subject to subchapter I of chapter 8 of the Foreign Service Act of 1980 [this part] if, on the date of enactment of this title [Jan. 8, 1988], that former spouse—

“(A) was the spouse of that participant or former participant; or

“(B) is entitled to an annuity under section 814 of the Foreign Service Act of 1980 [this section] pursuant to the divorce or annulment of the marriage to that participant or former participant.

“(c) DEFINITIONS.—For the purpose of this section, the terms ‘participant’ and ‘former participant’ have the same meaning as such terms in chapter 8 of the Foreign Service Act of 1980 [this subchapter].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4049, 4060, 4064, 4069a, 4069a-1, 4071j, 4159 of this title.

§ 4055. Lump-sum payments

(a) Requirements for payment

(1) A participant is entitled to be paid a lump-sum credit if the participant—

(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the participant is not subject to this subchapter and remains in such a position for at least 31 consecutive days;

(B) files an application with the Secretary of State for payment of the lump-sum credit;

(C) is not reemployed in a position in which the participant is subject to this subchapter at the time the participant files the application;

(D) will not become eligible to receive an annuity under this part within 31 days after filing the application; and

(E) has notified any spouse or former spouse the participant may have of the application

for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 4046(b)(1)(D) of this title.

(2) Such lump-sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i) of this section.

(b) Recall service; return of contributions

Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 4063 of this title, the compulsory contributions of the annuitant to the Fund for such service, together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned to the annuitant (and any former spouse of the annuitant who was married to the participant during the period of recall service, in accordance with subsection (i) of this section).

(c) Difference between annuity and lump-sum credit

If all annuity rights under this part based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit to which the participant or annuitant is entitled, the difference shall be paid in accordance with subsection (f) of this section.

(d) Lack of eligible survivors

If a participant or former participant dies and is not survived by an individual eligible for an annuity under this part or by such an individual or individuals all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit to which the participant or annuitant is entitled shall be paid in accordance with subsection (f) of this section.

(e) Death of annuitant who was former participant

If an annuitant who was a former participant dies, any annuity accrued and unpaid shall be paid in accordance with subsection (f) of this section.

(f) Order of precedence for payments

Payments under subsections (c) through (e) of this section shall be paid in the following order of precedence to individuals surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person:

(1) To the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing filed with the Secretary of State prior to the death of the participant, for which purpose a designation, change, or cancellation of beneficiary in a will or other document which is not so executed and filed shall have no force or effect.

(2) If there is no such beneficiary, to the surviving wife or husband of the participant.

(3) If none of the above, to the child (without regard to the definition in section 4044(2) of this title) or children of the participant (including adopted and natural children but not stepchildren) and descendants of deceased children by representation.

(4) If none of the above, to the parents of the participant or the survivor of them.

(5) If none of the above, to the duly appointed executor or administrator of the estate of the participant.

(6) If none of the above, to such other next of kin of the participant as may be determined in the judgment of the Secretary of State to be legally entitled to such payment, except that no payment shall be made under this paragraph until after the expiration of 30 days after the death of the participant or annuitant.

(g) Death of survivor annuitant

Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

(1) To the duly appointed executor or administrator of the estate of the survivor annuitant.

(2) If there is no such executor or administrator, to such person as may be determined by the Secretary of State (after the expiration of 30 days from the date of death of the survivor annuitant) to be entitled under the laws of the domicile of the survivor annuitant at the time of death.

(h) Amount of credit

¹Amounts deducted and withheld from basic salary of a participant under section 4045 of this title from the beginning of the first pay period after the participant has completed 35 years of service computed under section 4056 of this title (excluding service credit for unused sick leave under section 4056(b) of this title), together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under section 4045(d) of this title, and any balance not so required shall be refunded in a lump sum to the participant after separation or, in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (f) of this section.

(i) Former spouses

Unless otherwise expressly provided by any spousal agreement or court order under section 4060(b)(1) of this title, the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant shall be—

(1) if the former spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

(2) if such former spouse was not married to the participant throughout such creditable

¹ See Amendment of Section note below.

service, an amount equal to such former spouse's pro rata share of 50 percent of such lump-sum credit.

The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the former spouse. For the purposes of this subsection, the term "creditable service" means service which is creditable under part I or II of this subchapter.

(Pub. L. 96-465, title I, § 815, Oct. 17, 1980, 94 Stat. 2116; Pub. L. 99-335, title IV, §§ 402(a)(2), 404(c), 413, June 6, 1986, 100 Stat. 609, 610, 614; Pub. L. 100-238, title II, § 218, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsection (h) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-238 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this subchapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i) of this section). A participant who becomes subject to part II of this subchapter shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986."

1986—Subsec. (a). Pub. L. 99-335, § 413, inserted provision relating to payment of a lump-sum credit for a participant who becomes subject to part II of this subchapter.

Subsecs. (c), (d). Pub. L. 99-335, § 402(a)(2), substituted "part" for "subchapter".

Subsec. (i). Pub. L. 99-335, § 404(c), inserted provision defining "creditable service" as service creditable under part I or II of this subchapter.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4009, 4010, 4048, 4049, 4050, 4056, 4060, 4063, 4065, 4071j of this title.

§ 4056. Creditable service

(a) Applicability of civil service provisions

(1) ¹Except as otherwise specified by law, all periods of civilian and military and naval service, and all other periods through the date of final separation of a participant from the Service that the Secretary of State determines would be creditable toward retirement under the Civil Service Retirement and Disability System (as determined in accordance with section 8332 of title 5), shall be creditable for purposes of this part. Conversely, any such service performed after December 31, 1976, that would not be creditable under specified conditions under section 8332 of title 5, shall be excluded under this part under the same conditions.

(2) The service of an individual who first becomes a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1, 1982, shall include credit for:

(A) each period of military or naval service performed before January 1, 1957, and

(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this part is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 4045(e) of this title.

(3) The service of an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1956, to subsection (j) of this section.

(4) The service of an individual who first became a participant before October 17, 1983, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this part is based, subject, in the case of military or naval service performed after December 1976, to subsection (j) of this section.

(b) Unused sick leave credit

In computing any annuity under this part, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes (without regard to the 35-year limitation imposed by section 4046(a) of this title) the days of unused sick leave to the credit of the participant, except that these days shall not be counted in determining average basic salary or annuity eligibility under this part. A contribution to the Fund shall not be required from a participant for this service credit.

¹ See Amendment of Section note below.

(c) Service with other Government agency when on approved leave without pay; arrangement for payment of retirement deductions and agency contributions; special contribution

(1) A participant who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within 60 days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after November 7, 1976, the participant may not receive any credit for such periods of leave without pay occurring after such date.

(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving before November 7, 1976, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate and shall be computed in accordance with section 4045 of this title. A participant who makes such contributions shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to 6 months' retirement credit shall be allowed for such periods of leave without pay each calendar year.

(d) Special contribution in repayment of refund of retirement contributions

²A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service under section 4045 of this title. Credit may not be allowed for service covered by the refund unless the special contribution is made.

(e) Civilian service under other Government retirement system

No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless—

(1) the right to any annuity under the other system which is based on such service is waived, and

(2) a special contribution is made under section 4045 of this title covering such service.

(f) Service in military during period of war or national emergency

A participant who during a period of war, or national emergency proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the

purpose of this part, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 4055 of this title. However, the participant is deemed to be separated from the Service after the expiration of 5 years of such military service.

(g) Recomputation of annuity for participants of Japanese ancestry interned during World War II

(1) An annuity or survivor annuity based on the service of a participant of Japanese ancestry who would be eligible under section 8332(l) of title 5, for credit for civilian service for periods of internment during World War II shall, upon application to the Secretary of State, be recomputed to give credit for that service. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary of State.

(2) The Secretary of State shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited or annuity recomputed under this subsection of their entitlement to such credit or recomputation.

(3) The Secretary of State shall, on request, assist any individual referred to in paragraph (1) in obtaining from any agency or other Government establishment information necessary to verify the entitlement of the individual to have any service credited or any annuity recomputed under this subsection.

(4) Any agency or other Government establishment shall, upon request, furnish to the Secretary of State any information it possesses with respect to the internment or other detention, as described in section 8332(l) of title 5, of any participant.

(h) Service as employees of Member or office of Congress while on approved leave without pay

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing office in the Congress shall make a matching contribution (from the appropriation or fund which is used for payment of the salary of the participant) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this part and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(i) Former spouses

(1) Service of a participant shall be considered creditable service for purposes of applying provisions of this part relating to former spouses if such service would be creditable—

(A) under subsection (c)(1) or (2) of this section but for the fact an election was not made under subsection (c)(1) of this section or a spe-

² See Amendment of Section note below.

cial contribution was not made under subsection (c)(2) of this section, and

(B) under subsection (d) of this section but for the fact that a refund of contributions has not been repaid unless the former spouse received under this part a portion of the lump sum (or a spousal agreement or court order provided otherwise).

(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 4048(a) of this title or section 4049(e) of this title.

(j) Redetermination of credit for military and naval service

(1) Except as otherwise provided by statute or Executive Order, section 8332(j) of title 5, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this part. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in section 8332(j).

(2) Section 8332(j) of title 5 shall not apply with respect to:

(A) the service of any individual who first became a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1982; or

(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title; or

(C) any military or naval service performed prior to 1977 by any individual who first became a participant before October 17, 1983, or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title.

(Pub. L. 96-465, title I, §816, Oct. 17, 1980, 94 Stat. 2118; Ex. Ord. No. 12446, §4(b), (c), Oct. 17, 1983, 48 F.R. 48444, 48445; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609; Pub. L. 101-246, title I, §145(a), Feb. 16, 1990, 104 Stat. 36.)

AMENDMENT OF SECTION

Section 5 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48445, set out as a note under section 4067 of this title, provided that:

“(a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this Order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

“(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is

also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

“(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

“(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

“(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

“(d) For purposes of this section, the term ‘determination month’ means—

“(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

“(2) the first day of the month following the month in which this Order is issued [Oct. 1983] in the case of any individual so entitled to such benefits for such month.

“(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

“(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.”

Section 1(b) and (c) of Ex. Ord. No. 12446 provided that subsection (d) of this section, applicable (i) to contributions for civilian service per-

formed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under subsec. (a) of this section any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

AMENDMENTS

1990—Subsec. (i)(2). Pub. L. 101-246 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “A former spouse shall not be considered as married to a participant—

“(A) for periods assumed to be creditable service under section 4048(a) of this title or section 4049(e) of this title, or

“(B) for any extra period of creditable service provided under section 4057 of this title for service of a participant at an unhealthful post unless the former spouse resided with the participant at that post during that period.”

1986—Subsecs. (a), (b), (f), (h), (i)(1), (j)(1). Pub. L. 99-335 substituted “part” for “subchapter” wherever appearing.

1983—Subsec. (a). Ex. Ord. No. 12446, §4(b), designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (j). Ex. Ord. No. 12446, §4(c), added subsec. (j).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 4 of Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2504, 4044, 4045, 4046, 4055, 4063 of this title.

§ 4057. Extra credit for service at unhealthful posts

The Secretary of State may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of the service of a participant for the purpose of retirement, fractional months being considered as full months in computing such service. No such extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5 for such service. Such extra credit may not be used to determine the eligibility of a person to qual-

ify as a former spouse under this part, or to compute the pro rata share under section 4044(10) of this title. No extra credit for service at unhealthful posts may be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after February 16, 1990.

(Pub. L. 96-465, title I, §817, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 101-246, title I, §145(b), Feb. 16, 1990, 104 Stat. 37.)

AMENDMENTS

1990—Pub. L. 101-246 inserted provisions at end that extra credit not be used to determine eligibility to qualify as former spouse under this part or to compute the pro rata share under section 4044(10) of this title and that no extra credit for service at unhealthful posts be given under this section for any service as part of a tour of duty, or extension thereof, beginning on or after Feb. 16, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4071a of this title.

§ 4058. Estimate of appropriations needed

The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of the System at intervals of not more than five years. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per year for the incidental expenses necessary in administering the provisions of this part, including actuarial advice.

(Pub. L. 96-465, title I, §818, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609.)

AMENDMENTS

1986—Pub. L. 99-335 substituted “part” for “subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

§ 4059. Investment of Fund

The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in the judgment of the Secretary of the Treasury may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances. The income derived from such investments shall constitute a part of the Fund.

(Pub. L. 96-465, title I, §819, Oct. 17, 1980, 94 Stat. 2120.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4060. Assignment and attachment of moneys

(a) Annuities and severance pay benefits

(1) An individual entitled to an annuity from the Fund may make allotments or assignments

of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate.

(2) Notwithstanding section 3727 of title 31 or any other law, a member of the Service who is entitled to receive benefits under section 4009(b)(1) of this title may assign to any person the whole or any part of those benefits. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy of such assignment form shall be deposited with the Secretary of the Treasury by the member executing the assignment.

(b) Participants or annuitants having former spouses

(1)(A) In the case of any participant or annuitant who has a former spouse who is covered by a court order or who is a party to a spousal agreement—

(i) any right of the former spouse to any annuity under section 4054(a) of this title in connection with any retirement or disability annuity of the participant, and the amount of any such annuity;

(ii) any right of the former spouse to a survivor annuity under section 4054(b) or (c) of this title, and the amount of any such annuity; and

(iii) any right of the former spouse to any payment of a lump-sum credit under section 4055(a) or (b) of this title;

shall be determined in accordance with that spousal agreement or court order, if and to the extent expressly provided for in the terms of that spousal agreement or court order.

(B) This paragraph shall not apply in the case of any spousal agreement or court order which, as determined by the Secretary of State—

(i) would provide for a survivor annuity for a spouse or any former spouse of a participant with respect to which there has not been an annuity reduction (or a salary reduction or payment under section 4054(c)(3) of this title); or

(ii) is otherwise inconsistent with the requirements of this part.

(2) Except with respect to obligations between participants and former spouses, payments under this part which would otherwise be made to a participant or annuitant based upon his or her service shall be paid (in whole or in part) by the Secretary of State to another individual to the extent expressly provided for in the terms of any order or any court decree of legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of legal separation.

(3) Paragraphs (1) and (2) shall apply only to payments made under this part for periods beginning after the date of receipt by the Secretary of State of written notice of such decree, order, or agreement, and such additional information and such documentation as the Secretary of State may require.

(4) Any payment under this subsection to an individual bars recovery by any other individual.

(5) The 10-year requirement of section 4044(b)(6) of this title, or any other provision of

this part, shall not be construed to affect the rights any spouse or individual formerly married to a participant or annuitant may have, under any law or rule of law of any State or the District of Columbia, with respect to an annuity of a participant or annuitant under this part.

(c) Applicability of other provisions of law or remedies

None of the moneys mentioned in this part shall be assignable either in law or equity, except under subsection (a) or (b) of this section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal law.

(Pub. L. 96-465, title I, §820, Oct. 17, 1980, 94 Stat. 2120; Pub. L. 99-335, title IV, §402(a)(2), June 6, 1986, 100 Stat. 609.)

CODIFICATION

In subsec. (a)(2), “section 3727 of title 31” substituted for “section 3477 of the Revised Statutes of the United States (31 U.S.C. 203)” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsecs. (b)(1)(B)(ii), (2), (3), (5), (c). Pub. L. 99-335 substituted “this part” for “this subchapter” wherever appearing.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4054, 4055, 4064, 4159 of this title.

§ 4061. Payments for future benefits

(a) Statutes deemed to authorize appropriations to Fund to finance unfunded liability

Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund under this part, including annuity increases other than under section 4065 of this title;

(2) extension of the benefits of the System to new groups of employees; or

(3) increases in salary on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

(b) Authorization of appropriations to Fund

There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 4045(a) of this title.

(Pub. L. 96-465, title I, §821, Oct. 17, 1980, 94 Stat. 2121; Pub. L. 99-335, title IV, §402(a)(3), June 6, 1986, 100 Stat. 609.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99-335 inserted “under this part” after “payable from the Fund”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4044, 4062 of this title.

§ 4062. Unfunded liability obligations**(a) Notice of interest and military service credit**

At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount equivalent to—

(1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and

(2) that portion of disbursement for annuities for that year which the Secretary of State estimates is attributable to credit allowed for military and naval service, less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 4045(e) of this title.

(b) Credit to Fund

Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit such amounts to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated.

(c) Reports to Congress

Requests for appropriations to the Fund under section 4061(b) of this title shall include reports to the Congress on the sums credited to the Fund under this section.

(Pub. L. 96-465, title I, § 822, Oct. 17, 1980, 94 Stat. 2121; Ex. Ord. No. 12446, § 4(d), Oct. 17, 1983, 48 F.R. 48445.)

AMENDMENTS

1983—Subsec. (a)(2). Ex. Ord. No. 12446 inserted “, less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 4045(e) of this title”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Ex. Ord. No. 12446 effective Oct. 17, 1983, see section 4(e) of Ex. Ord. No. 12446, set out under section 4067 of this title.

§ 4063. Annuity adjustment for recall service**(a) Full salary in lieu of annuity; contributions to Fund; resumption of annuity with cost-of-living adjustment**

Any annuitant recalled to duty in the Service under section 3948(a) of this title shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service the recalled annuitant shall make contributions to the Fund in accordance with section 4045 of this title. On the day following ter-

mination of the recall service, the former annuity shall be resumed, adjusted by any cost-of-living increases under section 4065 of this title that became effective during the recall period.

(b) Refund of contributions to Fund; election for supplemental annuity or determination of annuity anew; prior service counted as recall service

If the recall service lasts less than one year, the contributions of the annuitant to the Fund during recall service shall be refunded in accordance with section 4055 of this title. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 4046 of this title on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least 5 years, the annuitant may elect to have his or her annuity determined anew under section 4046 of this title in lieu of any other benefits under this section. Any annuitant who is recalled under section 3948 of this title may upon written application count as recall service any prior service that is creditable under section 4056 of this title that was performed after the separation upon which his or her annuity is based.

(c) Annuitant subject to Foreign Service Pension System

If an annuitant becomes subject to part II of this subchapter by reason of recall service—

(1) subsections (a) and (b) of this section shall not apply to such annuitant; and

(2) section 4064 of this title shall apply to the recall service as if such service were reemployment.

(Pub. L. 96-465, title I, § 823, Oct. 17, 1980, 94 Stat. 2122; Pub. L. 99-335, title IV, § 409, June 6, 1986, 100 Stat. 612.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-335 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4049, 4055 of this title.

§ 4064. Reemployment**(a) Termination of annuity; coverage under same retirement system or another contributory retirement system; rights and benefits**

¹(1)(A) Except in the case of an annuitant who makes an election under subsection (b) of this section, if any former participant, who has retired and is receiving an annuity under this part or part II of this subchapter, becomes employed in an appointive or elective position in the Government, payment of any annuity under either part to the annuitant shall terminate effective

¹ So in original. No par. (2) has been enacted.

on the date of the employment and the reemployment service shall be covered service under the rules of the system under which the appointment is made.

(B) If the annuity of an individual is terminated under subparagraph (A) and that individual becomes covered under the same retirement system from which that annuity is terminated, that individual shall be entitled to a redetermination of rights under that system upon termination of the employment.

(C) If the annuity is terminated and the individual becomes covered under another contributory retirement system for Government employees pursuant to paragraph (A), the individual shall be entitled to benefits under the rules of that system. In addition, the individual shall be entitled to a resumption of any annuity terminated by reason of the employment.

(b) Part-time, intermittent, or temporary employment; election to continue receiving annuity; reduction in amount of annuity; resumption of full annuity

(1) A participant who is entitled to an annuity under this part or part II of this subchapter and becomes employed in an appointive or elective position in the Government on a part-time, intermittent, or temporary basis may elect to continue to receive either or both annuities as provided in this subsection.

(2) The total annuity payable under this subchapter to an annuitant making an election under paragraph (1) shall be reduced during the part-time, intermittent, or temporary employment referred to in paragraph (1) as necessary to meet the requirements of paragraph (3).

(3)(A) The sum of—

(i) the total annuity payable under this subchapter to an annuitant making an election under paragraph (1), and

(ii) the annual rate of pay payable to the annuitant during the part-time, intermittent, or temporary employment referred to in paragraph (1),

may not exceed, in any calendar year, the amount described in subparagraph (B).

(B) The amount referred to in subparagraph (A) is the greater of—

(i) the highest annual rate of basic pay which is payable during such year for full-time employment in the position in which the annuitant is employed, or

(ii) the basic pay the annuitant was entitled to receive under this chapter on the date of retirement from the Service.

(C) For purposes of this section, the term “annuity” means the annuity earned by the reemployed member based on his or her service irrespective of whether or not the amount payable is reduced by the amount of an annuity payable under section 4054 or 4060(b) of this title.

(4) Upon termination of the part-time, intermittent, or temporary employment referred to in paragraph (1), payment of the full annuity of an annuitant who has made an election under paragraph (1) of this subsection shall resume.

(c) Amount of annuity on resumption; amount resulting from redetermination of rights

The amount of annuity which has been terminated or reduced under this section by reason of

the reemployment of the annuitant and is resumed under this section shall be the amount of the annuity which would have been payable if the annuitant had not accepted the reemployment. The amount of an annuity resulting from a redetermination of rights pursuant to subsection (a) of this section shall not be less than the amount of an annuity resumed under the previous sentence.

(d) Annuity rights to be determined under this section

The annuity rights of any participant who is reemployed in the Government shall be determined under this section instead of section 8468 of title 5.

(e) Notice; direct payment of salary

When any such retired participant is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such participant the salary of the position in which he or she is serving.

(f) Recovery of overpayment

In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed participant or from any other moneys, including annuity payments, payable under this subchapter.

(Pub. L. 96-465, title I, §824, Oct. 17, 1980, 94 Stat. 2122; Pub. L. 99-335, title IV, §§402(a)(2), 410, June 6, 1986, 100 Stat. 609, 613; Pub. L. 99-556, title IV, §403, Oct. 27, 1986, 100 Stat. 3136.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-335, §410, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Notwithstanding any other law, any member of the Service who has retired and is receiving an annuity under this part, and who is reemployed in the Government service in any part-time or full-time appointive position, shall be entitled to receive the salary of the position in which he or she is serving plus so much of the annuity payable under this part which when combined with such salary does not exceed during any calendar year the basic salary the member was entitled to receive under this chapter on the date of retirement from the Service. Any such reemployed member of the Service who receives salary during any calendar year in excess of the maximum amount which he or she may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits under this part.”

Pub. L. 99-335, §402(a)(2), substituted “this part” for “this subchapter” in three places.

Subsec. (b). Pub. L. 99-335, §410, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “When any such retired member of the Service is reemployed, the employer shall send a notice of such reemployment to the Secretary of State, together with all pertinent information relating to such employment, and shall pay directly to such member the salary of the position in which he or she is serving.”

Subsec. (b)(3). Pub. L. 99-556, §403, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “The sum of—

“(A) the total annuity payable under this subchapter to an annuitant making an election under paragraph (1), and

“(B) the annual rate of pay payable to the annuitant during the part-time, intermittent, or temporary employment referred to in paragraph (1),

may not exceed, in any calendar year, the highest annual rate of pay which is payable during such year for full-time employment in the position in which the annuitant is employed.”

Subsec. (c). Pub. L. 99-335, §410, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed member of the Service or from any other moneys, including annuity payments, payable under this part.”

Pub. L. 99-335, §402(a)(2), substituted “this part” for “this subchapter”.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, and applicable to any individual in a reemployed status on or after that date, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2512, 4054, 4063 of this title.

§ 4065. Voluntary contribution account

(a) Composition; election and return

¹The voluntary contribution account shall be the sum of unrefunded amounts voluntarily contributed prior to February 15, 1981, by any participant or former participant under any prior law authorizing such contributions to the Fund, plus interest compounded at the rate of 3 percent per year to the date of separation from the Service or (in case of participant or former participant separated with entitlement to a deferred annuity) to the date the voluntary contribution account is claimed, the commencing date fixed for the deferred annuity, or the date of death, whichever is earlier. Effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the election of the participant, his or her account shall be—

- (1) returned in a lump sum;
- (2) used to purchase an additional life annuity;
- (3) used to purchase an additional life annuity for the participant and to provide for a cash payment on his or her death to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant; or
- (4) used to purchase an additional life annuity for the participant and a life annuity commencing on his or her death payable to a beneficiary whose name shall be notified in writing to the Secretary of State by the participant, with a guaranteed return to the beneficiary or his or her legal representative of an amount equal to the cash payment referred to in paragraph (3).

(b) Computation of benefits

The benefits provided by subsection (a) (2), (3), or (4) of this section shall be actuarially equivalent in value to the payment provided for by subsection (a)(1) of this section and shall be cal-

culated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

(c) Lump-sum payment; time; order of precedence

A voluntary contribution account shall be paid in a lump sum following receipt of an application therefor from a present or former participant if application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In case of death, the account shall be paid in the order of precedence specified in section 4055(f) of this title.

(Pub. L. 96-465, title I, §825, Oct. 17, 1980, 94 Stat. 2122.)

AMENDMENT OF SECTION

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsection (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

CODIFICATION

In subsec. (a), “February 15, 1981” substituted for “the effective date of this Act” pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4061, 4063 of this title.

§ 4066. Cost-of-living adjustment of annuities

(a) Effective date

A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5. Each such increase shall be applied to each annuity payable from the Fund under this part which has a commencing date not later than the effective date of the increase.

(b) Applicability of increases under other provisions of law

Each annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5.

¹ See Amendment of Section note below.

(c) Eligibility for increases

Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund under this part as of the effective date of an increase except as follows:

(1) The first increase (if any) made under this section to an annuity which is payable from the Fund to a participant or to the surviving spouse or former spouse of a deceased participant who died in service or a deceased annuitant whose annuity was not increased under this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

(A) $\frac{1}{12}$ of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a surviving spouse or former spouse of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund under this part to the survivor of an annuitant, except a child entitled to an annuity under section 4046(c) of this title or section 4049(c) or (d) of this title, shall be increased by the total percentage increase the annuitant was receiving under this section at death.

(3) For purposes of computing or recomputing an annuity to a child under section 4046(c) or (d) of this title or section 4049(c) or (d) of this title, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 4046(c) of this title shall be increased by the total percentage increases by which corresponding amounts are being increased under section 8340 of title 5 on the date the annuity of the child becomes effective.

(d) Exclusion of additional annuity purchased after retirement by voluntary contribution

No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) Rounding off of amount; minimum increases

The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar, except such installment shall after adjustment reflect an increase of at least \$1.

(f) Rate of increase for surviving spouses of annuitants electing reduced annuity

Effective from its commencing date, there shall be an increase of 10 percent in the annuity of each surviving spouse whose entitlement to annuity resulted from the death of an annuitant who, prior to October 1, 1976, elected a reduced annuity in order to provide a spouse's survivor annuity.

(g) Maximum annuity

(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay rate payable for class FS-1 under section 3963 of this title, 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the former participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the Foreign Service Schedule under such section 3963 of this title during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired participant, the date the participant's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, "pay" means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 96-465, title I, §826, Oct. 17, 1980, 94 Stat. 2123; Ex. Ord. No. 12289, §1, Feb. 14, 1981, 46 F.R. 12693; Ex. Ord. No. 12446, §§2(a), 6(a), Oct. 17, 1983, 48 F.R. 48443, 48446; Pub. L. 99-335, title IV, §402(a)(3), June 6, 1986, 100 Stat. 609; Pub. L. 100-238, title II, §219, Jan. 8, 1988, 101 Stat. 1775.)

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100-238 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The first increase (if any) made under this section to an annuity which is payable from the Fund under this part to a participant or to the surviving spouse of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

"(a) $\frac{1}{12}$ of the applicable percent change determined under subsection (b) of this section, multiplied by

"(b) the number of full months for which the annuity was payable from the Fund under this part before the effective date of the increase (counting any portion of a month as a full month).

In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service."

1986—Subsecs. (a), (c). Pub. L. 99-335 inserted "under this part" after "payable from the Fund" wherever appearing.

1983—Subsec. (e). Ex. Ord. No. 12446, §2(a), substituted "rounded to the next lowest" for "fixed at the nearest".

Subsec. (g). Ex. Ord. No. 12446, §6(a), added subsec. (g).

1981—Subsec. (c)(1). Ex. Ord. No. 12289 amended first sentence of par. (1) generally. Prior to amendment, first sentence read as follows: "An annuity (except a deferred annuity) payable from the Fund to a participant who retires and receives an immediate annuity, or to a surviving spouse or former spouse of a deceased participant who dies in service or who dies after being separated with benefits under section 4009(b)(2) of this title, which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the an-

nunity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 2(a) Ex. Ord. No. 12446 effective with respect to any adjustment or redetermination of any annuity made on or after Oct. 17, 1983, see section 2(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

Amendment by section 6 of Ex. Ord. No. 12446 applicable to any adjustment occurring on or after Apr. 1, 1983 under this section to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after Oct. 17, 1983, but shall not cause any annuity to be reduced below the rate that is payable on Oct. 17, 1983, see section 6(b) of Ex. Ord. No. 12446, set out under section 4067 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Ex. Ord. No. 12289 effective Feb. 15, 1981, see section 3 of Ex. Ord. No. 12289, set out under section 4067 of this title.

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4054 of this title.

§ 4067. Compatibility between retirement systems

(a) Civil Service and Foreign Service Retirement Systems

In order to maintain existing conformity between the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, and the Foreign Service Retirement and Disability System, whenever a law of general applicability is enacted which—

(1) affects the treatment of current or former participants, annuitants, or survivors under the Civil Service Retirement and Disability System; and

(2) affects treatment which, immediately prior to the enactment of such law, was substantially identical to the treatment accorded to participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System;

such law shall be extended in accordance with subsection (b) of this section to the Foreign Service Retirement and Disability System so that it applies in like manner with respect to participants, former participants, annuitants, or survivors under that System.

(b) Regulations to implement prescribed by Executive order

The President shall by Executive order prescribe regulations to implement this section and may make such extension retroactive to a date no earlier than the effective date of the provision of law applicable to the Civil Service Retirement and Disability System. Any provision of an Executive order issued under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date of that provision of the Executive order, and

(2) any prior provision of an Executive order issued under this section.

(c) Federal Employees' Retirement and Foreign Service Pension Systems

The President shall maintain, under the same conditions and in the same manner as provided in subsections (a) and (b) of this section existing conformity between the Federal Employees' Retirement System provided in chapter 84 of title 5 and the Foreign Service Pension System provided in part II of this subchapter.

(Pub. L. 96-465, title I, §827, Oct. 17, 1980, 94 Stat. 2124; Pub. L. 99-335, title IV, §411, June 6, 1986, 100 Stat. 614.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-335 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

REFERENCE TO VETERANS' ADMINISTRATION DEEMED REFERENCE TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 102-54, §13(h)(2), June 13, 1991, 105 Stat. 275, provided that: “Any reference to the Veterans' Administration in any regulation prescribed or Executive order issued pursuant to section 827(a) of the Foreign Service Act of 1980 (22 U.S.C. 4067(a)) shall be deemed to be a reference to the Department of Veterans Affairs.”

CONSTRUCTION OF SECTION WITH CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

This section not applicable with respect to either the amendments made by section 2 of Pub. L. 98-615 or the provisions of section 4 of Pub. L. 98-615 relating to equitable treatment under the Civil Service Retirement System for former spouses, except that, notwithstanding section 4(h) of Pub. L. 98-615, this section applicable with respect to sections 8339(j) and 8341(e) and (h) of Title 5, Government Organization and Employees, and section 4 (except subsec. (b)) of Pub. L. 98-615 to the extent that those sections apply to a qualified former wife or husband, see section 4069-1 of this title and section 4(h) of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 8341 of Title 5.

RECOMMENDATIONS BY SECRETARY OF STATE TO PRESIDENT

For authority for the Secretary of State to make recommendations to the President through the Director of the Office of Management and Budget whenever action is appropriate under this section to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System, see section 3 of Ex. Ord. No.

12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

EX. ORD. NO. 12289. CONFORMING THE FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS

Ex. Ord. No. 12289, Feb. 14, 1981, 46 F.R. 12693, as amended by Pub. L. 102-54, §13(h)(2), June 13, 1991, 105 Stat. 275, provided:

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. (a) Section 826(c) of the Foreign Service Act of 1980 (22 U.S.C. 4066(c)) is deemed to be amended by striking out the first sentence of paragraph (1) thereof, and inserting in lieu thereof the following sentence:

“(1) The first increase (if any) made under this section to an annuity which is payable from the Fund to a participant or to the surviving spouse of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

“(a) $\frac{1}{6}$ of the applicable percent change determined under Subsection (b) of this Section, multiplied by

“(b) the number of full months for which the annuity was payable from the Fund before the effective date of the increase (counting any portion of a month as a full month).”.

SEC. 2. Section 808(a) of the Foreign Service Act of 1980 (22 U.S.C. 4048(a)) is deemed to be amended by adding at the end thereof the following:

“However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in Section 8332(c) (1) or (2) of title 5 of the United States Code) or Department of Veterans Affairs pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this chapter excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in Section 5532 of title 5 of the United States Code, or the Department of Veterans Affairs pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this chapter in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this chapter.”.

SEC. 3. The amendments to be deemed made by this Order shall take effect as of February 15, 1981.

EX. ORD. NO. 12446. CONFORMING THE FOREIGN SERVICE AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS

Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, provided:

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067) (hereafter referred to as “the Act” [this chapter]), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

SECTION 1. *Interest Rates, Deposits, Refunds, and Redeposits.* (a) The second sentence of Section 805(d)(3) of the Act (22 U.S.C. 4045(d)(3)), the first sentence of Section 815(h) (22 U.S.C. 4055(h)), and the first sentence of Section 825(a) (22 U.S.C. 4065(a)), are deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Sec-

retary of the Treasury during such fiscal year under section 819 [22 U.S.C. 4059], as determined by the Secretary of the Treasury.

(b) Sections 806(a) and 816(d) of the Act (22 U.S.C. 4046(a) and 4056(d)) are deemed to be amended to exclude from the computation of creditable civilian service under section 816(a) of the Act any period of civilian service for which retirement deductions or contributions have not been made under section 805(d) [22 U.S.C. 4045] of the Act unless—

(1) the participant makes a contribution for such period as provided in such section 805(d); or

(2) no contribution is required for such service as provided under section 805(f) of the Act as deemed to be amended by this Order, or under any other statute.

(c) The amendments deemed to be made by section 1 of this Order shall apply (i) to contributions for civilian service performed on or after the first day of the month following issuance of this Order [Oct. 17, 1983], (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of the month, and (iii) to excess contributions under section 815(h) [22 U.S.C. 4055(h)] and voluntary contributions under section 825(a) [22 U.S.C. 4065(a)] from the first day of the month following issuance of this Order.

SEC. 2. *Rounding Down of Annuities.* (a) Section 826(e) of the Act (22 U.S.C. 4066(e)) is deemed to be amended by striking out “fixed at the nearest” and inserting in lieu thereof “rounded to the next lowest”.

(b) The amendment deemed to be made by section 2(a) of this Order shall be effective with respect to any adjustment or redetermination of any annuity made on or after the date of this Order [Oct. 17, 1983].

SEC. 3. *Later Commencement Date For Certain Annuities.*

(a) Section 807(a) of the Act (22 U.S.C. 4047(a)) is deemed to be amended to read as follows:

“(a)(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

“(A) separation from the Service occurs; or

“(B) pay ceases and the service and age requirements for entitlement to annuity are met.

“(2) The annuity of—

“(A) a participant who is retired and is eligible for benefits under section 609(a) [22 U.S.C. 4009(a)] or a participant who is retired under section 813 [22 U.S.C. 4053] or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency.

“(B) a participant retiring under section 808 [22 U.S.C. 4048] due to a disability, and

“(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met.”.

(b) The amendment deemed to be made by paragraph 3(a) of this Order shall become effective thirty days after the effective date of this Order [Oct. 17, 1983].

SEC. 4. *Credit For Military Service.* (a) Section 805 of the Act (22 U.S.C. 4045) is deemed to be amended—

(i) by striking out subsection (e) and substituting the following subsection in lieu thereof:

“(e)(1) Each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this chapter is based may pay to the Secretary a special contribution equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 of the United States Code, to the participant for each period of military or naval service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or if the Secretary determines sufficient evidence has not been so provided to adequately determine basic pay for military or naval service, such payment shall be based upon estimates of such basic pay provided to the Department under paragraph (4).

“(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

“(A) the effective date of this Order, or

“(B) the date on which the participant making the deposit first became a participant in a Federal staff retirement system for civilian employees,—

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (d) of this section.

“(3) Any payment received by the Secretary under this section shall be remitted to the Fund.

“(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Secretary as the Secretary may determine to be necessary for the administration of this subsection.

“(f) Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under section 805(e) [22 U.S.C. 4045(e)] and section 816(a) [22 U.S.C. 4056(a)], except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II.”; and—

(ii) by redesignating subsection (f) as subsection (g).

(b) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be amended by adding “(1)” after “(a)” and by adding the following new paragraphs at the end thereof:

“(2) The service of an individual who first becomes a participant on or after the date of this Order without any credit under section 816 for civilian service performed prior to October 1, 1982, shall include credit for:

“(A) each period of military or naval service performed before January 1, 1957, and

“(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this chapter is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 805(e) [22 U.S.C. 4045(e)].

“(3) The service of an individual who first became a participant on or after the date of this Order with credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this chapter is based, subject, in the case of military or naval service performed after December 1956, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order.

“(4) The service of an individual who first became a participant before the date of this Order shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this chapter is based, subject, in the case of military or naval service performed after December 1976, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order”;

(c) Section 816 of the Act (22 U.S.C. 4056) is deemed to be further amended by adding a new subsection (j) at the end thereof to read as follows:

“(1) Except as otherwise provided by statute or Executive Order, Section 8332(j) of Title 5, United States Code, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this chapter. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in Section 8332(j).

“(2) Section 8332(j) of Title 5, United States Code, shall not apply with respect to:

“(A) the service of any individual who first became a participant on or after the date of this Order without

any credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982; or

“(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after the date of this Order with credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to which the participant has made a contribution (with interest if any is required) under section 805(e) [22 U.S.C. 4045(e)]; or

“(C) any military or naval service performed prior to 1977 by any individual who first became a participant before the date of this Order or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 805(e) [22 U.S.C. 4045(e)].”

(d) Section 822(a) of the Act (22 U.S.C. 4062(a)) is deemed to be amended by striking out the period at the end thereof and inserting in lieu thereof: “, less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 805(e).”.

(e) The amendments deemed to be made by Section 4 of this Order shall be effective on the date of this Order [Oct. 17, 1983].

SEC. 5. *Recomputation at Age 62 of Credit for Military Service of Current Annuitants.* (a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 415(e)(1)] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 409]) for each such year, and

(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

(d) For purposes of this section, the term “determination month” means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

(2) the first day of the month following the month in which this Order is issued [Oct. 17, 1983] in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.

SEC. 6. *General Limitation on Cost-of-Living Adjustment for Annuities.* (a) Section 826 of the Act (22 U.S.C. 4066) is deemed to be amended to add at the end thereof the following new subsection:

“(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

“(A) the maximum pay rate payable for class FS-1 under section 403, 30 days before the effective date of the adjustment under this section; or

“(B) the final pay (or average pay, if higher) of the former participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the Foreign Service Schedule under such section 403 during the period—

“(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired participant, the date the participant's annuity commenced), and

“(ii) ending on the effective date of the adjustment under this section.

“(2) For the purposes of paragraph (1) of this subsection, ‘pay’ means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.”.

(b) The amendment made by subsection (a) of this Section shall not cause any annuity to be reduced below the rate that is payable on the date of approval of this Order [Oct. 17, 1983], but shall apply to any adjustment occurring on or after April 1, 1983 under Section 826 of the Act [22 U.S.C. 4066] to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of this Order.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4069-1 of this title.

§ 4068. Remarriage

Notwithstanding any other provision of this part, any benefit payable under this part to a surviving spouse, former spouse, or surviving former spouse that would otherwise terminate or be lost if the individual remarried before 60 years of age, shall not terminate or be lost if the remarriage occurred on or after November 8, 1984, and the individual was 55 years of age or over on the date of the remarriage.

(Pub. L. 96-465, title I, § 828, as added Pub. L. 99-335, title IV, § 412, June 6, 1986, 100 Stat. 614.)

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of Title 5, Government Organization and Employees.

§ 4069. Thrift Savings Fund participation

Participants in this System shall be deemed to be employees for the purposes of section 8351 of title 5. Any reference in such section 8351 or in subchapter III of chapter 84 of such title 5 to retirement or separation under subchapter III of chapter 83 or chapter 84 of such title 5 shall be deemed to be references to retirement or separation under part I or II of this subchapter with similar benefits or entitlements with respect to participants under such part I or II, respectively.

(Pub. L. 96-465, title I, § 829, as added Pub. L. 99-556, title IV, § 404(a), Oct. 27, 1986, 100 Stat. 3137.)

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as an Effective Date of 1986 Amendment note under section 4046 of this title.

§ 4069-1. Qualified former wives and husbands

(a) Construction with provisions relating to compatibility between retirement systems; effective dates

Notwithstanding section 4(h) of the Civil Service Retirement Spouse Equity Act of 1984, section 4067 of this title shall apply with respect to section 8339(j), section 8341(e), and section 8341(h) of title 5, and section 4 (except for subsection (b)) of the Civil Service Retirement Spouse Equity Act of 1984 to the extent that those sections apply to a qualified former wife or husband. For the purposes of this section any reference in the Civil Service Retirement Spouse Equity Act of 1984 to the effective date of that Act shall be deemed to be a reference to the effective date of this section.

(b) Payments to other persons as provided in court order or spousal agreement

(1) Payments pursuant to this section which would otherwise be made to a participant or former participant based upon his service shall be paid (in whole or in part) by the Secretary of State to another person if and to the extent expressly provided for in the terms of any court order or spousal agreement. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Secretary of State under this subchapter after the date of receipt by the Secretary of State of written notice of such court order or spousal agreement and such additional information and documentation as the Secretary of State may prescribe.

(c) “Qualified former wife or husband” defined

For the purposes of this section, the term “qualified former wife or husband” means a former wife or husband of an individual if—

(1) such individual performed at least 18 months of civilian service creditable under this subchapter; and

(2) the former wife or husband was married to such individual for at least 9 months but not more than 10 years.

(d) Promulgation of regulations

Regulations issued pursuant to section 4067 of this title to implement this section shall be sub-

mitted to the Committee on Post Office and Civil Service and the Committee on Foreign Affairs of the House of Representatives and the Committee on Governmental Affairs and the Committee on Foreign Relations of the Senate. Such regulations shall not take effect until 60 days after the date on which such regulations are submitted to the Congress.

(Pub. L. 96-465, title I, §830, as added Pub. L. 100-238, title II, §202(a), Jan. 8, 1988, 101 Stat. 1768.)

REFERENCES IN TEXT

The Civil Service Retirement Spouse Equity Act of 1984, referred to in subsec. (a), is Pub. L. 98-615, Nov. 8, 1984, 98 Stat. 3195, as amended. Section 4 of that Act is set out as a note under section 8341 of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 8331 of Title 5 and Tables.

For effective date of this section, referred to in subsec. (a), see Effective Date note set out below.

CODIFICATION

Another section 830 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069a of this title.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE

Section applicable to any individual who, on or after Jan. 8, 1988, is married to a participant or former participant, see section 261(b)(1) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight of House of Representatives, see section 1(b) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 4069a. Retirement benefits for certain former spouses

(a) Eligibility; percentage of benefits

Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent or in such amounts as are provided in advance in appropriations Acts, and except to the extent such former spouse is disqualified under subsection (b) of this section, to benefits—

- (1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or
- (2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such benefits.

(b) Disqualification

A former spouse shall not be entitled to benefits under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c) Period of entitlement; construction with other provisions; application approval and payment

(1) The entitlement of a former spouse to benefits under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this subchapter; or

(ii) the first day of the month in which the divorce or annulment involved becomes final; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age; or

(ii) the date the benefits of the participant terminates.

(2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—

(A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this subchapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.

(3) Benefits under this section shall be treated the same as an annuity under section 4054(a)(7) of this title for purposes of section 4046(h) of this title or any comparable provision of law.

(4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after December 22, 1987. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before December 22, 1987.

(d) "Benefits" defined

For the purposes of this section, the term "benefits" means—

(1) with respect to a participant or former participant subject to this part, the annuity of the participant or former participant; and

(2) with respect to a participant or former participant subject to part II of this sub-

chapter, the benefits of the participant or former participant under that part.

(e) Effect of section on annuity

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.

(f) Former spouses of United States Information Agency and Agency for International Development employees

Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

(Pub. L. 96-465, title I, §830, as added Pub. L. 100-204, title I, §188(a), Dec. 22, 1987, 101 Stat. 1369; amended Pub. L. 101-246, title I, §146(a), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 830 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-238 and is classified to section 4069-1 of this title.

AMENDMENTS

1990—Subsec. (f). Pub. L. 101-246 added subsec. (f).

§ 4069a-1. Retirement benefits for certain former spouses

(a) Eligibility; percentage of benefits

Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b) of this section, to benefits—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such benefits.

(b) Disqualification

A former spouse shall not be entitled to benefits under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c) Period of entitlement; construction with other provisions; application approval and payment

(1) The entitlement of a former spouse to benefits under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this subchapter; or

(ii) the first day of the month in which the divorce or annulment involved becomes final; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age; or

(ii) the date of the benefits of the participant terminates.

(2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—

(A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this subchapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.

(3) Benefits under this section shall be treated the same as an annuity under section 4054(a)(7) of this title for purposes of section 4046(h) of this title or any comparable provision of law.

(4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before the effective date of this section.

(d) "Benefits" defined

For the purpose of this section, the term "benefits" means—

(1) with respect to a participant or former participant subject to this part, the annuity of the participant or former participant; and

(2) with respect to a participant or former participant subject to part II of this subchapter, the benefits of the participant or former participant under that part.

(e) Effect of section on annuity

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a partici-

pant or former participant under this subchapter.

(Pub. L. 96-465, title I, §831, as added Pub. L. 100-238, title II, §204(a), Jan. 8, 1988, 101 Stat. 1770.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (c)(4), see Effective Date note set out below.

CODIFICATION

Another section 831 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069b of this title.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

§ 4069b. Survivor benefits for certain former spouses

(a) Eligibility; amount of annuity

Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent or in such amounts as are provided in advance in appropriations Acts, and except to the extent such former spouse is disqualified under subsection (b) of this section, to a survivor annuity equal to 55 percent of the greater of—

(1) the full amount of the participant's or former participant's annuity, as computed under this subchapter; or

(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(b) Election by former spouse

If an election has been made with respect to such former spouse under section 4159 or 4046(f) of this title, then the survivor annuity under subsection (a) of this section of such former spouse shall be equal to the full amount of the participant's or former participant's annuity referred to in subsection (a) of this section less the amount of such election.

(c) Disqualification

A former spouse shall not be entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d) Period of entitlement; application approval and payment

(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of December 22, 1987, beginning on December 22, 1987; and

(ii) in the case of any other former spouse, beginning on the later of—

(I) the date that the participant or former participant to whom the former spouse was married dies; or

(II) December 22, 1987; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining the age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after December 22, 1987. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before December 22, 1987.

(e) Promulgation of regulations; notification of rights

The Secretary shall—

(1) as soon as possible, but not later than 60 days after December 22, 1987, issue such regulations as may be necessary to carry out this section; and

(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

(f) Effect of section on annuity

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.

(g) Former spouses of United States Information Agency and Agency for International Development employees

Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to this section, but who was married to a former Foreign Service employee of the United States Information Agency or of the Agency of International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

(Pub. L. 96-465, title I, §831, as added Pub. L. 100-204, title I, §188(a), Dec. 22, 1987, 101 Stat. 1370; amended Pub. L. 101-246, title I, §146(b), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 831 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-238 and is classified to section 4069a-1 of this title.

AMENDMENTS

1990—Subsec. (g). Pub. L. 101-246 added subsec. (g).

§ 4069b-1. Survivor benefits for certain former spouses

(a) Eligibility; amount of annuity

Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b) of this section, to a survivor annuity equal to 55 percent of the greater of—

(1) the full amount of the participant's or former participant's annuity, as computed under this subchapter; or

(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(b) Election by former spouse

If an election has been made with respect to such former spouse under section 4159 or 4046(f) of this title, then the survivor annuity under subsection (a) of this section of such former spouse shall be equal to the full amount of the participant's or former participant's annuity referred to in subsection (a) of this section less the amount of such election.

(c) Disqualification

A former spouse shall not be entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this subchapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d) Period of entitlement; application approval and payment

(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on such date; and

(ii) in the case of any other former spouse, beginning on the later of—

(I) the date that the participant or former participant to whom the former spouse was married dies; or

(II) the effective date of this section; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining the age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which

the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

(e) Promulgation of regulations; notification of rights

The Secretary shall—

(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

(f) Effect of section on annuity

Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this subchapter.

(Pub. L. 96-465, title I, §832, as added Pub. L. 100-238, title II, §204(a), Jan. 8, 1988, 101 Stat. 1771.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsecs. (d)(1)(A)(i), (ii)(II), (2) and (e)(1), see Effective Date note set out below.

CODIFICATION

Another section 832 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-204 and is classified to section 4069c of this title.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

§ 4069c. Health benefits for certain former spouses

(a) Eligibility

Except as provided in subsection (c)(1) of this section, any individual—

(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible

for coverage under a health benefits plan in accordance with the provisions of this section.

(b) Prerequisites for enrollment; notification of rights

(1) Any individual eligible for coverage under subsection (a) of this section may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on December 22, 1987, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5 an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Secretary shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a) of this section; and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

(c) Disqualification

(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1) of this section.

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) of this section may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) Prohibition on coverage by more than one plan

No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) "Health benefits plan" defined

For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5.

(f) Former spouses of United States Information Agency and Agency for International Development employees

Any individual who on February 14, 1981, was an otherwise qualified former spouse pursuant to subsections (a), (b), and (c) of this section, but who was married to a former Foreign Service employee of the United States Information

Agency or of the Agency for International Development, shall be entitled to benefits under this section if—

(1) the former employee retired from the Civil Service Retirement and Disability System on a date before his employing agency could legally participate in the Foreign Service Retirement and Disability System; and

(2) the marriage included at least five years during which the employee was assigned overseas.

(Pub. L. 96-465, title I, §832, as added Pub. L. 100-204, title I, §188(a), Dec. 22, 1987, 101 Stat. 1371; amended Pub. L. 101-246, title I, §146(c), Feb. 16, 1990, 104 Stat. 37.)

CODIFICATION

Another section 832 of the Foreign Service Act of 1980 was enacted by Pub. L. 100-238 and is classified to section 4069b-1 of this title.

AMENDMENTS

1990—Subsec. (f). Pub. L. 101-246 added subsec. (f).

§ 4069c-1. Health benefits for certain former spouses

(a) Eligibility

Except as provided in subsection (c)(1) of this section, any individual—

(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b) Prerequisites for enrollment; notification of rights

(1) Any individual eligible for coverage under subsection (a) of this section may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5 an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Secretary shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a) of this section; and

(B) to notify each such former spouse of that individual's rights under this section.

(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

(c) Disqualification

(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1) of this section.

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) of this section may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) Prohibition on coverage by more than one plan

No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) "Health benefits plan" defined

For purposes of this section the term "health benefits plan" means an approved health benefits plan under chapter 89 of title 5.

(Pub. L. 96-465, title I, §833, as added Pub. L. 100-238, title II, §204(a), Jan. 8, 1988, 101 Stat. 1772.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (b)(1), see Effective Date note set out below.

EFFECTIVE DATE

Section effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as an Effective Date of 1988 Amendment note under section 4054 of this title.

PART II—FOREIGN SERVICE PENSION SYSTEM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 4043, 4044, 4054, 4055, 4063, 4064, 4067, 4069, 4069a, 4069a-1 of this title; title 5 sections 8402, 8411; title 26 section 3121; title 42 sections 402, 410.

§ 4071. Establishment; application of Federal Employees' Retirement System to Foreign Service Pension System participants

(a) There is hereby established a Foreign Service Pension System.

(b) Except as otherwise specifically provided in this part or any other provision of law, the provisions of chapter 84 of title 5 shall apply to all participants in the Foreign Service Pension System and such participants shall be treated in all respects similar to persons whose participation in the Federal Employees' Retirement System provided in that chapter is required.

(Pub. L. 96-465, title I, §851, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 615.)

EFFECTIVE DATE

Part effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as a note under section 8401 of Title 5, Government Organization and Employees.

§ 4071a. Definitions

As used in this part, unless otherwise specified—

(1) the term "court order" has the same meaning given in section 4044(4) of this title;

(2) the term "Fund" means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 4042 of this title;

(3) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of a participant under section 4071e of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 4071c of this title to obtain credit under this System for prior civilian or military service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(4) the term "normal cost" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(5) the term "participant" means a person who participates in the Foreign Service Pension System;

(6) the term "pro rata share" in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the service of the participant which is creditable under this subchapter is of (B) the total number of years of such service, disregarding extra credit under section 4057 of this title;

(7) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this part based on the service of participants or former participants, over

(B) the sum of—

(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 4071e of this title and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 4071f of this title;

(iii) the Fund balance as of the date the supplemental liability is determined, to

the extent that such balance is attributable—

(I) to the System, or

(II) to the contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; and

(8) the term "System" means the Foreign Service Pension System.

(Pub. L. 96-465, title I, §852, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 615; amended Pub. L. 100-238, title II, §241, Jan. 8, 1988, 101 Stat. 1776.)

REFERENCES IN TEXT

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (3)(A) and (7)(B)(iii)(II), is title II of Pub. L. 98-168, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1988—Pars. (3) to (8). Pub. L. 100-238 added par. (3) and redesignated former pars. (3) to (7) as (4) to (8), respectively.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

§ 4071b. Participants

(a) Covered members

Except for persons excluded by subsection (b), (c), or (d) of this section, all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 4043 of this title shall instead be participants in the Foreign Service Pension System.

(b) Exclusion of participants in Foreign Service Retirement and Disability System

Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act [42 U.S.C. 401 et seq.].

(c) Exclusion of individuals with certain creditable civilian service

Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under part I of this subchapter, subchapter III of chapter 83 of title 5 (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) (determined without regard to any deposit or redeposit re-

quirement under any such part, subchapter, or title, any requirement that the individual become subject to such part, subchapter, or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such part, subchapter, or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this part (under regulations issued by the Secretary of State pursuant to section 4071i of this title).

(d) Exclusion of temporary or intermittent employees

The Secretary may exclude from the operation of this part any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 3946 of this title.

(Pub. L. 96-465, title I, §853, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-178, title II, §204(b)(1), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Central Intelligence Agency Retirement Act, referred to in subsec. (c), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Title II of the Act is classified generally to subchapter II (§2011 et seq.) of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (c), is Pub. L. 99-335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of Title 5, Government Organization and Employees, and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of Title 5. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of Title 5 and Tables.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-178 substituted "the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.)" for "the Central Intelligence Agency Retirement Act of 1964 for Certain Employees".

1986—Subsec. (a). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4045 of this title.

§ 4071c. Creditable service**(a) Service included**

For purposes of this part, creditable service of a participant includes—

(1) service as a participant after December 31, 1986;

(2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and

(3) except as provided in subsection (b) of this section, any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under part I of this subchapter (determined without regard to any deposit or redeposit requirement under such part, subchapter III of chapter 83 of title 5 (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.), any requirement that the individual become subject to such part, subchapter, or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such part, subchapter, or title).

(b) Refund of retirement deductions; retirement deduction not made; required deposit; computation of interest

(1) A participant who has received a refund of retirement deductions under part I of this subchapter with respect to any service described in subsection (a)(3) of this section may not be allowed credit for such service under this part unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) A participant may not be allowed credit under this part for any service described in subsection (a)(3) of this section for which retirement deductions under part I of this subchapter have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 4045(d) of this title and regulations issued by the Secretary of State.

(c) Volunteer service; required payment

Credit shall be given under this System to a participant for a period of prior satisfactory service as—

(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

(3) a full-time volunteer for a period of service of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service (as determined in accordance with

regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5) together with interest determined under regulations issued by the Secretary of State.

(d) Prior service under other retirement system; waiver of credit and payment into Fund

Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5) or under title III of the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.) if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which was deducted and withheld from the individual's basic pay under the other retirement system during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

(e) Employees of Members or offices of Congress

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a contribution (from the appropriation or fund which is used for payment of the salary of the participant) determined under section 4071f(a) of this title to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this part and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

(Pub. L. 96-465, title I, §854, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 616; amended Pub. L. 99-556, title IV, §405, Oct. 27, 1986, 100 Stat. 3137; Pub. L. 100-238, title II, §242, Jan. 8, 1988, 101 Stat. 1776; Pub. L. 103-178, title II, §204(b)(2), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

Section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in subsec. (a)(2), is section 204(a)(2) of Pub. L. 98-168, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

Section 414 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(3), is section 414 of Pub. L. 99-335, title IV, June 6, 1986, 100 Stat. 614, which amended section 4043 of this title.

The Central Intelligence Agency Retirement Act, referred to in subsecs. (a)(3) and (d), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Titles II and III of the Act are classified generally to subchapters II (§2011 et seq.) and III (§2151 et seq.), respectively, of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

The Peace Corps Act, referred to in subsec. (c)(1), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of this title. For complete classification of this

Act to the Code, see Short Title note set out under section 2501 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (c)(2), is Pub. L. 88-452, Aug. 20, 1964, 73 Stat. 508, as amended. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88-452 as added by Pub. L. 90-222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93-113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq., 5042(13)(A), and 5055 of Title 42.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973 are classified to Parts A (§4951 et seq.), B (§4971 et seq.), and C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (a)(3), Pub. L. 103-178, §204(b)(1), substituted “the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

Subsec. (d), Pub. L. 103-178, §204(b)(2)(B), substituted “the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.)” for “the Central Intelligence Agency Retirement Act of 1964 for Certain Employees”.

1988—Subsec. (e), Pub. L. 100-238 struck out “matching” after “shall make a” and inserted “determined under section 4071f(a) of this title” after “participant”.

1986—Subsec. (d), Pub. L. 99-556, §405(a), which directed that subsec. (d) be amended by substituting “which was deducted and withheld from the individual’s basic pay under the other retirement system” for “which would have been deducted from pay under section 4071c(a) of this title had the individual been a participant”, was executed by making the substitution for “which would have been deducted from pay under section 4071e(a) of this title had the individual been a participant”, as the probable intent of Congress.

Subsec. (e), Pub. L. 99-556, §405(b), added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4071a of this title.

§ 4071d. Entitlement to annuity

(a) Retirement conditions; definitions

(1) Any participant may be retired under the conditions specified in section 4051 of this title and shall be retired under the conditions specified in sections 4052 and 4053 of this title and receive benefits under this part.

(2) For the purposes of this subsection—

(A) the term “participant”, as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

(B) the term “System”, as used in those sections, means the Foreign Service Pension System.

(b) Voluntary or mandatory retirement with authorization for immediate annuity; computation of annuity

(1) Any participant who retires voluntarily or mandatorily under section 4007, 4008, 4051, 4052, or 4053 of this title under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System and who has completed at least 5 years as a member of the Foreign Service shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(d)(1) of title 5 for all service while a participant in this System and for prior service creditable under this part not otherwise counted as—

(i) a member of the Service,

(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) or under section 302(a) or 303(b) of that Act (50 U.S.C. 2152(a), 2153(b)), or

(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, or in the Federal Employees’ Retirement System under chapter 84 of title 5; and

(B) at the rate stated in section 8415(a) of title 5 for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).

(3) Any participant who is involuntarily retired or separated under section 4007, 4008, or 4010 of this title and who would if a participant under part I of this subchapter, become eligible for a refund of contributions or a deferred annuity under part I of this subchapter, shall, in lieu thereof, receive benefits for an involuntary separation under this part.

(4) A disability annuity under this part required to be redetermined under section 8452(b) of title 5, or computed under section 8452(c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection (b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452(c) and (d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 4051 of this title.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5 shall not be subject to section 8415(f)(1) of such title 5 if the former participant has 20 years of service creditable under this part and is at least 50 years of age as of the date on which the annuity is to commence.

(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this part rather

than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an “assumed FSRDS annuity” rather than an “assumed CSRS annuity” as stated in such section. For the purpose of this subparagraph, the term “assumed FSRDS annuity” means the amount of the survivor annuity to which the widow or widower would be entitled under part I of this subchapter based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) Annuity supplement

A participant who is entitled to an immediate annuity under subsection (b) of this section shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5 as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Separation for cause based on disloyalty

Any participant who is separated for cause under section 4010 of this title shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

(Pub. L. 96-465, title I, §855, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 617; amended Pub. L. 99-556, title IV, §406, Oct. 27, 1986, 100 Stat. 3138; Pub. L. 103-178, title II, §204(b)(3), Dec. 3, 1993, 107 Stat. 2033.)

REFERENCES IN TEXT

The Central Intelligence Agency Retirement Act, referred to in subsec. (b)(2)(A)(ii), is Pub. L. 88-643, as revised generally by Pub. L. 102-496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196. Title II of the Act is classified generally to subchapter II (§2011 et seq.) of chapter 38 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50 and Tables.

AMENDMENTS

1993—Subsec. (b)(2)(A)(ii). Pub. L. 103-178 substituted “under title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) or under section 302(a) or 303(b) of that Act (50 U.S.C. 2152(a), 2153(b))” for “under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act”.

1986—Subsec. (b)(1). Pub. L. 99-556, §406(a), substituted “as a member of the Foreign Service” for “of service subject to this subchapter”.

Subsec. (b)(2). Pub. L. 99-556, §406(b), amended par. (2) by substituting subpars. (A) and (B) for former subpars. (A) to (C). Prior to amendment, subpars. (A) to (C) read as follows:

“(A) for all service earned while a participant in this System, at the rate stated in section 8415(d) of title 5; and

“(B) for all service earned while a participant in another retirement system creditable under section 4071c(d) of this title, at the rate which would have been applicable to the individual had that individual remained a participant in the other system; and

“(C) for all volunteer service creditable under section 4071c(c) of this title, at the rate stated in section 8415(a) of title 5.”

Subsec. (b)(3) to (6). Pub. L. 99-556, §406(c), added pars. (3) to (6).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4053 of this title.

§ 4071e. Deductions and withholdings from pay

(a) Basic pay

The employing agency shall deduct and withhold from basic pay of each participant a percentage of basic pay equal to 7½ percent minus the percentage then in effect under section 3101(a) of title 26 (relating to the rate of tax for old age, survivors and disability insurance).

(b) Consent to deductions; discharge of claims

Each participant is deemed to consent and agree to the deductions under subsection (a) of this section. Notwithstanding any law or regulation affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this part based on the service of the participant.

(c) Deposit of amounts

Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Entry on individual retirement records

Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) of this section shall be entered on individual retirement records.

(Pub. L. 96-465, title I, §856, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 618; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4045, 4071a of this title.

§ 4071f. Government contributions

(a) Each agency employing any participant shall contribute to the Fund the amount computed in a manner similar to that used under section 8423(a) of title 5 pursuant to determinations of the normal cost percentage for the Foreign Service Pension System by the Secretary of State.

(b)(1) The Secretary of State shall compute the amount of the supplemental liability of the Fund as of the close of each fiscal year beginning after September 30, 1987. The amount of any such supplemental liability shall be amor-

tized in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the System.

(2) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount of the installment computed under this subsection for such year.

(3) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (2) of this subsection for such year.

(Pub. L. 96-465, title I, §857, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4071a, 4071c of this title.

§ 4071g. Cost-of-living adjustments

Cost-of-living adjustments for annuitants under this System shall be granted under procedures in section 8462 of title 5 in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

(Pub. L. 96-465, title I, §858, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619.)

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103-66, set out as a note under section 8340 of Title 5, Government Organization and Employees.

§ 4071h. General and administrative provisions

(a) Administration by Secretary of State; issuance of regulations

The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapters III and VII of chapter 84 of title 5. The Secretary of State shall, with respect to the Foreign Service Pension System, perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of such Office by such chapter 84 and may issue regulations for such purposes.

(b) Appeal of determinations

Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 of title 5 or the Director of such Office, would be appealable to the Merit Systems Protection Board shall, instead, be appealable to the Foreign Service Grievance Board, except that determinations of disability for participants shall be based upon the standards in section 4048 of this title (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

(c) Periodic valuations by Secretary of the Treasury

At least every 5 years, the Secretary of the Treasury shall prepare periodic valuations of the Foreign Service Pension System and shall advise the Secretary of State of (1) the normal cost of the System, (2) the supplemental liability of the System, and (3) the amounts necessary to finance the costs of the System.

(Pub. L. 96-465, title I, §859, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619.)

§ 4071i. Transition provisions

The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5 (the Civil Service Retirement System) to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5 (the Civil Service Retirement System), the Social Security Act [42 U.S.C. 301 et seq.], and title 26 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

(Pub. L. 96-465, title I, §860, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4046, 4071b of this title; title 26 section 3121; title 42 section 410.

§ 4071j. Former spouses

(a) Entitlement to share in benefits; conditions; remarriage; payments as income to former spouse; disability annuitants; election regarding method of payment; maximum amount payable

(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this part, a former spouse of a participant or former participant is entitled, during the period described in subparagraph (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this part if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this subchapter with at least 5 of such years occurring while the participant was a member of the Foreign Service.

(B) The period referred to in subparagraph (A) is the period which begins on the first day of the month following the month in which the divorce or annulment becomes final and ends on the last day of the month before the former spouse dies or remarries before 55 years of age.

(2) The share referred to in paragraph (1) equals—

(A) 50 percent, if such former spouse was married to the participant throughout the actual years of service of the participant which are creditable under this subchapter; or

(B) a pro rata share of 50 percent, if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(4)(A) For purposes of title 26, payments to a former spouse under this section shall be treated as income to the former spouse and not to the participant.

(B) Any reduction in payments to a participant or former participant as a result of payments to a former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this part, and

(ii) any reduction in the annuity of the participant to provide survivor benefits under this part.

(5) Notwithstanding subsection (a)(1) of this section, in the case of any former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date the participant would qualify, on the basis of his or her creditable service, for an annuity under this subchapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this part which would otherwise be payable to a participant or former participant shall be entitled to make any election regarding method of payment to such former spouse that such participant would have otherwise been entitled to elect, and the participant may elect an alternate method for the remaining share of such benefits. Such elections shall not increase the actuarial present value of benefits expected to be paid under this part.

(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, providing for payment of a survivor annuity to any survivor of the former spouse.

(7) The maximum amount payable to any former spouse pursuant to this subsection shall be the difference, if any, between 50 percent of the total benefits authorized to be paid to a former participant by this part, disregarding any apportionment of these benefits to others,

and the aggregate amount payable to all others at any one time.

(b) Entitlement to survivor benefits; determination of share; disqualification upon remarriage

(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this part to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A) of this section, such former spouse is entitled to a share, determined under subsection (b)(2) of this section, of all survivor benefits that would otherwise be payable under this part to an eligible surviving spouse of the participant.

(2) The share referred to in subsection (b)(1) of this section equals—

(A) 100 percent if such former spouse was married to the participant throughout the entire period of service of the participant which is creditable under this subchapter; or

(B) a pro rata share of 100 percent if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(c) Diminution of entitlement of former spouse prohibited

A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5 or other section relating to the participant's account in the Thrift Savings Plan or annuity under the basic plan that would diminish the entitlement of a former spouse to any benefit granted to the former spouse by this section or in a current spousal agreement.

(d) Transfer of participant from Foreign Service Retirement and Disability System; determination of benefit share

If a member becomes a participant under this part after qualifying for benefits under part I of this subchapter and, at the time of transfer, has a former spouse entitled to benefits under part I of this subchapter which are determined under section 4054 or 4055 of this title (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 4054 or 4055 of this title and the service of the member as a participant under this part is not recognized in determining that pro rata share, then subsections (a) and (b) of this section shall not apply to such former spouse. Otherwise, subsections (a) and (b) of this section shall apply.

(e) Death of participant entitled to deferred annuity; spousal agreement; payment of survivor annuity

If a participant dies after completing at least 18 months of service or a former participant dies entitled to a deferred annuity, but before becoming eligible to receive the annuity, and such participant or former participant has left with the Secretary of State a spousal agreement promising a share of a survivor annuity under sub-

chapter IV, chapter 84, title 5, to a former spouse, such survivor annuity shall be paid under the terms of this part as if the survivor annuity had been ordered by a court.

(Pub. L. 96-465, title I, §861, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 619; amended Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-556, title IV, §407, Oct. 27, 1986, 100 Stat. 3139.)

AMENDMENTS

1986—Subsec. (a)(4)(A). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (b)(3). Pub. L. 99-556 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

§ 4071k. Spousal agreements

A spousal agreement is any written agreement (properly authenticated as determined by the Secretary of State) between a participant or former participant and his or her spouse or former spouse on file with the Secretary of State. A spousal agreement shall be consistent with the terms of this chapter and applicable regulations and, if executed at the time a participant or former participant is currently married, shall be approved by such current spouse. It may be used to fix the level of benefits payable under this part to a spouse or former spouse.

(Pub. L. 96-465, title I, §862, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 621.)

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.

SUBCHAPTER IX—TRAVEL, LEAVE, AND OTHER BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4153 of this title; title 7 section 1766c; title 26 section 912; title 31 section 325; title 42 section 242i; title 50 section 403e.

§ 4081. Travel and related expenses

The Secretary may pay the travel and related expenses of members of the Service and their families, including costs or expenses incurred for—

- (1) proceeding to and returning from assigned posts of duty;
- (2) authorized or required home leave;
- (3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty;
- (4) representational travel within the country to which the member of the Service is assigned or, when not more than one family member participates, outside such country;

(5) obtaining necessary medical care for an illness, injury, or medical condition while abroad in a locality where there is no suitable person or facility to provide such care (without regard to those laws and regulations limiting or restricting the furnishing or payment of transportation and traveling expenses), as well as expenses for—

(A) an attendant or attendants for a member of the Service or a family member who is too ill to travel unattended or for a family member who is too young to travel alone, and

(B) a family member incapable of caring for himself or herself if he or she remained at the post at which the member of the Service is serving;

(6) rest and recuperation travel of members of the Service who are United States citizens, and members of their families, while serving at locations abroad specifically designated by the Secretary for purposes of this paragraph, to—

(A) other locations abroad having different social, climatic, or other environmental conditions than those at the post at which the member of the Service is serving, or

(B) locations in the United States;

except that, unless the Secretary otherwise specifies in extraordinary circumstances, travel expenses under this paragraph shall be limited to the cost for a member of the Service, and for each member of the family of the member, of 1 round trip during any continuous 2-year tour unbroken by home leave and of 2 round trips during any continuous 3-year tour unbroken by home leave;

(7) removal of the family members of a member of the Service, and the furniture and household and personal effects (including automobiles) of the family, from a Foreign Service post where there is imminent danger because of the prevalence of disturbed conditions, and the return of such individuals, furniture, and effects to such post upon the cessation of such conditions, or to such other Foreign Service post as may in the meantime have become the post to which the member of the Service has been reassigned;

(8) trips by a member of the Service for purposes of family visitation in situations where the family of the member is prevented by official order from accompanying the member to, or has been ordered from, the assigned post of the member because of imminent danger due to the prevalence of disturbed conditions, except that—

(A) with respect to any such member whose family is located in the United States, the Secretary may pay the costs and expenses for not to exceed two round trips in a 12-month period; and

(B) with respect to any such member whose family is located abroad, the Secretary may pay such costs and expenses for trips in a 12-month period as do not exceed the cost of 2 round trips (at less than first class) to the District of Columbia;

(9) roundtrip travel to or from an employee's post of assignment for purposes of family visi-

tation in emergency situations involving personal hardship, except that payment for travel by family members to an employee's post of assignment may be authorized under this paragraph only where the family of the member is prevented by official order from residing at such post.¹

(10) preparing and transporting to the designated home in the United States or to a place not more distant, the remains of a member of the Service, or of a family member of a member of the Service, who dies abroad or while in travel status or, if death occurs in the United States, transport of the remains to the designated home in the United States or to a place not more distant;

(11) transporting the furniture and household and personal effects of a member of the Service (and of his or her family) to successive posts of duty and, on separation of a member from the Service, to the place where the member will reside (or if the member has died, to the place where his or her family will reside);

(12) packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of a member of the Service (and of his or her family)—

(A) when the member is absent from his or her post of assignment under orders or is assigned to a Foreign Service post to which such furniture and household and personal effects cannot be taken or at which they cannot be used, or when it is in the public interest or more economical to authorize storage;

(B) in connection with an assignment of the member to a new post, except that costs and expenses may be paid under this subparagraph only for the period beginning on the date of departure from his or her last post or (in the case of a new member) on the date of departure from the place of residence of the member and ending on the earlier of the date which is 3 months after arrival of the member at the new post or the date on which the member establishes residence quarters, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days; and

(C) in connection with separation of the member from the Service, except that costs or expenses may not be paid under this subparagraph for storing furniture and household and personal effects for more than 3 months, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days;

(13) transporting, for or on behalf of a member of the Service, a privately owned motor vehicle in any case in which the Secretary determines that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination, but transportation may be provided under this

paragraph for only one motor vehicle of a member during any 48-month period while the member is continuously serving abroad, except that another motor vehicle may be so transported as a replacement for such motor vehicle if such replacement—

(A) is determined, in advance, by the Secretary to be necessary for reasons beyond the control of the member and in the interest of the Government, or

(B) is incident to a reassignment when the cost of transporting the replacement motor vehicle does not exceed the cost of transporting the motor vehicle that is replaced;

(14) the travel and relocation of members of the Service, and members of their families, assigned to or within the United States (or any territory or possession of the United States or the Commonwealth of Puerto Rico), including assignments under subchapter VI of chapter 33 of title 5 (notwithstanding section 3375(a) of such title, if an agreement similar to that required by section 3375(b) of such title is executed by the member of the Service); and

(15) 1 round-trip per year for each child below age 21 of a member of the Service assigned abroad—

(A) to visit the member abroad if the child does not regularly reside with the member and the member is not receiving an education allowance or educational travel allowance for the child under section 5924(4) of title 5; or

(B) to visit the other parent of the child if the other parent resides in a country other than the country to which the member is assigned and the child regularly resides with the member and does not regularly attend school in the country in which the other parent resides,

except that a payment under this paragraph may not exceed the cost of round-trip travel between the post to which the member is assigned and the port of entry in the contiguous 48 States which is nearest to that post.

(Pub. L. 96-465, title I, §901, Oct. 17, 1980, 94 Stat. 2124; Pub. L. 101-246, title I, §148, Feb. 16, 1990, 104 Stat. 38; Pub. L. 102-138, title I, §§145, 146, Oct. 28, 1991, 105 Stat. 668, 669.)

AMENDMENTS

1991—Par. (10). Pub. L. 102-138, §146, inserted before semicolon “or, if death occurs in the United States, transport of the remains to the designated home in the United States or to a place not more distant”.

Par. (12)(B). Pub. L. 102-138, §145(1), inserted before semicolon “, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days”.

Par. (12)(C). Pub. L. 102-138, §145(2), inserted before semicolon “, except that in extraordinary circumstances the Secretary may extend this period for not more than an additional 90 days”.

1990—Par. (9). Pub. L. 101-246 amended par. (9) generally. Prior to amendment, par. (9) read as follows: “round-trip travel from a location abroad for purposes of family visitation in emergency situations involving personal hardship;”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 143a; title 10 sections 1599b, 1605; title 28 section 530A; title 37 section 431; title 38 section 707.

¹ So in original. The period probably should be a semicolon.

§ 4082. Loan of household effects

The Secretary may, as a means of eliminating transportation costs, provide members of the Service with basic household furnishing and equipment for use on a loan basis in personally owned or leased residences.

(Pub. L. 96-465, title I, §902, Oct. 17, 1980, 94 Stat. 2127.)

§ 4083. Required leave**(a) Criteria; length of continuous service**

The Secretary may order a member of the Service (other than a member employed under section 3951 of this title) who is a citizen of the United States to take a leave of absence under section 6305 of title 5 (without regard to the introductory clause of subsection (a) of that section), upon completion by that member of 18 months of continuous service abroad. The Secretary shall order on such a leave of absence a member of the Service (other than a member employed under section 3951 of this title) who is a citizen of the United States as soon as possible after completion by that member of 3 years of continuous service abroad.

(b) Place leave may be taken

Leave ordered under this section may be taken in the United States, its territories and possessions, or the Commonwealth of Puerto Rico.

(c) Availability for work or duties in Department

While on a leave of absence ordered under this section, the services of any member of the Service shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties shall not be counted as leave.

(Pub. L. 96-465, title I, §903, Oct. 17, 1980, 94 Stat. 2127; Pub. L. 103-236, title I, §180(a)(8), Apr. 30, 1994, 108 Stat. 416.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-236 inserted “(other than a member employed under section 3951 of this title)” after “member of the Service” in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1605; title 37 section 431; title 38 section 707.

§ 4084. Health care program**(a) Establishment**

The Secretary of State shall establish a health care program to promote and maintain the physical and mental health of members of the Service, and (when incident to service abroad) other designated eligible Government employees, and members of the families of such members and employees.

(b) Services provided

Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations, and other preventive and remedial care and services as necessary, for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations

necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or Foreign Service Pension System or to provide survivor benefits under subchapter VIII of this chapter.

(c) Facilities; employment of personnel

The Secretary of State may establish health care facilities and provide for the services of physicians, nurses, or other health care personnel at Foreign Service posts abroad at which, in the opinion of the Secretary of State, a sufficient number of Government employees are assigned to warrant such facilities or services.

(d) Costs of treatment

If an individual eligible for health care under this section incurs an illness, injury, or medical condition which requires treatment while assigned to a post abroad or located overseas pursuant to Government authorization, the Secretary may pay the cost of such treatment.

(e) Death or separation of member

Health care may be provided under this section to a member of the Service or other designated eligible Government employee after the separation of such member or employee from Government service. Health care may be provided under this section to a member of the family of a member of the Service or of a designated eligible Government employee after the separation from Government service or the death of such member of the Service or employee or after dissolution of the marriage.

(f) Review; medical care contracts

The Secretary of State shall review on a continuing basis the health care program provided for in this section. Whenever the Secretary of State determines that all or any part of such program can be provided for as well and as cheaply in other ways, the Secretary may, for such individuals, locations, and conditions as the Secretary of State deems appropriate, contract for health care pursuant to such arrangements as the Secretary deems appropriate.

(Pub. L. 96-465, title I, §904, Oct. 17, 1980, 94 Stat. 2127; Pub. L. 99-93, title I, §122, Aug. 16, 1985, 99 Stat. 413; Pub. L. 100-238, title II, §243, Jan. 8, 1988, 101 Stat. 1776.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-238 inserted “or Foreign Service Pension System” after “System”.

1985—Subsec. (a). Pub. L. 99-93, §122(1), substituted “shall” for “may”.

Subsec. (b). Pub. L. 99-93, §122(2), inserted “, and other preventive and remedial care and services as necessary.”

Subsec. (d). Pub. L. 99-93, §122(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “If an individual eligible for health care under this section incurs an illness, injury, or medical condition while abroad which requires hospitalization or similar treatment, the Secretary may pay all or part of the cost of such treatment. Limitations on such payments established by regulation may be waived whenever the Secretary determines that the illness, injury, or medical condition clearly was caused or materially aggravated by the fact that the individual concerned is or has been located abroad.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-238 effective 90 days after Jan. 8, 1988, see section 261(a) of Pub. L. 100-238, set out as a note under section 4054 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 143a; title 10 section 1599b; title 28 section 530A; title 38 section 707.

§ 4085. Entertainment and representation expenses

Notwithstanding section 5536 of title 5, the Secretary may provide for official receptions and may pay entertainment and representational expenses (including expenses of family members) to enable the Department and the Service to provide for the proper representation of the United States and its interests. In carrying out this section, the Secretary shall, to the maximum extent practicable, provide for the use of United States products, including American wine.

(Pub. L. 96-465, title I, §905, Oct. 17, 1980, 94 Stat. 2128.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287e, 1452, 2389, 2513 of this title; title 38 section 707.

§ 4086. Entitlement to vote in a State in a Federal election; preconditions; applicability

(a) Except as provided in subsection (b) of this section and in such manner as shall be otherwise authorized by a State or other jurisdiction within the territory of the United States, a member of the Service residing outside the United States shall, in addition to any entitlement to vote in a State in a Federal election under section 3 of the Overseas Citizens Voting Rights Act (42 U.S.C. 1973dd-1), be entitled to vote in a Federal election in the State in which such member was last domiciled immediately before entering the Service if such member—

- (1) makes an election of that State;
- (2) notifies that State of such election and notifies any other States in which he or she is entitled to vote of such election; and
- (3) otherwise meets the requirements of such Act [42 U.S.C. 1973dd et seq.].

(b) The provisions of subsection (a) of this section shall apply only to an individual who becomes a member of the Service on or after November 22, 1983, and shall not apply to an individual who registers to vote in a State in which he is entitled to vote under section 3 of Overseas Citizens Voting Rights Act [42 U.S.C. 1973dd-1].

(Pub. L. 96-465, title I, §906, as added Pub. L. 98-164, title I, §129(a), Nov. 22, 1983, 97 Stat. 1027.)

REFERENCES IN TEXT

The Overseas Citizens Voting Rights Act, referred to in text, probably means the Overseas Citizens Voting Rights Act of 1975, Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1142, as amended, which was classified generally to subchapter I-E (§1973dd et seq.) of chapter 20 of Title 42, The Public Health and Welfare, and which was repealed by Pub. L. 99-410, title II, §203, Aug. 28, 1986, 100 Stat. 930. See section 1973ff et seq. of Title 42.

SUBCHAPTER X—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4131, 4153 of this title; title 18 section 205.

§ 4101. Congressional findings and policy

The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of workers to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

- (A) safeguards the public interest,
- (B) contributes to the effective conduct of public business, and
- (C) facilitates and encourages the amicable settlement of disputes between workers and their employers involving conditions of employment;

(2) the public interest demands the highest standards of performance by members of the Service and the continuous development and implementation of modern and progressive work practices to facilitate improved performance and efficiency; and

(3) the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive, and cooperative relationships between management officials and organizations representing members of the Service.

Therefore, labor organizations and collective bargaining in the Service are in the public interest and are consistent with the requirement of an effective and efficient Government. The provisions of this subchapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

(Pub. L. 96-465, title I, §1001, Oct. 17, 1980, 94 Stat. 2128.)

§ 4102. Definitions

As used in this subchapter, the term—

(1) “Authority” means the Federal Labor Relations Authority, described in section 7104(a) of title 5;

(2) “Board” means the Foreign Service Labor Relations Board, established by section 4106(a) of this title;

(3) “collective bargaining” means the performance of the mutual obligation of the management representative of the Department and of the exclusive representative of employees to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting employees, and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but this obligation does not compel either party to agree to a proposal or to make a concession;

(4) “collective bargaining agreement” means an agreement entered into as a result of collective bargaining under the provisions of this subchapter;

(5) “conditions of employment” means personnel policies, practices, and matters, whether established by regulation or otherwise, affecting working conditions, but does not include policies, practices, and matters—

- (A) relating to political activities prohibited abroad or prohibited under subchapter III of chapter 73 of title 5;

(B) relating to the designation or classification of any position under section 3981 of this title;

(C) to the extent such matters are specifically provided for by Federal statute; or

(D) relating to Government-wide or multi-agency responsibility of the Secretary affecting the rights, benefits, or obligations of individuals employed in agencies other than those which are authorized to utilize the Foreign Service personnel system;

(6) “confidential employee” means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(7) “dues” means dues, fees, and assessments;

(8) “employee” means—

(A) a member of the Service who is a citizen of the United States, wherever serving, other than a management official, a confidential employee, a consular agent, a member of the Service who is a United States citizen (other than a family member) employed under section 3951 of this title, or any individual who participates in a strike in violation of section 7311 of title 5; or

(B) a former member of the Service as described in subparagraph (A) whose employment has ceased because of an unfair labor practice under section 4115 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Board;

(9) “exclusive representative” means any labor organization which is certified as the exclusive representative of employees under section 4111 of this title;

(10) “General Counsel” means the General Counsel of the Authority;

(11) “labor organization” means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose dealing with the Department concerning grievances (as defined in section 4131 of this title) and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by the Department; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(12) “management official” means an individual who—

(A) is a chief of mission or principal officer;

(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in subparagraph (A) or (B);

(D) is serving as a deputy to any individual described by subparagraph (A), (B), or (C);

(E) is assigned to carry out functions of the Inspector General of the Department of State and the Foreign Service under section 3929 of this title; or

(F) is engaged in the administration of this subchapter or in the formulation of the personnel policies and programs of the Department;

(13) “Panel” means the Foreign Service Impasse Disputes Panel, established by section 4110(a) of this title; and

(14) “person” means an individual, a labor organization, or an agency to which this subchapter applies.

(Pub. L. 96-465, title I, §1002, Oct. 17, 1980, 94 Stat. 2129; Pub. L. 103-236, title I, §180(a)(9), Apr. 30, 1994, 108 Stat. 416.)

AMENDMENTS

1994—Par. (8)(A). Pub. L. 103-236 inserted “a member of the Service who is a United States citizen (other than a family member) employed under section 3951 of this title.”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3902 of this title; title 5 section 5596.

§ 4103. Application

(a) Departments and agencies affected

This subchapter applies only with respect to the Department of State, the United States Information Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(b) Exclusion of subdivisions

The President may by Executive order exclude any subdivision of the Department from coverage under this subchapter if the President determines that—

(1) the subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(2) the provisions of this subchapter cannot be applied to that subdivision in a manner consistent with national security requirements and considerations.

(c) Suspension of provisions

The President may by Executive order suspend any provision of this subchapter with respect to any post, bureau, office, or activity of the Department, if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency.

(Pub. L. 96-465, title I, §1003, Oct. 17, 1980, 94 Stat. 2130; Pub. L. 97-241, title III, §303(b), Aug. 24, 1982, 96 Stat. 291.)

CHANGE OF NAME

“United States Information Agency” substituted for “International Communication Agency” in subsec. (a), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4173 of this title.

§ 4104. Employee rights

(a) Every employee has the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal. Each employee shall be protected in the exercise of such right.

(b) Except as otherwise provided under this subchapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and, in that capacity, to present the views of the labor organization to the Secretary and other officials of the Government, including the Congress, or other appropriate authorities; and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this subchapter.

(Pub. L. 96-465, title I, §1004, Oct. 17, 1980, 94 Stat. 2130.)

§ 4105. Management rights

(a) Subject to subsection (b) of this section, nothing in this subchapter shall affect the authority of any management official of the Department, in accordance with applicable law—

(1) to determine the mission, budget, organization, and internal security practices of the Department, and the number of individuals in the Service or in the Department;

(2) to hire, assign, direct, lay off, and retain individuals in the Service or in the Department, to suspend, remove, or take other disciplinary action against such individuals, and to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member in accordance with regulations prescribed under section 4005(b) of this title;

(3) to conduct reductions in force, and to prescribe regulations for the separation of employees pursuant to such reductions in force conducted under section 4010a of this title;

(4) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which the operations of the Department shall be conducted;

(5) to fill positions from any appropriate source;

(6) to determine the need for uniform personnel policies and procedures between or among the agencies to which this subchapter applies; and

(7) to take whatever actions may be necessary to carry out the mission of the Department during emergencies.

(b) Nothing in this section shall preclude the Department and the exclusive representative from negotiating—

(1) at the election of the Department, on the numbers, types, and classes of employees or

positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the Department will observe in exercising any function under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any function under this section by such management officials.

(Pub. L. 96-465, title I, §1005, Oct. 17, 1980, 94 Stat. 2131; Pub. L. 103-236, title I, §181(b), Apr. 30, 1994, 108 Stat. 417; Pub. L. 103-415, §1(jj)(2), Oct. 25, 1994, 108 Stat. 4303.)

AMENDMENTS

1994—Subsec. (a)(3) to (7). Pub. L. 103-236, as amended by Pub. L. 103-415, added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

§ 4106. Foreign Service Labor Relations Board**(a) Establishment; composition**

There is established within the Federal Labor Relations Authority the Foreign Service Labor Relations Board. The Board shall be composed of 3 members, 1 of whom shall be the Chairman of the Authority, who shall be the Chairperson of the Board. The remaining 2 members shall be appointed by the Chairperson of the Board from nominees approved in writing by the agencies to which this subchapter applies, and the exclusive representative (if any) of employees in each such agency. In the event of inability to obtain agreement on a nominee, the Chairperson shall appoint the remaining 2 members from among individuals the Chairperson considers knowledgeable in labor-management relations and the conduct of foreign affairs.

(b) Chairperson serving concurrently as Chairman of Authority; length of terms; designation of alternate Chairperson

The Chairperson shall serve on the Board while serving as Chairman of the Authority. Of the 2 original members of the Board other than the Chairperson, one shall be appointed for a 2-year term and one shall be appointed for a 3-year term. Thereafter, each member of the Board other than the Chairperson shall be appointed for a term of 3 years, except that an individual appointed to fill a vacancy occurring before the end of a term shall be appointed for the unexpired term of the member replaced. The Chairperson may at any time designate an alternate Chairperson from among the members of the Authority.

(c) Vacancies

A vacancy on the Board shall not impair the right of the remaining members to exercise the full powers of the Board.

(d) Holding other Government offices or positions; compensation

The members of the Board, other than the Chairperson, may not hold another office or position in the Government except as authorized by law, and shall receive compensation at the daily equivalent of the rate payable for level V of the Executive Schedule under section 5316 of

title 5 for each day they are performing their duties (including traveltime).

(e) Removal of members

The Chairperson may remove any other Board member, upon written notice, for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing, except where the right to a hearing is waived in writing.

(Pub. L. 96-465, title I, §1006, Oct. 17, 1980, 94 Stat. 2131.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4102 of this title.

§ 4107. Functions of Foreign Service Labor Relations Board

(a) General provisions

The Board shall—

(1) supervise or conduct elections and determine whether a labor organization has been selected as the exclusive representative by a majority of employees who cast valid ballots and otherwise administer the provisions of this subchapter relating to the according of exclusive recognition to a labor organization;

(2) resolve complaints of alleged unfair labor practices;

(3) resolve issues relating to the obligation to bargain in good faith;

(4) resolve disputes concerning the effect, the interpretation, or a claim of breach of a collective bargaining agreement, in accordance with section 4114 of this title; and

(5) take any action considered necessary to administer effectively the provisions of this subchapter.

(b) Consistency or precedence of decisions under other provisions of law

Decisions of the Board under this subchapter shall be consistent with decisions rendered by the Authority under chapter 71 of title 5, other than in cases in which the Board finds that special circumstances require otherwise. Decisions of the Board under this subchapter shall not be construed as precedent by the Authority, or any court or other authority, for any decision under chapter 71 of title 5.

(c) Implementation

In order to carry out its functions under this subchapter—

(1) the Board shall by regulation adopt procedures to apply in the administration of this subchapter; and

(2) the Board may—

(A) adopt other regulations concerning its functions under this subchapter;

(B) conduct appropriate inquiries wherever persons subject to this subchapter are located;

(C) hold hearings;

(D) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas;

(E) require the Department or a labor organization to cease and desist from violations of this subchapter and require it to take any remedial action the Board consid-

ers appropriate to carry out this subchapter; and

(F) consistent with the provisions of this subchapter, exercise the functions the Authority has under chapter 71 of title 5 to the same extent and in the same manner as is the case with respect to persons subject to chapter 71 of such title.

(Pub. L. 96-465, title I, §1007, Oct. 17, 1980, 94 Stat. 2132.)

§ 4108. Functions of General Counsel

The General Counsel may—

(1) investigate alleged unfair labor practices under this subchapter,

(2) file and prosecute complaints under this subchapter, and

(3) exercise such other powers of the Board as the Board may prescribe.

(Pub. L. 96-465, title I, §1008, Oct. 17, 1980, 94 Stat. 2133.)

§ 4109. Judicial review and enforcement

(a) Persons entitled to maintain action; time of filing; venue

Except as provided in section 4114(d) of this title, any person aggrieved by a final order of the Board may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of such order in the United States Court of Appeals for the District of Columbia.

(b) Enforcement of order; temporary relief or restraining order

The Board may petition the United States Court of Appeals for the District of Columbia for the enforcement of any order of the Board under this subchapter and for any appropriate temporary relief or restraining order.

(c) Applicability of other provisions of law

Subsection (c) of section 7123 of title 5 shall apply to judicial review and enforcement of actions by the Board in the same manner that it applies to judicial review and enforcement of actions of the Authority under chapter 71 of title 5.

(d) Unfair labor practices

The Board may, upon issuance of a complaint as provided in section 4116 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition the United States District Court for the District of Columbia, for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the Department to carry out its essential functions or if the Board fails to establish probable cause that an unfair labor practice is being committed.

(Pub. L. 96-465, title I, §1009, Oct. 17, 1980, 94 Stat. 2133.)

§ 4110. Foreign Service Impasse Disputes Panel**(a) Establishment; composition**

There is established within the Federal Labor Relations Authority the Foreign Service Impasse Disputes Panel, which shall assist in resolving negotiating impasses arising in the course of collective bargaining under this subchapter. The Chairperson shall select the Panel from among individuals the Chairperson considers knowledgeable in labor-management relations or the conduct of foreign affairs. The Panel shall be composed of 5 members, as follows:

- (1) 2 members of the Service (other than a management official, a confidential employee, or a labor organization official);
- (2) one individual employed by the Department of Labor;
- (3) one member of the Federal Service Impasses Panel; and
- (4) one public member who does not hold any other office or position in the Government.

The Chairperson of the Board shall set the terms of office for Panel members and determine who shall chair the Panel.

(b) Compensation; travel expenses

Panel members referred to in subsection (a) (3) and (4) of this section shall receive compensation for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, except that the member who is also a member of the Federal Service Impasses Panel shall not be entitled to pay under this subsection for any day for which he or she receives pay under section 7119(b)(4)¹ of title 5. Members of the Panel shall be entitled to travel expenses as provided under section 5703 of title 5.

(c) Impasse investigation and settlement; hearings and other actions upon failure to settle; notice; binding nature of action

(1) The Panel or its designee shall promptly investigate any impasse presented to it by a party. The Panel shall consider the impasse and shall either—

- (A) recommend to the parties to the negotiation procedures for the resolution of the impasse; or
- (B) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(2) If the parties do not arrive at a settlement after assistance by the Panel under paragraph (1), the Panel may—

- (A) hold hearings;
- (B) administer oaths, take the testimony or deposition of any individual under oath, and issue subpoenas as provided in section 7132 of title 5; and
- (C) take whatever action is necessary and not inconsistent with this subchapter to resolve the impasse.

(3) Notice of any final action of the Panel under this section shall be promptly served upon

the parties, and the action shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise.

(Pub. L. 96-465, title I, §1010, Oct. 17, 1980, 94 Stat. 2133.)

REFERENCES IN TEXT

Section 7119(b)(4) of title 5, referred to in subsec. (b), probably means section 7119(c)(4) of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4113 of this title.

§ 4111. Exclusive recognition**(a) Secret ballot election; majority vote**

The Department shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in a unit who cast valid ballots in the election.

(b) Investigation of petition; hearing; supervision of election; certification of results; length of time between elections

If a petition is filed with the Board—

(1) by any person alleging—

(A) in the case of a unit for which there is no exclusive representative, that 30 percent of the employees in the unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of a unit for which there is an exclusive representative, that 30 percent of the employees in the unit alleged that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Board finds on the record of the hearing that a question of representation exists, the Board shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any unit within which a valid election under this subsection has been held during the preceding 12 calendar months or with respect to which a labor organization has been certified as the exclusive representative during the preceding 24 calendar months.

¹ See References in Text note below.

(c) Intervention of labor organizations; placement on ballot

A labor organization which—

- (1) has been designated by at least 10 percent of the employees in the unit; or
- (2) is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under subsection (b) of this section with respect to the petition.

(d) Eligibility to vote; regulations; choices on ballot; preferential voting; certification as exclusive representative

(1) The Board shall determine who is eligible to vote in any election under this section and shall establish regulations governing any such election, which shall include regulations allowing employees eligible to vote the opportunity to choose—

- (A) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or
- (B) not to be represented by a labor organization.

(2) In any election in which more than two choices are on the ballot, the regulations of the Board shall provide for preferential voting. If no choice receives a majority of first preferences, the Board shall distribute to the two choices having the most first preferences the preferences as between those two of the other valid ballots cast. The choice receiving a majority of preferences shall be declared the winner. A labor organization which is declared the winner of the election shall be certified by the Board as the exclusive representative.

(e) Submission of required material

A labor organization seeking exclusive recognition shall submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(f) Grounds for denial of exclusive recognition status

Exclusive recognition shall not be accorded to a labor organization—

- (1) if the Board determines that the labor organization is subject to corrupt influence or influences opposed to democratic principles; or
- (2) in the case of a petition filed under subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition.

(g) Waiver of hearings; consent elections

Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Board.

(Pub. L. 96-465, title I, §1011, Oct. 17, 1980, 94 Stat. 2134.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4118 of this title.

§ 4112. Employees represented

The employees of the Department shall constitute a single and separate worldwide bargaining unit, from which there shall be excluded—

- (1) employees engaged in personnel work in other than a purely clerical capacity; and
- (2) employees engaged in criminal or national security investigations or who audit the work of individuals to insure that their functions are discharged honestly and with integrity.

(Pub. L. 96-465, title I, §1012, Oct. 17, 1980, 94 Stat. 2135.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4113 of this title.

§ 4113. Representation rights and duties**(a) Negotiation of collective bargaining agreements; nondiscriminatory representation**

A labor organization which has been accorded exclusive recognition is the exclusive representative of, and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit described in section 4112 of this title. An exclusive representative is responsible for representing the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(b) Places of representation

(1) An exclusive representative shall be given the opportunity to be represented at—

- (A) any formal discussion between one or more representatives of the Department and one or more employees in the unit (or their representatives), concerning any grievance (as defined in section 4131 of this title) or any personnel policy or practice or other general condition of employment; and
- (B) any examination of an employee by a Department representative in connection with an investigation if—

- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and
- (ii) the employee requests such representation.

(2) The Department shall annually inform employees of their rights under paragraph (1)(B).

(c) Duty to bargain in good faith; determination of techniques assisting negotiation

The Department and the exclusive representative, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the Department and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 4110 of this title, to assist in any negotiation.

(d) Applicability to other employee rights or remedies

The rights of an exclusive representative under this section shall not preclude an employee from—

(1) being represented by an attorney or other representative of the employee's own choosing, other than the exclusive representative, in any grievance proceeding under subchapter XI of this chapter; or

(2) exercising grievance or appeal rights established by law, rule, or regulation.

(e) Obligations included in good faith bargaining

The duty of the Department and the exclusive representative to negotiate in good faith shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary and to avoid unnecessary delays;

(4) for the Department to furnish to the exclusive representative, or its authorized representative, upon request and to the extent not prohibited by law, data—

(A) which is normally maintained by the Department in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or confidential employees, relating to collective bargaining;

(5) to negotiate jointly with respect to conditions of employment applicable to employees in more than one of the agencies authorized to utilize the Foreign Service personnel system, as determined by the heads of such agencies; and

(6) if agreement is reached, to execute, upon the request of any party to the negotiation, a written document embodying the agreed terms, and to take the steps necessary to implement the agreement.

(f) Approval of agreement by Secretary; effective date; binding effect

(1) An agreement between the Department and the exclusive representative shall be subject to approval by the Secretary.

(2) The Secretary shall approve the agreement within 30 days after the date of the agreement unless the Secretary finds in writing that the agreement is contrary to applicable law, rule, or regulation.

(3) Unless the Secretary disapproves the agreement by making a finding under paragraph (2), the agreement shall take effect after 30 days from its execution and shall be binding on the Department and the exclusive representative subject to all applicable laws, orders, and regulations.

(g) Consultation by Department with exclusive representative

The Department shall consult with the exclusive representative with respect to Government-wide or multiagency matters affecting the

rights, benefits, or obligations of individuals employed in agencies not authorized to utilize the Foreign Service personnel system. The exclusive representative shall be informed of any change proposed by the Department with respect to such matters, and shall be permitted reasonable time to present its views and recommendations regarding such change. The Department shall consider the views and recommendations of the exclusive representative before taking final action on any such change, and shall provide the exclusive representative a written statement of the reasons for taking the final action.

(Pub. L. 96-465, title I, §1013, Oct. 17, 1980, 94 Stat. 2135.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4173 of this title.

§ 4114. Resolution of implementation disputes

(a) Grievance procedure

Any dispute between the Department and the exclusive representative concerning the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved through procedures negotiated by the Department and the exclusive representative. Any procedures negotiated under this section shall—

(1) be fair and simple,

(2) provide for expeditious processing, and

(3) include provision for appeal to the Foreign Service Grievance Board by either party of any dispute not satisfactorily settled.

(b) Review by Foreign Service Labor Relations Board

Either party to an appeal under subsection (a)(3) of this section may file with the Board an exception to the action of the Foreign Service Grievance Board in resolving the implementation dispute. If, upon review, the Board finds that the action is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Board may take such action and make such recommendations concerning the Foreign Service Grievance Board action as it considers necessary, consistent with applicable laws, rules, and regulations.

(c) Time of filing exceptions; finality and binding nature of action

If no exception to a Foreign Service Grievance Board action is filed under subsection (b) of this section within 30 days after such action is communicated to the parties, such action shall become final and binding and shall be implemented by the parties.

(d) Judicial review

Resolutions of disputes under this section shall not be subject to judicial review.

(Pub. L. 96-465, title I, §1014, Oct. 17, 1980, 94 Stat. 2137.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4107, 4109, 4115 of this title.

§ 4115. Unfair labor practices**(a) Department of State**

It shall be an unfair labor practice for the Department—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subchapter;
- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish upon request customary and routine services and facilities on an impartial basis to labor organizations having equivalent status;
- (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint or petition, or has given any information, affidavit, or testimony under this subchapter;
- (5) to refuse to consult or negotiate in good faith with a labor organization, as required under this subchapter;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this subchapter;
- (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of title 5) which is in conflict with an applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
- (8) to fail or refuse otherwise to comply with any provision of this subchapter.

(b) Labor organizations

It shall be an unfair labor practice for a labor organization—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this subchapter;
- (2) to cause or attempt to cause the Department to discriminate against any employee in the exercise by the employee of any right under this subchapter;
- (3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment or reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's functions as an employee;
- (4) to discriminate against an employee with regard to the terms and conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
- (5) to refuse to consult or negotiate in good faith with the Department, as required under this subchapter;
- (6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this subchapter;
- (7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or to picket the Department in a labor-management dispute (except that any such picketing in the United

States which does not interfere with the Department's operations shall not be an unfair labor practice); or

(B) to condone any unfair labor practice described in subparagraph (A) by failing to take action to prevent or stop such activity;

(8) to deny membership to any employee in the unit represented by the labor organization except—

(A) for failure to tender dues uniformly required as a condition of acquiring and retaining membership, or

(B) in the exercise of disciplinary procedures consistent with the organization's constitution or bylaws and this subchapter; or

(9) to fail or refuse otherwise to comply with any provision of this subchapter.

(c) Personal views, arguments, opinions, or statements

The expression of any personal view, argument, or opinion, or the making of any statement, which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such an election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

if the expression contains no threat of reprisal or force or promise of benefit and was not made under coercive conditions shall not—

(A) constitute an unfair labor practice under this subchapter, or

(B) constitute grounds for the setting aside of any election conducted under this subchapter.

(d) Election of remedies

Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 4139(a)(2) of this title, an employee has an option of using the grievance procedure under subchapter XI of this chapter or an appeals procedure, issues which can be raised under section 4114 of this title or subchapter XI of this chapter may, in the discretion of the aggrieved party, be raised either under such section or subchapter or else raised as an unfair labor practice under this section, but may not be raised both under this section and under section 4114 of this title or subchapter XI of this chapter.

(Pub. L. 96-465, title I, §1015, Oct. 17, 1980, 94 Stat. 2137; Pub. L. 102-138, title I, §153(d)(2), Oct. 28, 1991, 105 Stat. 674.)

AMENDMENTS

1991—Subsec. (d). Pub. L. 102-138 substituted “section 4139(a)(2)” for “section 4139(b)”.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 153(f) of Pub. L. 102-138 provided that: “The amendments made by this section [amending this section and sections 4131, 4134, 4137, 4139, and 4140 of this title] shall not apply with respect to any grievance (within the meaning of section 1101 of the Act [22 U.S.C.

4131], as amended by this section) arising before the date of enactment of this Act [Oct. 28, 1991].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4117 of this title; title 5 section 5596.

§ 4116. Prevention of unfair labor practices

(a) Investigation by General Counsel; issuance of complaint; statement of reasons

If the Department or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the Department or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(b) Notice in complaint

Any complaint under subsection (a) of this section shall contain a notice—

- (1) of the charge;
- (2) that a hearing will be held before the Board (or any member thereof or before an individual employed by the Board and designated for such purpose); and
- (3) of the time and place fixed for the hearing.

(c) Answer; personal appearance

The labor organization or Department involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(d) Time of filing of charges

(1) Except as provided in paragraph (2), no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Board.

(2) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in paragraph (1) by reason of—

(A) any failure of the Department or labor organization against which the charge is made to perform a duty owed to the person, or

(B) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(e) Regulations providing for resolution through informal methods

The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(f) Hearing

The Board (or any member thereof or any individual employed by the Board and designated for

such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Board, in its discretion, may upon notice receive further evidence or hear argument.

(g) Findings of fact relative to issuance of orders; backpay

If the Board (or any member thereof or any individual employed by the Board and designated for such purpose) determines after any hearing on a complaint under subsection (f) of this section that the preponderance of the evidence received demonstrates that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the Department or labor organization an order—

(1) to cease and desist from any such unfair labor practice in which the Department or labor organization is engaged;

(2) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) requiring reinstatement of an employee with backpay in accordance with section 5596 of title 5; or

(4) including any combination of the actions described in paragraphs (1) through (3) or such other action as will carry out the purpose of this subchapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the Department (as provided in section 5596 of title 5) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(h) Findings of fact requiring dismissal of complaint

If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the Department or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(Pub. L. 96-465, title I, §1016, Oct. 17, 1980, 94 Stat. 2139.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4109 of this title.

§ 4117. Standards of conduct for labor organizations

(a) Freedom from corrupt influences and influences opposed to basic democratic principles

The Department shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to a governing requirement adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including—

(A) provisions for periodic elections to be conducted subject to recognized safeguards, and

(B) provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Furnishing of information

A labor organization may be required to furnish evidence of its freedom from corrupt influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction by, a parent labor organization, or federation of organizations with which it has been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this subchapter.

(c) Reports; bonding of officials and other employees; compliance with trusteeship and election standards

A labor organization which has or seeks recognition as a representative of employees under this subchapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and others employed by the organization, and comply with trusteeship and election standards.

(d) Regulations; filing of complaints; cease and desist orders

The Assistant Secretary of Labor shall prescribe such regulations as are necessary to carry out this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as the Assistant Secretary considers appropriate to carry out the policies of this section.

(e) Participation in labor organizations restricted

(1) Notwithstanding any other provision of this subchapter—

(A) participation in the management of a labor organization for purposes of collective bargaining or acting as a representative of a labor organization for such purposes is prohibited under this subchapter—

(i) on the part of any management official or confidential employee;

(ii) on the part of any individual who has served as a management official or confidential employee during the preceding two years; or

(iii) on the part of any other employee if the participation or activity would result in a conflict of interest or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such employee; and

(B) service as a management official or confidential employee is prohibited on the part of any individual having participated in the management of a labor organization for purposes of collective bargaining or having acted as a representative of a labor organization during the preceding two years.

(2) For the purposes of paragraph (1)(A)(ii) and paragraph (1)(B), the term “management official” shall not include chiefs of mission, principal officers and their deputies, and administrative and personnel officers abroad.

(f) Willful and intentional violations

If the Board finds that any labor organization has willfully and intentionally violated section 4115(b)(7) of this title by omission or commission with regard to any strike, work stoppage, slowdown, the Board shall—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Pub. L. 96-465, title I, §1017, Oct. 17, 1980, 94 Stat. 2140; Pub. L. 103-236, title I, §171, Apr. 30, 1994, 108 Stat. 411.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-236 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “This subchapter does not authorize participation

in the management of a labor organization or acting as a representative of a labor organization by a management official, a confidential employee, or any other employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official functions of such management official or such employee.”

§ 4118. Administrative provisions

(a) Assignment for deduction of dues

If the Department has received from any individual a written assignment which authorizes the Department to deduct from the salary of that individual amounts for the payment of regular and periodic dues of the exclusive representative, the Department shall honor the assignment. Any such assignment shall be made at no cost to the exclusive representative or the individual. Except as provided in subsection (b) of this section, any such assignment may not be revoked for a period of one year from its execution.

(b) Termination of assignment for deduction of dues

An assignment for deduction of dues shall terminate when—

- (1) the labor organization ceases to be the exclusive representative;
- (2) the individual ceases to receive a salary from the Department as a member of the Service; or
- (3) the individual is suspended or expelled from membership in the exclusive representative.

(c) Negotiations with uncertified labor organizations

During any period when no labor organization is certified as the exclusive representative of employees in the Department, the Department shall have the duty to negotiate with a labor organization which has filed a petition under section 4111(b)(1)(A) of this title alleging that 10 percent of the employees in the Department have membership in the organization if the Board has determined that the petition is valid. Negotiations under this subsection shall be concerned solely with the deduction of dues of the labor organization from the salary of the individuals who are members of the labor organization and who make a voluntary allotment for that purpose. Any agreement between the Department and a labor organization under this subsection shall terminate upon the certification of an exclusive representative of any employees to whom the agreement applies.

(d) Official time usage

The following provisions shall apply to the use of official time:

- (1) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this subchapter shall be authorized official time for such purposes, including attendance at impasse proceedings, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this paragraph shall not exceed the number of individuals des-

ignated as representing the Department for such purposes.

(2) Any activities performed by any employee relating to the internal business of the labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues, shall be performed during the time the employee is in a nonduty status.

(3) Except as provided in paragraph (1), the Board shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Board shall be authorized official time for such purpose during the time the employee would otherwise be in a duty status.

(4) Except as provided in paragraphs (1), (2), and (3), any employee representing an exclusive representative, or engaged in any other matter covered by this subchapter, shall be granted official time in any amount the Department and the exclusive representative agree to be reasonable, necessary, and in the public interest.

(Pub. L. 96-465, title I, §1018, Oct. 17, 1980, 94 Stat. 2141.)

SUBCHAPTER XI—GRIEVANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3949, 4010, 4010a, 4113, 4115, 4153 of this title; title 5 section 5596.

§ 4131. Definitions and applicability

(a)(1) Except as provided in subsection (b) of this section, for purposes of this subchapter, the term “grievance” means any act, omission, or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States (other than a United States citizen employed under section 3951 of this title who is not a family member) of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member, including—

(A) separation of the member allegedly contrary to laws or regulations, or predicated upon alleged inaccuracy, omission, error, or falsely prejudicial character of information in any part of the official personnel record of the member;

(B) other alleged violation, misinterpretation, or misapplication of applicable laws, regulations, or published policy affecting the terms and conditions of the employment or career status of the member;

(C) allegedly wrongful disciplinary action against the member;

(D) dissatisfaction with respect to the working environment of the member;

(E) alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the member which is or could be prejudicial to the member;

(F) action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by the member in procedures under this subchapter;

(G) alleged denial of an allowance, premium pay, or other financial benefit to which the

member claims entitlement under applicable laws or regulations; and

(H) any discrimination prohibited by—

- (i) section 2000e-16 of title 42,
- (ii) section 206(d) of title 29,
- (iii) section 791 of title 29,
- (iv) sections 631 and 633a of title 29, or
- (v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv).

(2) The scope of grievances described in paragraph (1) may be modified by written agreement between the Department and the labor organization accorded recognition as the exclusive representative under subchapter X of this chapter (hereinafter in this subchapter referred to as the “exclusive representative”).

(b) For purposes of this subchapter, the term “grievance” does not include—

(1) an individual assignment of a member under subchapter V of this chapter, other than an assignment alleged to be contrary to law or regulation;

(2) the judgment of a selection board established under section 4002 of this title, a tenure board established under section 3946(b) of this title, or any other equivalent body established by laws or regulations which similarly evaluates the performance of members of the Service on a comparative basis;

(3) the expiration of a limited appointment, the termination of a limited appointment under section 4011 of this title, or the denial of a limited career extension or of a renewal of a limited career extension under section 4007(b) of this title; or

(4) any complaint or appeal where a specific statutory hearing procedure exists, except as provided in section 4139(a)(2) of this title.

Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) of this section from such term.

(c) This subchapter applies only with respect to the Department of State, the United States Information Agency, the United States International Development Cooperation Agency, the Department of Agriculture, and the Department of Commerce.

(Pub. L. 96-465, title I, §1101, Oct. 17, 1980, 94 Stat. 2142; Pub. L. 97-241, title III, §303(b), Aug. 24, 1982, 96 Stat. 291; Pub. L. 102-138, title I, §153(a), Oct. 28, 1991, 105 Stat. 673; Pub. L. 103-236, title I, §§180(a)(10), 181(a)(4)(A), Apr. 30, 1994, 108 Stat. 416, 417.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103-236, §180(a)(10), inserted “(other than a United States citizen employed under section 3951 of this title who is not a family member)” after “citizen of the United States” in introductory provisions.

Subsec. (b)(3). Pub. L. 103-236, §181(a)(4), made technical amendment to reference to section 4011 of this title to reflect renumbering of corresponding section of original act.

1991—Subsec. (a)(1)(H). Pub. L. 102-138, §153(a)(1), added subpar. (H).

Subsec. (b). Pub. L. 102-138, §153(a)(2), in par. (4), substituted “section 4139(a)(2)” for “section 4139(b)” and

inserted at end “Nothing in this subsection shall exclude any act, omission, or condition alleged to violate any law, rule, regulation, or policy directive referred to in subsection (a)(1)(H) of this section from such term.”

CHANGE OF NAME

“United States Information Agency” substituted for “International Communication Agency” in subsec. (c), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of this section, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 4113, 4132, 4134, 4137, 4139, 4140 of this title; title 5 section 5596.

§ 4132. Grievances concerning former members or their survivors

Within the time limitations of section 4134 of this title, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this subchapter only with respect to allegations described in section 4131(a)(1)(G) of this title.

(Pub. L. 96-465, title I, §1102, Oct. 17, 1980, 94 Stat. 2143.)

§ 4133. Freedom of action

(a) Nature of protection

Any individual filing a grievance under this subchapter (hereinafter in this subchapter referred to as the “grievant”), and any witness, labor organization, or other person involved in a grievance proceeding, shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them.

(b) Right to representation

(1) The grievant has the right to a representative of his or her own choosing at every stage of the proceedings under this subchapter.

(2) In any case where the grievant is a member of a bargaining unit represented by an exclusive representative, but is not represented in the grievance by that exclusive representative, the exclusive representative shall have the right to appear during the grievance proceedings.

(3) The grievant, and any representative of the grievant who is a member of the Service or employee of the Department, shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under this subchapter.

(c) Administrative leave for witnesses

Any witness who is a member of the Service or employee of the Department shall be granted reasonable periods of administrative leave to appear and testify at any proceedings under this subchapter.

(d) Records

(1) No record of—

(A) a determination by the Secretary to reject a recommendation of the Foreign Service Grievance Board,

(B) a finding by the Grievance Board against the grievant, or

(C) the fact that a grievance proceeding is pending or has been held,

shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual connected with the grievance.

(2) The Department shall maintain records pertaining to grievances under appropriate safeguards to preserve confidentiality.

(3) The Foreign Service Grievance Board may enforce compliance with the requirements of paragraphs (1) and (2).

(e) Expedition of security clearance procedures

The Department will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.

(Pub. L. 96-465, title I, §1103, Oct. 17, 1980, 94 Stat. 2143.)

§ 4134. Time limitations

(a) 3-year period

A grievance is forever barred under this subchapter unless it is filed with the Department within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) Failure of Department to resolve grievance; grievance filed with Foreign Service Grievance Board

If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the grievant or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

(c) Grievances based on alleged discrimination

(1) In applying subsection (a) of this section with respect to an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, the reference to "3 years" shall be deemed to read "180 days", subject to paragraph (2).

(2) If the occurrence or occurrences giving rise to the grievance are alleged to have occurred while the grievant was assigned to a post abroad, the 180-day period provided for under paragraph (1) shall not commence until the earlier of—

(A) the date as of which the grievant is no longer assigned to such post; or

(B) the expiration of the 18-month period beginning on the date of the occurrence giving

rise to the grievance or the last such occurrence, as the case may be.

(Pub. L. 96-465, title I, §1104, Oct. 17, 1980, 94 Stat. 2144; Pub. L. 102-138, title I, §153(b), Oct. 28, 1991, 105 Stat. 673.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-138, §153(b)(1), inserted "under this subchapter" before "unless".

Subsec. (c). Pub. L. 102-138, §153(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4132 of this title.

§ 4135. Foreign Service Grievance Board

(a) Establishment; composition

There is established the Foreign Service Grievance Board (hereinafter in this subchapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) Appointment and selection of nominees; length of terms; vacancies

The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this subchapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Compensation

Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5.

(d) Removal

The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated incapacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) Administrative services; payment of expenses; assignment as staff employees of Board; performance evaluation reports; records

The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

(Pub. L. 96-465, title I, §1105, Oct. 17, 1980, 94 Stat. 2144.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4136. Foreign Service Grievance Board procedures

The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 4007 or 4008 of this title, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party (including an exclusive representative appearing in the proceedings) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and

have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by the Board. The decision of the Board shall be based exclusively on the record of proceedings.

(7) The Board may act by or through panels or individual members designated by the Chairperson, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. References in this subchapter to the Board shall be considered to be references to a panel or member of the Board where appropriate. All members of the Board shall act as impartial individuals in considering grievances.

(8) If the Board determines that the Department is considering the involuntary separation of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board and that such action should be suspended, the Department shall suspend such action until the date which is one year after such determination or until the Board has ruled upon the grievance, whichever comes first. The Board shall extend the one-year limitation under the preceding sentence and the Department shall continue to suspend such action, if the Board determines that the agency or the Board is responsible for the delay in the resolution of the grievance. The Board may also extend the 1-year limit if it determines that the delay is due to the complexity of the case, the unavailability of witnesses or to circumstances beyond the control of the agency, the Board or the grievant. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post

or office to which the grievant is assigned. Notwithstanding the first sentence of this paragraph, the Board's authority to suspend such action shall not extend to instances where the Secretary, or his designee, has exercised his authority under subsection (a)(3) of section 4010 of this title or with respect to any action which would delay the separation of an employee pursuant to a reduction in force conducted under section 4010a of this title.

(9) The Board may reconsider any decision upon presentation of newly discovered or previously unavailable material evidence.

(Pub. L. 96-465, title I, §1106, Oct. 17, 1980, 94 Stat. 2145; Pub. L. 101-167, title V, §586(a), Nov. 21, 1989, 103 Stat. 1252; Pub. L. 102-138, title I, §143(b), Oct. 28, 1991, 105 Stat. 668; Pub. L. 103-236, title I, §§177(a), 181(a)(4)(B), Apr. 30, 1994, 108 Stat. 414, 417.)

AMENDMENTS

1994—Par. (8). Pub. L. 103-236, §181(a)(4)(B), inserted before period at end “or with respect to any action which would delay the separation of an employee pursuant to a reduction in force conducted under section 4010a of this title”.

Pub. L. 103-236, §177(a), substituted “until the date which is one year after such determination or until the Board has ruled upon the grievance, whichever comes first. The Board shall extend the one-year limitation under the preceding sentence and the Department shall continue to suspend such action, if the Board determines that the agency or the Board is responsible for the delay in the resolution of the grievance. The Board may also extend the 1-year limit if it determines that the delay is due to the complexity of the case, the unavailability of witnesses or to circumstances beyond the control of the agency, the Board or the grievant.” for “until the Board has ruled upon the grievance.”

1991—Par. (8). Pub. L. 102-138 substituted “exercised his authority under subsection (a)(3) of section 4010 of this title” for “determined that there is reasonable cause to believe that a grievant has committed a job-related crime for which a sentence of imprisonment may be imposed and has taken action to suspend the grievant without pay pending a final resolution of the underlying matter”.

1989—Par. (8). Pub. L. 101-167 inserted at end “Notwithstanding the first sentence of this paragraph, the Board's authority to suspend such action shall not extend to instances where the Secretary, or his designee, has determined that there is reasonable cause to believe that a grievant has committed a job-related crime for which a sentence of imprisonment may be imposed and has taken action to suspend the grievant without pay pending a final resolution of the underlying matter.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4010 of this title.

§ 4137. Foreign Service Grievance Board decisions

(a) Record; findings of fact and statement of reasons

Upon completion of its proceedings, the Board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the Board shall be in writing, and shall include findings of fact and a statement of the reasons for the decision of the Board.

(b) Authority of Department upon finding of meritorious grievance

If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department—

(1) to correct any official personnel record relating to the grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(3) to retain in the Service a member whose separation would be in consequence of the matter by which the member is aggrieved;

(4) to reinstate the grievant, and to grant the grievant back pay in accordance with section 5596(b)(1) of title 5;

(5) to pay reasonable attorney fees to the grievant to the same extent and in the same manner as such fees may be required by the Merit Systems Protection Board under section 7701(g) of title 5; and

(6) to take such other remedial action as may be appropriate under procedures agreed to by the Department and the exclusive representative (if any).

(c) Finality of decisions; judicial review

Except as provided in subsection (d) of this section, decisions of the Board under this subchapter shall be final, subject only to judicial review as provided in section 4140 of this title.

(d) Recommendations

(1) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion, tenure or assignment of the grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence before it warrants disciplinary action against any employee of the Department or member of the Service, it shall make an appropriate recommendation to the Secretary. The Secretary shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation. The Secretary shall implement the recommendation of the Board except to the extent that, in a decision made within that 30-day period, the Secretary rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the Secretary rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Pending the decision of the Secretary, there shall be no ex parte communication concerning the grievance between the Secretary and any person involved in the proceedings of the Board. The Secretary shall, however, have access to the entire record of the proceedings of the Board.

(2) A recommendation under paragraph (1) shall, for purposes of section 4140 of this title, be

considered a final action upon the expiration of the 30-day period referred to in such paragraph, except to the extent that it is rejected by the Secretary by an appropriate written decision.

(3)(A) If the Secretary makes a written decision under paragraph (1) rejecting a recommendation in whole or in part on the basis of a determination that implementing such recommendation would be contrary to law, the Secretary shall, within the 30-day period referred to in such paragraph—

(i) submit a copy of such decision to the Board; and

(ii) request that the Board reconsider its recommendation or, if less than the entirety is rejected, that the Board reconsider the portion rejected.

(B)(i) Within 30 days after receiving a request under subparagraph (A), the Board shall, after reviewing the Secretary's decision, make a recommendation to the Secretary either confirming, modifying, or vacating its original recommendation or, if less than the entirety was rejected, the portion involved.

(ii) Reconsideration under this subparagraph shall be limited to the question of whether implementing the Board's original recommendation, either in whole or in part, as applicable, would be contrary to law.

(C) A recommendation made under subparagraph (B) shall be considered a final action for purposes of section 4140 of this title, and shall be implemented by the Secretary.

(e) Record of grievances; copy to committee of Congress; right of review

(1) The Board shall maintain records of all grievances awarded in favor of the grievant in which the grievance concerns gross misconduct by a supervisor. Subject to paragraph (2), the Committee on Foreign Relations of the Senate shall be provided with a copy of the grievance decision whenever such a supervisor is nominated for any position requiring the advice and consent of the Senate and the Board shall provide access to the entire record of any proceedings of the Board concerning such a grievance decision to any Member of the Committee on Foreign Relations upon a request by the Chairman or Ranking Minority Member of such committee.

(2)(A) Except as provided in subparagraph (B), all decisions, proceedings, and other records disclosed pursuant to paragraph (1) shall be treated as confidential and may be disclosed only to Committee members and appropriate staff.

(B) Whenever material is provided to the Committee or a Member thereof pursuant to paragraph (1), the Board shall, at the same time, provide a copy of all such material to the supervisor who is the subject of such material.

(C) A supervisor who is the subject of records disclosed to the committee¹ pursuant to this subsection shall have the right to review such record and provide comments to the Committee concerning such record. Such comments shall be treated in a confidential manner.

¹ So in original. Probably should be capitalized.

(f) Alleged discrimination; substantive law to be applied

The Board shall, with respect to any grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, apply the substantive law that would be applied by the Equal Employment Opportunity Commission if a charge or claim alleging discrimination under such law, rule, regulation, or policy directive had been filed with the commission.¹

(Pub. L. 96-465, title I, §1107, Oct. 17, 1980, 94 Stat. 2146; Pub. L. 100-204, title I, §§181(a), (b), 182, Dec. 22, 1987, 101 Stat. 1363, 1364; Pub. L. 102-138, title I, §153(c), Oct. 28, 1991, 105 Stat. 673.)

AMENDMENTS

1991—Subsec. (f). Pub. L. 102-138 added subsec. (f).

1987—Subsec. (d). Pub. L. 100-204, §181(a), (b), designated existing provisions as par. (1), inserted “, tenure” after “promotion” in first sentence, and added pars. (2) and (3).

Subsec. (e). Pub. L. 100-204, §182, added subsec. (e).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to this section before Dec. 22, 1987, see section 181(e) of Pub. L. 100-204, set out as a note under section 3946 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3946, 4010 of this title.

§ 4138. Access to records

(a) Review by Foreign Service Grievance Board of decision denying access

If a grievant is denied access to any agency record prior to or during the consideration of the grievance by the Department, the grievant may raise such denial before the Board in connection with the grievance.

(b) Access by Foreign Service Grievance Board; relevant and material records; adverse effect on national security or foreign policy

In considering a grievance, the Board shall have access to any agency record as follows:

(1)(A) The Board shall request access to any agency record which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance.

(B) The Board may request access to any other agency record which the Board determines may be relevant and material to the grievance.

(2) Any agency shall make available to the Board any agency record requested under paragraph (1) unless the head or deputy head of such agency personally certifies in writing to the Board that disclosure of the record to the Board and the grievant would adversely af-

fect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) Access by grievant

If the Board determines that an agency record, or a summary or extract of a record, made available to the Board under subsection (b) of this section is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract, as the case may be, available to the grievant.

(d) Denial of access as factor in determination of grievance

In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant and material to the grievance.

(e) Proceedings and decisions of Foreign Service Grievance Board

The grievant in any case decided by the Board shall have access to the record of the proceedings and the decision of the Board.

(Pub. L. 96-465, title I, §1108, Oct. 17, 1980, 94 Stat. 2147.)

§ 4139. Relationship to other remedies

(a)(1) A grievant may not file a grievance with the Board if the grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided under another provision of law, regulation, or Executive order, other than under section 1214 or 1221 of title 5, and the matter has been carried to final decision under such provision on its merits or is still under consideration.

(2) If a grievant is not prohibited from filing a grievance under paragraph (1), the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief under chapter 12 of title 5 or a regulation or Executive order other than under this subchapter. An election of remedies under this subsection shall be final upon the acceptance of jurisdiction by the Board.

(3) This subsection shall not apply to any grievance with respect to which subsection (b) of this section applies.

(b)(1) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, a grievant may either—

(A) file a grievance under this subchapter, or

(B) initiate in writing a proceeding under another provision of law, regulation, or Executive order that authorizes relief,

but not both.

(2) A grievant shall be considered to have exercised the option under paragraph (1) as soon as the grievant timely either—

(A) files a grievance under this subchapter, or

(B) initiates in writing a proceeding under such other provision of law, regulation, or Executive order.

(Pub. L. 96-465, title I, §1109, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 101-12, §9(a)(3), Apr. 10, 1989, 103 Stat. 35; Pub. L. 102-138, title I, §153(d)(1), Oct. 28, 1991, 105 Stat. 673.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-138, §153(d)(1)(A), (B), redesignated former subsec. (a) as par. (1), redesignated former subsec. (b) as par. (2) of subsec. (a) and substituted “paragraph (1)” for “subsection (a) of this section” and “under this subsection” for “under this section”, and added par. (3).

Subsec. (b). Pub. L. 102-138, §153(d)(1)(C), added subsec. (b). Former subsec. (b) redesignated (a)(2).

1989—Subsec. (a). Pub. L. 101-12 substituted “1214 or 1221” for “1206”.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4115, 4131 of this title.

§ 4140. Judicial review

(a) Any aggrieved party may obtain judicial review of a final action of the Secretary or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in chapter 7 of title 5, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party's return to the United States). Section 706 of title 5 shall apply without limitation or exception. This subsection shall not apply to any grievance with respect to which subsection (b) of this section applies.

(b)(1) For purposes of this subsection, the term “aggrieved party” means a grievant.

(2) With respect to a grievance based on an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, judicial review of whether the act, omission, or condition that is the basis of the grievance violates such law, rule, regulation, or policy directive may be obtained by an aggrieved party only if such party commences a civil action, not later than 90 days after such party receives notice of the final action of the Secretary or the Board, in an appropriate district court of the United States for de novo review.

(Pub. L. 96-465, title I, §1110, Oct. 17, 1980, 94 Stat. 2148; Pub. L. 102-138, title I, §153(e), Oct. 28,

1991, 105 Stat. 674; Pub. L. 103-236, title I, § 177(b), Apr. 30, 1994, 108 Stat. 414.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-236 inserted before period at end of first sentence “, if the request for judicial review is filed not later than 180 days after the final action of the Secretary or the Board (or in the case of an aggrieved party who is posted abroad at the time of the final action of the Secretary or the Board, if the request for judicial review is filed not later than 180 days after the aggrieved party’s return to the United States)”.

1991—Pub. L. 102-138 designated existing provisions as subsec. (a), inserted provision that subsec. (a) not apply to any grievance with respect to which subsec. (b) applies, and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

JUDICIAL REVIEW OF CERTAIN FOREIGN SERVICE GRIEVANCES

Pub. L. 101-246, title I, § 152, Feb. 16, 1990, 104 Stat. 42, provided that: “For the purposes of judicial review under section 1110 of the Foreign Service Act of 1980 [22 U.S.C. 4140], any recommendation made by the Foreign Service Grievance Board with respect to the tenure of a grievant which was reviewed by the Secretary of State before the date of enactment of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 [Dec. 22, 1987], shall be considered to be a final action of the Department of State, and any such recommendation shall be considered to have been made within the authority of the Foreign Service Grievance Board.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4010, 4137 of this title.

SUBCHAPTER XI-A—FOREIGN SERVICE INTERNSHIP PROGRAM

§ 4141. Statement of policy; objectives

(a) Statement of policy

Consistent with the findings of section 3901 of this title, the Foreign Service of the United States should be representative of the American people. In order to facilitate and encourage the entry into the Foreign Service of individuals who meet the rigorous requirements of the Service, while ensuring a Foreign Service system which reflects the cultural and ethnic diversity of the United States, intensive recruitment efforts are mandated. This is particularly true for Native Americans, African Americans, and Hispanic Americans, where other affirmative action and equal opportunity efforts have not been successful in attracting the ablest applicants for entry into the Foreign Service. The United States remains committed to equal opportunity and to a Foreign Service system operated on the basis of merit principles.

(b) Objectives

The objective of this subchapter is to strengthen and improve the Foreign Service of the United States through the establishment of a Foreign Service Internship Program. The program shall promote the Foreign Service as a viable and rewarding career opportunity for

qualified individuals who reflect the cultural and ethnic diversity of the United States through a highly selective internship program for students enrolled in institutions of higher education.

(Pub. L. 96-465, title I, § 1201, as added Pub. L. 101-246, title I, § 149(b), Feb. 16, 1990, 104 Stat. 39.)

§ 4141a. Foreign Service Internship Program

(a) Establishment

In consultation with the heads of other agencies utilizing the Foreign Service system, the Secretary of State shall establish a Foreign Service internship program to carry out the objectives of this subchapter in accordance with the provisions of this subchapter.

(b) Foreign Service Internship Program

The program shall introduce interns to the practice of diplomacy and the unique rewards of the Foreign Service. The program shall consist of three successive summer internships of not less than eight weeks duration in each year to be completed over the course of not more than four years. Special emphasis shall be given to preparing the intern for the Foreign Service examination process. In each year not less than 10 interns shall enter the program.

(c) Eligibility to participate

(1) Students enrolled full-time in institutions of higher education from groups which are underrepresented in the Foreign Service in terms of the cultural and ethnic diversity of the Foreign Service and for whom equal opportunity and affirmative action recruitment efforts have not been successful in achieving balanced representation in appointments to the Foreign Service shall be eligible to be interns in programs under this subchapter.

(2) An intern shall have successfully completed not less than one academic year of study at an institution of higher education to be admitted to the program. In each succeeding year of participation an intern shall have completed an additional year of undergraduate or graduate study and shall maintain an exemplary record of academic achievement.

(3) In selecting interns, the Secretary shall consider only the ablest students of superior ability selected on the basis of demonstrated achievement and exceptional promise whose academic records reflect the requisite standards of performance necessary for the Foreign Service.

(d) Summer internships

(1) The primary focus of the first internship shall be the study of international relations, the functions of the Department of State and other agencies which utilize the Foreign Service system, and the nature of the Foreign Service. The internship shall be held in Washington, District of Columbia, at the Department of State. As appropriate, the Secretary shall utilize the personnel and facilities of the Foreign Service Institute.

(2) The second internship shall be, principally, an assignment to a specific bureau of the Department of State. Emphasis shall be on providing insight into the economic and political functional areas.

(3) The third internship shall be an assignment to a United States mission abroad in the political or economic area.

(4) The first and second internships may include a detail to the Congress.

(e) Administration

The Secretary of State shall determine the academic requirements, other selection criteria, and standards for successful completion of each internship period. The Secretary shall be responsible for the design, implementation, and operation of the program.

(f) Mentors

Each intern shall be assigned a career Foreign Service officer as a mentor. The mentor shall act as a counselor and advisor throughout each summer internship and as a personal Foreign Service contact throughout the period of participation in the program. In the assignment of mentors, the Secretary shall give preference to Foreign Service officers who volunteer for such assignment and who may be role models for the interns.

(g) Compensation

Interns shall be compensated at a rate determined by the Secretary which shall not be less than the compensation of comparable summer interns at the Department of State. As determined by the Secretary, for the purposes of travel, housing, health insurance, and other appropriate benefits, interns shall be considered employees of the Foreign Service during each internship period.

(h) Study of Foreign Service examination

The Secretary of State shall study the feasibility of administering the Foreign Service examination in separate segments over several years. Not later than 180 days after February 16, 1990, the Secretary shall submit a report summarizing the findings of such a study to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(Pub. L. 96-465, title I, § 1202, as added Pub. L. 101-246, title I, § 149(b), Feb. 16, 1990, 104 Stat. 40.)

CODIFICATION

February 16, 1990, referred to in subsec. (h), was in the original “the date of the enactment of this Act”, which was translated as meaning the date of enactment of Pub. L. 101-246, which enacted this subchapter, to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 4141b. Report to Congress

Together with the annual submission required under section 3905(d)(2) of this title, the Secretary of State shall submit a report to the Congress concerning the implementation of the program established under this subchapter. Such report accompanied by such other information as the Secretary considers appropriate, shall include specific information concerning the completion rates of interns in the program, interns who took the Foreign Service examination, interns who passed the examination, former interns appointed to the Foreign Service, assignments of former interns, and the advancement of former interns through the Foreign Service System.¹

(Pub. L. 96-465, title I, § 1203, as added Pub. L. 101-246, title I, § 149(b), Feb. 16, 1990, 104 Stat. 41.)

§ 4141c. Authorization of appropriations

Of the amounts authorized to be appropriated by section 101(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, \$100,000 for the fiscal year 1990 and \$150,000 for the fiscal year 1991 shall be available only to carry out this subchapter. Sums appropriated for the purposes of this subchapter are authorized to remain available until expended.

(Pub. L. 96-465, title I, § 1204, as added Pub. L. 101-246, title I, § 149(b), Feb. 16, 1990, 104 Stat. 41.)

REFERENCES IN TEXT

Section 101(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, referred to in text, is section 101(a)(1) of Pub. L. 101-246, title I, Feb. 16, 1990, 104 Stat. 18, which is not classified to the Code.

SUBCHAPTER XII—TRANSITION

§ 4151. Pay and benefits pending conversion

Until converted under the provisions of this subchapter, any individual who is in the Foreign Service before February 15, 1981, and is serving under an appointment as a Foreign Service officer, Foreign Service information officer, Foreign Service Reserve officer with limited or unlimited tenure, or Foreign Service staff officer or employee, shall be treated for purposes of salary, allowances, and other matters as if such individual had been converted under section 4152 or 4153 of this title, as the case may be, on February 15, 1981, except that any adjustment of salary under this section shall take effect—

(1) in the case of an individual who is in the Foreign Service on October 17, 1980, on the first day of the first pay period which begins on or after October 1, 1980, and

(2) in the case of an individual who is appointed to the Foreign Service after October 17, 1980, on the date such appointment becomes effective.

(Pub. L. 96-465, title II, § 2101, Oct. 17, 1980, 94 Stat. 2148.)

CODIFICATION

“February 15, 1981” substituted in text for “the effective date of this Act” pursuant to section 2403 of Pub.

¹ So in original. Probably should not be capitalized.

L. 96-465, set out as an Effective Date note under section 3901 of this title.

§ 4152. Conversion to Foreign Service Schedule

(a) Not later than 120 days after February 15, 1981, the Secretary shall, in accordance with section 4156 of this title, convert to the appropriate class in the Foreign Service Schedule established under section 3963 of this title those individuals in the Foreign Service who are serving immediately before February 15, 1981, under appointments at or below class 3 of the schedule established under section 412 or 414 of the Foreign Service Act of 1946, or at any class in the schedule established under section 415 of such Act, as—

- (1) Foreign Service officers, or
- (2) Foreign Service Reserve officers with limited or unlimited tenure, and Foreign Service staff officers or employees, who the Secretary determines are available for worldwide assignment.

(b) Not later than 3 years after February 15, 1981, Foreign Service Reserve officers and staff officers and employees who the Secretary determines under subsection (a)(2) of this section are not available for worldwide assignment shall also be converted, in accordance with section 4156 of this title, to the appropriate class in the Foreign Service Schedule established under section 3963 of this title if—

- (1) the Secretary certifies that there is a need for their services in the Foreign Service; and
- (2) they agree in writing to accept availability for worldwide assignment as a condition of continued employment.

(Pub. L. 96-465, title II, § 2102, Oct. 17, 1980, 94 Stat. 2148.)

REFERENCES IN TEXT

Sections 412, 414 and 415 of the Foreign Service Act of 1946, referred to in subsec. (a), which were classified to sections 867, 869 and 870, respectively, of this title, were repealed by Pub. L. 96-465, title II, § 2205(1), Oct. 17, 1980, 94 Stat. 2159.

CODIFICATION

In subsecs. (a) and (b), “February 15, 1981” substituted for “the effective date of this Act” pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4151, 4154 of this title.

§ 4153. Conversion to Senior Foreign Service

(a) Criteria; application less than 120 days after effective date of Foreign Service Act of 1980

Foreign Service officers and Foreign Service Reserve officers with limited or unlimited tenure who, immediately before February 15, 1981, are serving under appointments at class 2 or a higher class of the schedule established under section 412 or 414 of the Foreign Service Act of 1946 may at any time within 120 days after such date submit to the Secretary a written request for appointment to the Senior Foreign Service.

(b) Limited appointment

Except as provided in subsection (d) of this section, if a request is submitted under sub-

section (a) of this section by a Foreign Service Reserve officer with limited tenure, the Secretary shall grant to such officer a limited appointment to the Senior Foreign Service in the appropriate class established under section 3962 of this title.

(c) Career appointment

If a request is submitted under subsection (a) of this section by a Foreign Service officer or, except as provided in subsection (d) of this section, a Foreign Service Reserve officer with unlimited tenure, the Secretary shall recommend to the President a career appointment of such officer, by and with the advice and consent of the Senate, to the Senior Foreign Service in the appropriate class established under section 3962 of this title.

(d) Availability for worldwide assignment

If the Secretary determines that a Foreign Service Reserve officer with limited or unlimited tenure who submits a request under subsection (a) of this section is not available for worldwide assignment, an appointment under subsection (b) of this section or a recommendation for appointment under subsection (c) of this section shall be made only if—

- (1) the Secretary certifies that there is a need for the services of such officer in the Senior Foreign Service; and
- (2) such officer agrees in writing to accept availability for worldwide assignment as a condition of continued employment.

(e) Application more than 120 days after effective date of Foreign Service Act of 1980

If a Foreign Service officer or a Foreign Service Reserve officer who is eligible to submit a request under subsection (a) of this section submits a written request for appointment to the Senior Foreign Service to the Secretary more than 120 days after February 15, 1981, and before the end of the 3-year period beginning on February 15, 1981, the Secretary (in the case of a Foreign Service Reserve officer with limited tenure) may grant a limited appointment to, or (in the case of a Foreign Service officer or Foreign Service Reserve officer with unlimited tenure) may recommend to the President a career appointment of, the requesting officer to the appropriate class established under section 3962 of this title, subject to the conditions specified in subsection (d) of this section and such other conditions as the Secretary may prescribe consistent with the provisions of subchapter VI of this chapter relating to promotion into the Senior Foreign Service.

(f) Forced conversion

Any officer of the Foreign Service who is eligible to submit a request under subsection (a) of this section and—

- (1) who does not submit a request under subsection (a) of this section, or
- (2) who submits such a request more than 120 days after February 15, 1981, and is not appointed to the Senior Foreign Service for any reason other than failure to meet the conditions specified in subsection (d) of this section,

may not remain in the Foreign Service for more than 3 years after February 15, 1981. During such

period, the officer shall be subject to the provisions of subchapters I to XI of this chapter applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 3965 of this title, and shall not be eligible for a limited career extension as described in section 4007(b) of this title. Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits on the same basis as a member retired from the Senior Foreign Service under section 4007(c)(1) of this title, and section 4009(a)(2)(B) of this title shall be deemed to apply to such officer.

(Pub. L. 96-465, title II, §2103, Oct. 17, 1980, 94 Stat. 2149; Pub. L. 98-164, title I, §128, Nov. 22, 1983, 97 Stat. 1027.)

REFERENCES IN TEXT

Sections 412 and 414 of the Foreign Service Act of 1946, referred to in subsec. (a), which were classified to sections 867 and 869, respectively, of this title, were repealed by Pub. L. 96-465, title II, §2205(1), Oct. 17, 1980, 94 Stat. 2159.

CODIFICATION

In subsecs. (a), (e), and (f), “February 15, 1981” substituted for “the effective date of this Act” and “such effective date” pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

AMENDMENTS

1983—Subsec. (f). Pub. L. 98-164 substituted provisions relating to applicability of sections 4007(c)(1) and 4009(a)(2)(B) of this title, for provisions relating to applicability of subchapter VIII of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4151, 4154 of this title.

§ 4154. Conversion from Foreign Service

(a) Individuals serving under appointment

In the case of any individual in the Foreign Service who, immediately before February 15, 1981, is serving under an appointment described in section 4152(a) or 4153(a) of this title and who is not converted under section 4152 or section 4153 of this title because such individual does not meet the conditions specified in section 4152(b) or 4153(d) of this title, the Secretary shall, not later than 3 years after February 15, 1981, provide that—

(1) the position such individual holds shall be subject to chapter 51 and subchapter III of chapter 53 of title 5;

(2) such individual shall be appointed to such position without competitive examination; and

(3) such position shall be considered to be in the competitive service so long as the individual continues to hold that position;

except that any such individual who meets the eligibility requirements for the Senior Executive Service and who elects to join that Service shall be converted by the Secretary to the Senior Executive Service in the appropriate rate of basic pay established under section 5382 of title 5.

(b) United States Information Agency individuals

In the case of individuals in the Foreign Service in the United States Information Agency who immediately before October 17, 1980, are covered by a collective bargaining agreement between the Agency and the exclusive representative of those individuals, the 3-year period referred to in subsection (a) of this section shall begin on July 1, 1981.

(c) Department of State security officers

The three-year period referred to in subsection (a) of this section shall be extended for an additional period not to exceed one year from November 22, 1983, in the case of Department of State security officers who are members of the Service and who were initially ineligible for conversion under that subsection because they were available for worldwide assignment and there was a need for their services in the Service, but as to whom subsequent events require the services of these members (and of those later employed who are similarly situated) only or primarily for domestic functions.

(Pub. L. 96-465, title II, §2104, Oct. 17, 1980, 94 Stat. 2150; Pub. L. 97-241, title III, §303(b), Aug. 24, 1982, 96 Stat. 291; Pub. L. 98-164, title I, §132, Nov. 22, 1983, 97 Stat. 1028.)

CODIFICATION

In subsec. (a), “February 15, 1981” substituted for “the effective date of this Act” pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

In subsec. (c), “November 22, 1983” was in the original “the date of enactment of this section” which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-164 added subsec. (c).

CHANGE OF NAME

“United States Information Agency” substituted for “International Communication Agency” in subsec. (b), pursuant to section 303(b) of Pub. L. 97-241, set out as a note under section 1461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4156 of this title.

§ 4155. Conversion of certain positions in Department of Agriculture

(a) Designation and classification of positions to be occupied; notice

Not later than 15 days after February 15, 1981, the Secretary of Agriculture shall—

(1) designate and classify under section 3981 of this title those positions in the Foreign Agricultural Service under the General Schedule described in section 5332 of title 5 which the Secretary of Agriculture determines are to be occupied by career members of the Foreign Service, and

(2) provide written notice to individuals holding those positions of such designation and classification of the personnel category under section 3903 of this title which will apply to such individual.

(b) Election to convert

Each employee serving in a position at the time it is designated under subsection (a) of this

section shall, not later than 120 days after notice of such designation, elect—

(1) to accept conversion to the Foreign Service, in which case such employee shall be converted in accordance with the provisions of subsection (c) of this section; or

(2) to decline conversion to the Foreign Service and have the provisions of subsection (d) of this section apply.

(c) Recommendations for appointment

(1) The Secretary of Agriculture shall recommend to the President for appointment to the appropriate class (as determined under paragraph (2)), by and with the advice and consent of the Senate, those employees who elect conversion under subsection (a)(1) of this section.

(2) The Secretary of Agriculture shall appoint as Foreign Service personnel those employees who elect to accept conversion and who are not eligible for appointment under paragraph (1).

(d) Results of declining to convert

Any employee who declines conversion under subsection (b)(2) of this section shall for so long as that employee continues to hold the designated position be deemed to be a member of the Foreign Service for purposes of allowances, differentials, and similar benefits (as determined by the Secretary of Agriculture).

(Pub. L. 96-465, title II, § 2105, Oct. 17, 1980, 94 Stat. 2150.)

CODIFICATION

In subsec. (a), "February 15, 1981" substituted for "the effective date of this Act" pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

§ 4156. Preservation of status and benefits

(a) Conversion to class, grade, or step corresponding to level prior to conversion; reduction in position or salary; conversion from Foreign Service under section 4154 of this title

(1) Every individual who is converted under this subchapter shall be converted to the class or grade and pay rate that most closely corresponds to the class or grade and step at which the individual was serving immediately before conversion. No conversion under this subchapter shall cause any individual to incur a reduction in his or her class, grade, or basic rate of salary.

(2) An individual converted under section 4154 of this title to a position in the competitive service shall be entitled to have that position, or any other position to which the individual is subsequently assigned (other than at the request of the individual), be considered for all purposes as at the grade which corresponds to the class in which the individual served immediately before conversion so long as the individual continues to hold that position.

(b) Participation in Foreign Service Retirement and Disability System

(1) Any participant in the Foreign Service Retirement and Disability System who would, but for this paragraph, participate in the Civil Service Retirement and Disability System by virtue of conversion under this subchapter shall re-

main a participant in the Foreign Service Retirement and Disability System for 120 days after participation in the Foreign Service Retirement and Disability System would otherwise cease. During such 120-day period, the individual may elect in writing to continue to participate in the Foreign Service Retirement and Disability System instead of the Civil Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is not made, the individual shall then be covered by the Civil Service Retirement and Disability System and contributions made by the participant to the Foreign Service Retirement and Disability Fund shall be transferred to the Civil Service Retirement and Disability Fund.

(2) Any Foreign Service Reserve officer with limited tenure who has reemployment rights to a personnel category in the Foreign Service in which he or she would be a participant in the Foreign Service Retirement and Disability System and who would, but for this paragraph, continue to participate in the Civil Service Retirement and Disability System by virtue of conversion under section 4154 of this title may elect, during the 120-day period beginning on the date of such conversion, to become a participant in the Foreign Service Retirement and Disability System so long as he or she is employed in an agency which is authorized to utilize the Foreign Service personnel system. If such an election is made, the individual shall be transferred to the Foreign Service Retirement and Disability System and contributions made by that individual to the Civil Service Retirement and Disability Fund shall be transferred to the Foreign Service Retirement and Disability Fund.

(c) Conversion to type of appointment corresponding in tenure to that prior to conversion

Individuals who are converted under this subchapter shall be converted to the type of appointment which corresponds most closely in tenure to the type of appointment under which they were serving immediately prior to such conversion, except that this subchapter shall not operate to extend the duration of any limited appointment or previously applicable time in class.

(d) Reappointment resulting from enactment of Foreign Service Act of 1980

Any individual who on February 15, 1981, is serving—

(1) under an appointment in the Foreign Service, or

(2) in any other office or position continued by this chapter, may continue to serve under such appointment, subject to the provisions of this chapter, and need not be reappointed by virtue of the enactment of this chapter.

(e) Deferral of retirement provisions

Any individual in the Foreign Service—

(1) who is serving under a career appointment on October 17, 1980, and

(2) who was not subject to section 633(a)(2) of the Foreign Service Act of 1946 immediately before February 15, 1981,

may not be retired under section 4008 of this title until 10 years after February 15, 1981, or when such individual first becomes eligible for an immediate annuity under subchapter VIII of this chapter, whichever occurs first.

(Pub. L. 96-465, title II, §2106, Oct. 17, 1980, 94 Stat. 2151.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), 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. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

Section 633(a)(2) of the Foreign Service Act of 1946, referred to in subsec. (e)(2), which was classified to section 1003(a)(2) of this title, was repealed by Pub. L. 96-465, title II, §2205(1), Oct. 17, 1980, 94 Stat. 2159.

CODIFICATION

In subsecs. (d) and (e), "February 15, 1981" substituted for "the effective date of this Act" pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4152 of this title.

§ 4157. Regulations

Under the direction of the President, the Secretary shall prescribe regulations for the implementation of this subchapter.

(Pub. L. 96-465, title II, §2107, Oct. 17, 1980, 94 Stat. 2152.)

DELEGATION OF FUNCTIONS

Authority of President under this section to extent necessary to implement provisions of section 4151 of this title, relating to pay and benefits pending conversion, delegated to Secretary of State, see section 5 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4158 of this title.

§ 4158. Authority of other agencies

The heads of agencies other than the Department of State which utilize the Foreign Service personnel system shall perform functions under this subchapter in accordance with regulations prescribed by the Secretary of State under section 4157 of this title. Such agency heads shall consult with the Secretary of State in the exercise of such functions.

(Pub. L. 96-465, title II, §2108, Oct. 17, 1980, 94 Stat. 2152.)

§ 4159. Survivor benefits for certain former spouses

(a) Eligible participants; election of benefits

Any participant or former participant in the Foreign Service Retirement and Disability System who on February 15, 1981, has a former spouse may, by a spousal agreement, elect to receive a reduced annuity and provide a survivor annuity for such former spouse under section 4054(b) of this title.

(b) Time of election

(1) If the participant or former participant has not retired under such system on or before Feb-

ruary 15, 1981, an election under this section may be made at any time before retirement.

(2) If the participant or former participant has retired under such system on or before February 15, 1981, an election under this section may be made within such period after February 15, 1981, as the Secretary of State may prescribe.

(3) For purposes of applying subchapter VIII of this chapter, any such election shall be treated the same as if it were a spousal agreement under section 4060(b)(1) of this title.

(c) Portion of annuity as basis for benefits

An election under this section may provide for a survivor benefit based on all or any portion of that part of the annuity of the participant which is not designated or committed as a base for survivor benefits for a spouse or any other former spouse of the participant. The participant and his or her spouse may make an election under section 4046(b)(1)(B) of this title prior to the time of retirement for the purpose of allowing an election to be made under this section.

(d) Amount of reduction; effective date

The amount of the reduction in the participant's annuity shall be determined in accordance with section 4046(b)(2) of this title. Such reduction shall be effective as of—

(1) the commencing date of the participant's annuity, in the case of an election under subsection (b)(1) of this section, or

(2) February 15, 1981, in the case of an election under subsection (b)(2) of this section.

(e) Definitions

For purposes of this section, the terms "former spouse", "participant", and "spousal agreement" have the meanings given such terms in sections 4043 and 4044 of this title.

(Pub. L. 96-465, title II, §2109, Oct. 17, 1980, 94 Stat. 2152.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4069b, 4069b-1 of this title.

SUBCHAPTER XIII—MISCELLANEOUS

§ 4171. Model foreign language competence posts

(a) Designation of posts; time of designation and implementation; determination of competency standards

In order to carry out the purposes of section 4022 of this title and to help ascertain the relationship between foreign language competence and the effectiveness of representation of the United States abroad, the Secretary of State shall designate as model foreign language competence posts at least two Foreign Service posts in countries where English is not the common language. Such designation shall be made no later than October 1, 1981, and shall be implemented so that no later than October 1, 1983, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to

the nature of their functions and the standards employed by the Foreign Service Institute.

(b) Continuation; report to Congress concerning operation of posts and advantages of meeting competency requirements

The posts designated under subsection (a) of this section shall continue as model foreign language competence posts at least until September 30, 1985. The Secretary of State shall submit no later than January 31, 1986, a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the operation of such posts and the costs, advantages and disadvantages associated with meeting the foreign language competence requirements of this section.

(c) Exceptions; report to Congress

The Secretary of State may authorize exceptions to the requirements of this section if he determines that unanticipated exigencies so require.

(Pub. L. 96-465, title II, §2207, Oct. 17, 1980, 94 Stat. 2163; Pub. L. 103-236, title I, §139(7), (25), Apr. 30, 1994, 108 Stat. 398, 399.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-236, §139(7), (25), amended subsec. (c) identically, striking out at end “Such exceptions shall be annually reported to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.”

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

EXPANSION OF MODEL FOREIGN LANGUAGE COMPETENCE POSTS

Pub. L. 101-246, title I, §161, Feb. 16, 1990, 104 Stat. 46, as amended by Pub. L. 101-302, title III, §320(b)(3), May 25, 1990, 104 Stat. 247, provided that:

“(a) DESIGNATION OF POSTS.—In order to carry out the purposes of section 702 of the Foreign Service Act of 1980 [22 U.S.C. 4022], and in light of the positive report issued on March 28, 1986, by the Department of State, as required by section 2207 of the Foreign Service Act of 1980 [22 U.S.C. 4171], the Secretary of State shall designate as model foreign language competence posts a minimum of six Foreign Service posts, representing the Department of State’s five geographic bureaus, in countries where English is not the common language. Such designation shall be made not later than 120 days after the date of enactment of this Act [Feb. 16, 1990], and shall be implemented so that not later than October 1, 1991, in the case of non-hard language posts, and October 1, 1992, in the case of hard language posts, each Government employee permanently assigned to those posts shall possess an appropriate level of competence in the language common to the country where the post is located. The Secretary of State shall determine appropriate levels of language competence for employees assigned to those posts by reference to the nature of their functions and the standards employed by the Foreign Service Institute.

“(b) ‘HARD LANGUAGE COUNTRY’ POST TO BE DESIGNATED.—At least one of the posts designated under subsection (a) shall be in a ‘hard language’ country, as identified in the report to the Under Secretary of State

for Management of May 12, 1986, entitled ‘Hard Language Proficiency in the Foreign Service’. Such post shall be in one of the countries where the official or principal language is Arabic, Chinese, Japanese, or Russian.

“(c) TERMINATION DATE.—The posts designated under subsection (a) shall continue as model foreign language posts at least until September 30, 1993, in the case of non-hard language posts, and September 30, 1994, in the case of hard language posts. Not later than January 31, 1995, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives a report describing the operation of such posts and the costs, advantages, and disadvantages associated with meeting the foreign language competence requirements of this section.

“(d) EXEMPTION AUTHORITY.—The Secretary of State may authorize exceptions to the requirements of this section if—

“(1) he determines that unanticipated exigencies so require; and

“(2) he immediately reports such exceptions to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives.

“(e) EXCLUDED POSTS.—The posts designated under subsection (a) may not include Dakar, Senegal, or Montevideo, Uruguay. The report required under subsection (c) shall include progress made in these posts in maintaining the high foreign language standards achieved under the initial pilot program.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

§ 4172. Savings provisions

(a) Determinations, authorizations, etc., under authority of Foreign Service Act of 1946 and grievances, claims, or appeals filed and pending on effective date of this chapter

All determinations, authorizations, regulations, orders, agreements, exclusive recognition of an organization or other actions made, issued, undertaken, entered into, or taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by this chapter shall continue in full force and effect until modified, revoked, or superseded by appropriate authority. Any grievances, claims, or appeals which were filed or made under any such law and are pending resolution on February 15, 1981, shall continue to be governed by the provisions repealed, modified, or affected by this chapter.

(b) Increase in annuity or other right to benefits

This chapter shall not affect any increase in annuity or other right to benefits, which was provided by any provision amended or repealed by this chapter, with respect to any individual who became entitled to such benefit prior to February 15, 1981.

(c) Cross references

References in law to provisions of the Foreign Service Act of 1946 or other law superseded by this chapter shall be deemed to include reference to the corresponding provisions of this chapter.

(Pub. L. 96-465, title II, §2401, Oct. 17, 1980, 94 Stat. 2168.)

REFERENCES IN TEXT

The Foreign Service Act of 1946, referred to in subsecs. (a) and (c), 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.

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. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

CODIFICATION

In subsecs. (a) and (b), "February 15, 1981" substituted for "the effective date of this Act" pursuant to section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

§ 4173. Congressional oversight of implementation

(a), (b) Repealed. Pub. L. 100-204, title I, § 185(c)(2), Dec. 22, 1987, 101 Stat. 1366

(c) Consultation with agency representatives

The Secretary shall consult, in accordance with the procedures set out in section 4113(g) of this title, with the exclusive representative (if any) of members of the Foreign Service in each agency specified in section 4103(a) of this title with respect to steps to be taken in implementing this chapter and reported under section 4001(c)(4) of this title. To that end, each such exclusive representative will have timely access to all relevant information at each stage. Each such report shall include the views of each such exclusive representative on any and all aspects of the report and the information contained in such report.

(Pub. L. 96-465, title II, §2402, Oct. 17, 1980, 94 Stat. 2168; Pub. L. 100-204, title I, §185(c)(2), Dec. 22, 1987, 101 Stat. 1366.)

AMENDMENTS

1987—Subsecs. (a), (b). Pub. L. 100-204 struck out subsec. (a) which related to report by Secretary of State and its contents and subsec. (b) which related to annual supplemental report and its contents.

Subsec. (c). Pub. L. 100-204 substituted "under section 4001(c)(4) of this title" for "under this section".

SUBCHAPTER XIV—POWERS, DUTIES AND LIABILITIES OF CONSULAR OFFICERS GENERALLY

CODIFICATION

Subchapter was not enacted as a part of the Foreign Service Act of 1980 which comprises this chapter.

§ 4191. General application of provisions to consular officers

The various provisions of title 18 of the Revised Statutes which are expressed in terms of general application to any particular classes of consular officers, shall be deemed to apply as well to all other classes of such officers, so far as may be consistent with the subject matter of the same and with the treaties of the United States.

(R.S. §1689.)

REFERENCES IN TEXT

Title 18 of the Revised Statutes, referred to in text, was in the original "this Title", meaning title 18 of the Revised Statutes, consisting of R.S. §§1674 to 1752, and insofar as classified to the Code, is classified to sections 4191, 4193 to 4197, 4200, 4202, 4204, 4205, 4207 to 4214, and 4216 to 4221 of this title. For complete classification of R.S. §§1674 to 1752 to the Code, see Tables.

CODIFICATION

R.S. §1689 derived from act Aug. 18, 1856, ch. 127, §31, 11 Stat. 64.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1171 of this title, and prior thereto to section 53 of this title.

§ 4192. Repealed. Pub. L. 101-246, title I, § 123, Feb. 16, 1990, 104 Stat. 27

Section, R.S. §4082, related to solemnization of marriages by consular officers of the United States in a foreign country.

CODIFICATION

Pub. L. 101-246, §123, which directed the repeal of section 31 of the Act of June 22, 1860 (12 Stat. 79; 22 U.S.C. 4192), was executed as though repealing section 4082 of the Revised Statutes, which is classified to this section, to reflect the probable intent of Congress. Section 31 of the Act of June 22, 1860, was restated in section 4082 of the Revised Statutes and repealed by section 5596 of the Revised Statutes.

§ 4193. Protests

Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States.

(R.S. §1707; June 25, 1948, ch. 646, §39, 62 Stat. 992.)

CODIFICATION

R.S. §1707 derived from act Apr. 14, 1792, ch. 24, §2, 1 Stat. 255.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1173 of this title, and prior thereto to section 73 of this title.

AMENDMENTS

1948—Act June 25, 1948, repealed second sentence relating to authenticated copies of consular acts received as evidence.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4194. Lists and returns of seamen and vessels, etc.

Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the

payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of Commerce.

(R.S. § 1708; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736.)

CODIFICATION

R.S. § 1708 derived from act Aug. 18, 1856, ch. 127, § 27, 11 Stat. 62.

Act Feb. 14, 1903, substituted "Secretary of Commerce and Labor" for "Secretary of the Treasury". Act Mar. 4, 1913, substituted "Secretary of Commerce" for "Secretary of Commerce and Labor".

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1174 of this title, and prior thereto to section 74 of this title.

TRANSFER OF FUNCTIONS

Certain shipping and navigation functions of Secretary of Commerce transferred to Commandant of Coast Guard and Commissioner of Customs by Reorg. Plan No. 3 of 1946, §§ 101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, 1098 set out in the Appendix to Title 5, Government Organization and Employees.

Functions of all officers of Department of the Treasury [which included Commandant of Coast Guard and Commissioner of Customs], and functions of all agencies and employees of Department, transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5. Coast Guard was generally a service in Department of the Treasury but such Plan excepted, from transfer, functions of Coast Guard, and of Commandant thereof, when Coast Guard was operating as a part of Navy under section 3 of Title 14, Coast Guard.

Coast Guard transferred to Department of Transportation and functions, powers, and duties, relating to Coast Guard, of Secretary of the Treasury and of other offices and officers of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 931. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14. See section 108 of Title 49, Transportation.

CROSS REFERENCES

Consular powers as to seamen extended to United States naval officers in certain instances, see section 5948 of Title 10, Armed Forces.

Other powers and duties of consular officers as to merchant seamen, see sections 10308, 10309, 10318, 10703-10705, 10902, 10905, 10906, and 11104 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4195. Estates of decedents generally; Department of State as conservator

It shall be the duty of a consular officer, or, if no consular officer is present, a diplomatic offi-

cer, under such procedural regulations as the Secretary of State may prescribe—

First. To take possession and to dispose of the personal estate left by any citizen of the United States, except a seaman who is a member of the crew of an American vessel, who shall die within or is domiciled at time of death within his jurisdiction: *Provided*, That such procedure is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the death occurs, or the decedent is domiciled, or that such privilege is accorded by established usage: *Provided further*, That the decedent shall leave in the country where the death occurred or where he was domiciled, no legal representative, partner in trade, or trustee by him appointed to take care of his personal estate. A consular officer or, in his absence, a diplomatic officer shall act as the provisional conservator of the personal property within his jurisdiction of a deceased citizen of the United States but, unless authorized by treaty provisions, local law, or usage, he shall not act as administrator of such personal property. He shall render assistance in guarding, collecting, and transmitting the property to the United States to be disposed of according to the law of the decedent's domicile.

Second. After having taken possession of the personal property, as provisional conservator, to inventory and carefully appraise the effects with the assistance of two competent persons who, together with such officer, shall sign the inventory and annex thereto an appropriate certificate as to the accuracy of the appraised value of each article.

Third. To collect the debts due to the decedent in his jurisdiction and pay from the estate the obligations owed there by the decedent.

Fourth. To sell at auction, after reasonable public notice, unless the amount involved does not justify such expenditure, such part of the estate as shall be of a perishable nature, and after reasonable public notice and notice to next of kin if they can be ascertained by reasonable diligence such further part, if any, as shall be necessary for the payment of the decedent's debts incurred in such country, and funeral expenses, and expenses incident to the disposition of the estate. If, at the expiration of one year from the date of death (or for such additional period as may be required for final settlement of the estate), no claimant shall appear, the residue of the estate, with the exception of investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value, shall be sold.

Fifth. To transmit to the Department of State the proceeds of the sale (and any unsold effects, such as investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value), there to be held in trust for the legal claimant. If, however, at any time prior to such transmission, the decedent's legal representative should appear and demand the proceeds and effects in the officer's hands, he shall deliver them to such representative after having collected the prescribed fee therefor.

The Secretary of State or the Secretary's representative shall act as conservator of such parts of these estates as may be received by the

Department of State or are in its possession, and may, when deemed to be in the interest of the estate, sell such effects, including bonds, shares of stock, notes of indebtedness, jewelry, or other articles, which have heretofore or may hereafter be so received, and pay the expenses of such sale out of the proceeds: *Provided*, That application for such effects shall not have been made by the legal claimant within six years after their receipt. The Secretary of State is authorized, for and in behalf of the estate of the deceased, to receive any balances due to such estates, to draw therefor on banks, safe deposits, trust or loan companies, or other like institutions, to endorse all checks, bills of exchange, promissory notes, and other evidences of indebtedness due to such estates, and take such other action as may be deemed necessary for the conservation of such estates. The net proceeds of such sales, together with such other moneys as may be collected by him, shall be deposited into the Treasury to a fund in trust for the legal claimant and reported to the Secretary of State.

If no claim to the effects the proceeds of which have been so deposited shall have been received from a legal claimant of the deceased within six years from the date of the receipt of the effects by the Department of State, the funds so deposited, with any remaining unsold effects, less transmittal charges, shall be transmitted by that department to the proper officer of the State or Territory of the last domicile in the United States of the deceased citizen, if known, or, if not, such funds shall be covered into the general fund of the Treasury as miscellaneous receipts on account of proceeds of deceased citizens, and any such remaining unsold effects shall be disposed of by the Department of State in such manner as, in the judgment of the Secretary of State, is deemed appropriate, or they may be destroyed if considered no longer possessed of any value: *Provided*, That when the estate shall be valued in excess of \$500, and no claim therefor has been presented to the Department of State by a legal claimant within the period specified in this paragraph or the legal claimant is unknown, before disposition of the estate as provided herein, notice shall be given by publishing once a week for four consecutive weeks in a newspaper published in the county of the last known domicile of the deceased, in the United States, the expense thereof to be deducted from the proceeds of such estate, and any lawful claim received as the result of such advertisement shall be adjusted and settled as provided for herein.

(R.S. §1709; Mar. 3, 1911, ch. 223, 36 Stat. 1083; June 10, 1921, ch. 18, title III, §304, 42 Stat. 24; July 12, 1940, ch. 618, 54 Stat. 758; Nov. 14, 1986, Pub. L. 99-653, §21, 100 Stat. 3658; Oct. 24, 1988, Pub. L. 100-525, §8(p), 102 Stat. 2618; Oct. 19, 1996, Pub. L. 104-316, title II, §202(i), 110 Stat. 3843.)

CODIFICATION

R.S. §1709 derived from act Apr. 14, 1792, ch. 24, §2, 1 Stat. 255.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1175 of this title, and prior thereto to section 75 of this title.

AMENDMENTS

1996—Pub. L. 104-316, in par. designated “Fifth” substituted “Department of State” for “General Accounting Office”, in penultimate par. substituted “Secretary of State or the Secretary’s representative” for “Comptroller General of the United States, or such member of the General Accounting Office as he may duly empower to act as his representative for the purpose”, “Department of State” for “General Accounting Office”, and “Secretary of State is authorized” for “Comptroller General is authorized”, and in last par. substituted “Department of State” for “General Accounting Office” wherever appearing, “department to the proper” for “office to the proper”, and “Secretary of State” for “Comptroller General”.

1988—Pub. L. 100-525 amended Pub. L. 99-653, see 1986 Amendment note below.

1986—Pub. L. 99-653, as amended by Pub. L. 100-525, in par. designated “Second”, struck out “, article by article,” after “appraise the effects”.

1940—Act July 12, 1940, amended section generally.

1911—Act Mar. 3, 1911, inserted par. designated “Sixth” which required the Auditor for the State and other Departments to act as conservator of such part of the estates of certain deceased citizens as may be received at the Treasury.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653, see section 309(b)(15) of Pub. L. 102-232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 23(h) of Pub. L. 99-653, as added by Pub. L. 100-525, §8(r), Oct. 24, 1988, 102 Stat. 2619, provided that: “The amendment made by section 21 [amending this section] shall apply to individuals who die on or after November 14, 1986.”

TRANSFER OF FUNCTIONS

Act June 10, 1921, transferred to General Accounting Office all powers and duties conferred upon Comptroller, six auditors, and certain other officers of the Treasury.

ADMINISTRATIVE ASSISTANCE IN ARRANGEMENTS FOLLOWING DEATH OF UNITED STATES CITIZEN ABROAD

Pub. L. 95-426, title I, §121, Oct. 7, 1978, 92 Stat. 970, as amended by Pub. L. 97-241, title V, §505(a)(2), (b)(1), Aug. 24, 1982, 96 Stat. 299, provided that: “The Congress finds that the Department of State should, in the performance of its consular duties, render all reasonable administrative assistance to a United States citizen who is making necessary arrangements following the death of another United States citizen abroad.”

CROSS REFERENCES

Acceptance by consular officers of appointment from any foreign state as administrator, guardian, etc., see sections 4198 and 4199 of this title.

Duties of consular officers where seaman, dying out of United States, leaves money or effects not on board of his vessel, see sections 10704 and 10705 of Title 46, Shipping.

Embezzlement by a consular officer of money, property, etc., of a citizen of the United States received by him made punishable, see section 4217 of this title.

Estates of Decedents, Department of State, Trust Fund, see section 1321(63) of Title 31, Money and Finance.

Permanent appropriation for payment of the proceeds of the personal estates of American citizens who die abroad, to their legal representatives, see section 1305 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4196. Notification of death of decedent; transmission of inventory of effects

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed.

(R.S. § 1710; July 12, 1940, ch. 618, 54 Stat. 760.)

CODIFICATION

R.S. § 1710 derived from act Apr. 14, 1792, ch. 24, § 2, 1 Stat. 255.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1176 of this title, and prior thereto to section 76 of this title.

AMENDMENTS

1940—Act July 12, 1940, substituted “the consular officer, or, if no consular officer is present, a diplomatic officer,” for “the consul or vice-consul.”

CROSS REFERENCES

Inventory directed to be taken, see paragraph “Second” of section 4195 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4197. Following testamentary directions; assistance to testamentary appointee

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any interference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent's property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property.

(R.S. § 1711; July 12, 1940, ch. 618, 54 Stat. 760.)

CODIFICATION

R.S. § 1711 derived from act Aug. 18, 1856, ch. 127, § 28, 11 Stat. 63.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1177 of this title, and prior thereto to section 77 of this title.

AMENDMENTS

1940—Act July 12, 1940, amended section generally.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4198. Bond as administrator or guardian; action on bond

No consular officer of the United States shall accept an appointment from any foreign state as administrator, guardian, or to any other office or trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities, without executing a bond, with security, to be approved by the Secretary of State, and in a penal sum to be fixed by him and in such form as he may prescribe, conditioned for the true and faithful performance of all his duties according to law and for the true and faithful accounting for delivering, and paying over to the persons thereto entitled of all moneys, goods, effects, and other property which shall come to his hands or to the hands of any other person to his use as such administrator, guardian, or in other fiduciary capacity. Said bond shall be deposited with the Secretary of the Treasury. In case of a breach of any such bond, any person injured by the failure of such officer faithfully to discharge the duties of his said trust according to law, may institute, in his own name and for his sole use, a suit upon said bond and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue in due form; but if such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same. The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by a breach of the condition of the same until the whole penalty has been recovered.

(June 30, 1902, ch. 1331, § 1, 32 Stat. 546.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1178 of this title, and prior thereto to section 78 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4199 of this title.

§ 4199. Penalty for failure to give bond and for embezzlement

Every consular officer who accepts any appointment to any office of trust mentioned in section 4198 of this title without first having complied with the provisions thereof by due execution of a bond as therein required, or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do, shall be

deemed guilty of embezzlement and shall be punishable by imprisonment for not more than five years and by a fine of not more than \$5,000. (June 30, 1902, ch. 1331, § 2, 32 Stat. 547.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1179 of this title, and prior thereto to section 79 of this title.

CROSS REFERENCES

Embezzlement and theft, see section 641 et seq. of Title 18, Crimes and Criminal Procedure.

Embezzlement of fees or of effects of American citizens, see section 4217 of this title.

§ 4200. Certification of invoices generally

No consular officer shall certify any invoice unless he is satisfied that the person making oath thereto is the person he represents himself to be, that he is a credible person, and that the statements made under such oath are true; and he shall, thereupon, by his certificate, state that he was so satisfied.

(R.S. § 1715.)

CODIFICATION

R.S. § 1715 derived from act Aug. 18, 1856, ch. 127, § 27, 11 Stat. 62.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1180 of this title, and prior thereto to section 83 of this title.

CROSS REFERENCES

Certification of invoices, see sections 338 to 341 of Title 19, Customs Duties.

False certification of invoices and other papers, by consular officers, see section 1019 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4201. Fees for certification of invoices

Fees for the consular certification of invoices shall be, and they are, included with the fees for official services for which the President is authorized by section 4219 of this title to prescribe rates or tariffs.

(Apr. 5, 1906, ch. 1366, § 9, 34 Stat. 101.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

A further provision of section 9 of act Apr. 5, 1906, repealed R.S. § 2851, which provided for certification of invoices of imported merchandise by the collector of the post, and R.S. § 1721, which prescribed a fee of one dollar to be charged by the consul-general for the British North American provinces, for certifying invoices of goods not exceeding \$100 in value.

Section was formerly classified to section 1181 of this title, and prior thereto to section 84 of this title.

§ 4202. Exaction of excessive fees for verification of invoices; penalty

The fee provided by law for the verification of invoices by consular officers shall, when paid, be held to be a full payment for furnishing blank forms of declaration to be signed by the shipper,

and for making, signing, and sealing the certificate of the consular officer thereto; and any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of such declaration or certificate, charges or receives any fee greater in amount than that provided by law for the verification of invoices, or who demands or receives for any official services, or who allows any clerk or subordinate to receive for any such service, any fee or reward other than the fee provided by law for such service, shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$2,000, and shall be removed from his office.

(R.S. § 1716.)

CODIFICATION

R.S. § 1716 derived from act Mar. 3, 1869, ch. 125, § 3, 15 Stat. 321.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1182 of this title, and prior thereto to section 85 of this title.

CROSS REFERENCES

Refunding excessive fees, with a penalty for the collection thereof, see section 4209 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4203. Destruction of old invoices

The Secretary of State is authorized to cause, from time to time, the destruction of invoices that have been filed in the consular offices for a period of more than five years.

(Feb. 24, 1903, ch. 753, 32 Stat. 854.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1183 of this title, and prior thereto to section 86 of this title.

§ 4204. Restriction as to certificate for goods from countries adjacent to United States

No consular officer of the United States shall grant a certificate for goods, wares, or merchandise shipped from countries adjacent to the United States which have passed a consulate after purchase for shipment.

(R.S. § 1717.)

CODIFICATION

R.S. § 1717 derived from act Feb. 22, 1873, ch. 184, § 3, 17 Stat. 474.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1184 of this title, and prior thereto to section 87 of this title.

CROSS REFERENCES

Restriction on consular certificates, see section 339 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4205. Retention of papers of American vessels until payment of demands and wages

All consular officers are authorized and required to retain in their possession all the pa-

pers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels.

(R.S. § 1718.)

CODIFICATION

R.S. § 1718 derived from act Aug. 18, 1856, ch. 127, § 28, 11 Stat. 63.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1185 of this title, and prior thereto to section 88 of this title.

CROSS REFERENCES

Deposit of ships' papers with consular officers by masters of vessels, see section 354 of Title 46, Appendix, Shipping.

Entry of vessels, see section 1434 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4206. Fees for services to American vessels or seamen prohibited

No fees named in the tariff of consular fees prescribed by order of the President shall be charged or collected by consular officers for the official services to American vessels and seamen. Consular officers shall furnish the master of every such vessel with an itemized statement of such services performed on account of said vessel, with the fee so prescribed for each service, and make a detailed report to the Secretary of the Treasury of such services and fees, under such regulations as the Secretary of State may prescribe.

(June 26, 1884, ch. 121, § 12, 23 Stat. 56.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Provisions of section 12 of act June 26, 1884 (this section), permitting the Secretary of the Treasury to allow consular officers who are paid in whole or in part by fees such compensation for their services as they would have received but for the prohibition in this section were superseded by section 4223 of this title and were omitted, as was a provision of said section appropriating a sum sufficient for the payment of the compensation herein mentioned.

Section was formerly classified to section 1186 of this title, and prior thereto to section 89 of this title.

§ 4207. Profits from dealings with discharged seamen; prohibition

No consular officer, nor any person under any consular officer shall make any charge or receive, directly or indirectly, any compensation, by way of commission or otherwise, for receiving or disbursing the wages or extra wages to which any seaman or mariner is entitled who is discharged in any foreign country, or for any money advanced to any such seaman or mariner who seeks relief from any consulate; nor shall any consular officer, or any person under any consular officer, be interested, directly or indirectly, in any profit derived from clothing, boarding or otherwise supplying or sending home any such seaman or mariner. Such prohibition as to profit, however, shall not be con-

strued to relieve or prevent any such officer who is the owner of or otherwise interested in any vessel of the United States from transporting in such vessel any such seaman or mariner, or from receiving or being interested in such reasonable allowance as may be made for such transportation by law.

(R.S. § 1719; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 1719 derived from act Aug. 18, 1856, ch. 127, § 20, 11 Stat. 59.

Reference to "commercial agency" was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1187 of this title, and prior thereto to section 90 of this title.

CROSS REFERENCES

Discharge and return by consular officers of seamen, see sections 10318, 10906, 11106, and 11503 of Title 46, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4208. Valuation of foreign coins in payment of fees

Consuls, vice consuls, and consular agents in the Dominion of Canada, in the collection of official fees, shall receive foreign moneys at the rate given in the Treasury schedule of the value of foreign coins.

(R.S. § 1722.)

CODIFICATION

R.S. § 1722 derived from act Mar. 3, 1869, ch. 125, § 3, 15 Stat. 321.

Provisions of R.S. § 1722 that no consul, vice consul, or consular agent in the Dominion of Canada shall be allowed tonnage fees for any services, actual or constructive, rendered any vessel owned and registered in the United States that may touch at a Canadian port, were omitted as superseded by section 12 of act June 26, 1884, ch. 121, 23 Stat. 56, which is classified to section 4206 of this title.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1188 of this title, and prior thereto to section 91 of this title.

CROSS REFERENCES

Medium for payment of fees, see section 4220 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4209. Exaction of excessive fees generally; penalty of treble amount

Whenever any consular officer collects, or knowingly allows to be collected for any service, any other or greater fees than are allowed by law for such service, he shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty, to be recovered with costs, in any proper form of action, by such person for his own use. And in any such case the Secretary of the Treasury may retain, out of the

compensation of such officer, the amount of such overcharge and of such penalty, and charge the same to such officer in account, and may thereupon refund such unlawful charge, and pay such penalty to the person entitled to the same if he shall think proper so to do.

(R.S. § 1723.)

CODIFICATION

R.S. § 1723 derived from act Aug. 18, 1856, ch. 127, § 17, 11 Stat. 58.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1189 of this title, and prior thereto to section 92 of this title.

CROSS REFERENCES

Exaction of excessive fees for verification of invoices made punishable, see section 4202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4210. Liability for uncollected fees

Every consul general, consul, or vice consul appointed to perform the duty of any such officer, who omits to collect any fees which he is entitled to charge for any official service, shall be liable to the United States therefor, as if he had collected the same; unless, upon good cause shown therefor, the Secretary of the Treasury shall think proper to remit the same.

(R.S. § 1724; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 1724 derived from act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

References to “commercial agent” and “vice-commercial agent” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1190 of this title, and prior thereto to section 93 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4211. Returns as to fees by officers compensated by fees

All consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, shall make returns in such manner as the General Accounting Office shall prescribe, of all such fees as they or any person in their behalf so collect.

(R.S. § 1725; July 31, 1894, ch. 174, § 5, 28 Stat. 206; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

CODIFICATION

R.S. § 1725 derived from act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

References to “commercial agents” and “vice-commercial agents” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1191 of this title, and prior thereto to section 94 of this title.

TRANSFER OF FUNCTIONS

“General Accounting Office” substituted in text for “Comptroller of the Treasury” pursuant to act June 10,

1921, which transferred all powers and duties conferred upon Comptroller, six auditors, and certain other officers of the Treasury to General Accounting Office. See section 701 et seq. of Title 31, Money and Finance. Previously, functions of Secretary of State under this section transferred to Comptroller of the Treasury by act July 31, 1894.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4212. Receipt for fees; numbering receipts

Every consular officer shall give receipts for all fees collected for his official services, expressing the particular services for which the same were collected. He shall number all receipts given by him for fees received for official services, in the order of their dates, beginning with number one at the commencement of the period of his service, and on the first day of January in every year thereafter.

(R.S. §§ 1726, 1727.)

CODIFICATION

R.S. §§ 1726, 1727 derived from act Aug. 18, 1856, ch. 127, §§ 17, 18, 11 Stat. 58.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1192 of this title, and prior thereto to section 95 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4213. Registry of fees

Every consular officer shall also register in a book to be kept by him for that purpose all fees so received by him, in the order in which they are received, specifying each item of service and the amount received therefor, from whom, and the dates when received, and if for any service connected with any vessel, the name thereof, and indicating what items and amounts are embraced in each receipt given by him therefor, and numbering the same according to the number of the receipts, respectively, so that the receipts and register shall correspond with each other; and he shall, in such register, specify the name of the person for whom, and the date when he shall grant, issue, or verify any passport, certify any invoice, or perform any other official service in the entry of the receipt of the fees therefor, and also number each consular act so receipted for with the number of such receipt, and as shown by such register.

(R.S. § 1727.)

CODIFICATION

R.S. § 1727 derived from act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1193 of this title, and prior thereto to section 96 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4214. Account of fees; certification

Every consular officer responsible for the collection of fees, in rendering his account of fees received, shall furnish a full transcript of the

register which he is required to keep, and certify that such transcript is an accurate and complete record of all fees received for the period shown.

(R.S. § 1728; June 28, 1955, ch. 196, 69 Stat. 187.)

CODIFICATION

R.S. § 1728 derived from act Aug. 18, 1856, ch. 127, § 18, 11 Stat. 58.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1194 of this title, and prior thereto to section 97 of this title.

AMENDMENTS

1955—Act June 28, 1955, permitted certification by consular officers of their accounts of fees.

CROSS REFERENCES

Embezzlement of fees or of effects of American citizens, see section 4217 of this title.

Perjury, see sections 1621, 1622, and 3185 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4215. Notarial acts, oaths, affirmations, affidavits, and depositions; fees

Every consular officer of the United States is required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed he shall charge in each instance the appropriate fee prescribed by the President under section 4219 of this title.

(Apr. 5, 1906, ch. 1366, § 7, 34 Stat. 101; Apr. 30, 1994, Pub. L. 103-236, title I, § 127(b), 108 Stat. 394; Oct. 25, 1994, Pub. L. 103-415, § 1(mm)(1), 108 Stat. 4303.)

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1195 of this title, and prior thereto to section 98 of this title.

AMENDMENTS

1994—Pub. L. 103-415 struck out sentence inserted at end by Pub. L. 103-236. See below.

Pub. L. 103-236 inserted at end “Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.”

CROSS REFERENCES

Oaths, affirmations, affidavits, or depositions, see section 4221 of this title.

§ 4216. Posting rates of fees

It shall be the duty of all consular officers at all times to keep posted up in their offices, respectively, in a conspicuous place, and subject to the examination of all persons interested therein, a copy of such rates or tariffs as shall be in force.

(R.S. § 1731.)

CODIFICATION

R.S. § 1731 derived from act Aug. 18, 1856, ch. 127, § 16, 11 Stat. 57.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1197 of this title, and prior thereto to section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4217. Embezzlement of fees or of effects of American citizens

Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of said moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more than five years, and by a fine of not more than \$2,000.

(R.S. § 1734; Dec. 21, 1898, ch. 36, § 3, 30 Stat. 771.)

CODIFICATION

R.S. § 1734 derived from act Mar. 3, 1869, ch. 125, § 5, 15 Stat. 322.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1198 of this title, and prior thereto to section 102 of this title.

CROSS REFERENCES

Embezzlement and theft, see section 641 et seq. of Title 18, Crimes and Criminal Procedure.

Penalty for failure to give bond and for embezzlement, perjury, and making false oaths in accounting for fees, see sections 4199 and 4214 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4218. False certificate as to ownership of property

If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he shall be punishable by imprisonment for not more than three years, and by a fine of not more than \$10,000.

(R.S. § 1737; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 1737 derived from act Feb. 22, 1803, ch. 9, § 7, 2 Stat. 204.

References to “commercial agent” and “vice-commercial agent” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1200 of this title, and prior thereto to section 104 of this title.

CROSS REFERENCES

False certification of invoice, or other paper, by a consular officer, made punishable, see section 1019 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4219. Regulation of fees by President

The President is authorized to prescribe, from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate; and it shall be the duty of all officers and persons connected with such embassies, legations, and consulates to collect for such official services such and only such fees as may be prescribed for their respective embassies, legations, and consulates, and such rates or tariffs shall be reported annually to Congress.

(R.S. § 1745; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 1745 derived from act Aug. 18, 1856, ch. 127, § 16, 11 Stat. 57.

References to “commercial agencies” and “commercial agency” were omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1201 of this title, and prior thereto to section 127 of this title.

EX. ORD. NO. 10718. DELEGATION OF AUTHORITY TO SECRETARY OF STATE

Ex. Ord. No. 10718, June 27, 1957, 22 F.R. 4632, provided: SECTION 1. There is hereby delegated to the Secretary of State the authority vested in the President by section 1745 of the Revised Statutes of the United States (22 U.S.C. 1201) [this section] to prescribe, from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate.

SEC. 2. This order shall not operate to amend, supersede, or terminate any rates or tariffs of fees, designations, or adaptations prescribed or made under authority of the said section 1745 [this section] and in force immediately prior to the issuance of this order; but authority to amend, supersede, or terminate the same, and to prescribe regulations necessary or desirable for the implementation of rates or tariffs of fees, designations, or adaptations heretofore or hereafter prescribed or made, shall be deemed to be included within the authority delegated by section 1 of this order.

SEC. 3. The rates or tariffs of fees and the regulations prescribed and any other actions taken by the Secretary of State under authority of this order shall be published in the Federal Register.

DWIGHT D. EISENHOWER.

CROSS REFERENCES

Fees for consular certification of invoices, see section 4201 of this title.

Fees named in tariff of consular fees prescribed by order of the President, see section 4206 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4191, 4201, 4215 of this title.

§ 4220. Medium for payment of fees

All fees collected by diplomatic and consular officers for and in behalf of the United States shall be collected in the coin of the United States, or at its representative value in exchange.

(R.S. § 1746.)

CODIFICATION

R.S. § 1746 derived from act Aug. 18, 1856, ch. 127, § 30, 11 Stat. 63.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1202 of this title, and prior thereto to section 128 of this title.

CROSS REFERENCES

All coins and currencies of United States to be legal tender for all debts, see section 5103 of Title 31, Money and Finance.

Valuation of foreign coins in payment of fees, see section 4208 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4221. Depositions and notarial acts; perjury

Every secretary of embassy or legation and consular officer is authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto, or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto,

knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined, in a sum not to exceed \$3,000, and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody. Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.

(R.S. §1750; Apr. 5, 1906, ch. 1366, §3, 34 Stat. 100; Oct. 25, 1994, Pub. L. 103-415, §1(mm)(2), 108 Stat. 4304.)

REFERENCES IN TEXT

This Act, referred to in text, probably means the act of Aug. 18, 1856, ch. 127, 11 Stat. 52, as amended. That act was incorporated into the Revised Statutes as R.S. 208, 211, 1674 to 1676, 1680, 1685 to 1687, 1689, 1690, 1692, 1695, 1697, 1699, 1700, 1701, 1703, 1706, 1708, 1711, 1713, 1715, 1718, 1719, 1730, 1731, 1735, 1738 to 1741, 1743 to 1748, 1750 to 1752, 4207, 4213, 4580, 4581, 4583, and 4584. For complete classification of those sections of the Revised Statutes to the Code, see Tables.

CODIFICATION

R.S. §1750 derived from act Aug. 18, 1856, ch. 127, §24, 11 Stat. 61.

Reference to “commercial agency” was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1203 of this title, and prior thereto to section 131 of this title.

AMENDMENTS

1994—Pub. L. 103-415, which directed amendment of section 24 of the Act of August 18, 1856 (11 Stat. 61, 22 U.S.C. 4221) by inserting at end “Pursuant to such regulations as the Secretary of State may prescribe, the Secretary may designate any other employee of the Department of State who is a citizen of the United States to perform any notarial function authorized to be performed by a consular officer of the United States under this Act.”, was executed to this section, which is section 1750 of the Revised Statutes, to reflect the probable intent of Congress. Section 24 of the Act of Aug. 18, 1856, was restated in section 1750 of the Revised Statutes and repealed by section 5596 of the Revised Statutes.

CROSS REFERENCES

Certificate of acknowledgment of assignments, grants, or conveyances of patents as prima facie evidence of execution, see section 261 of Title 35, Patents.

Counterfeiting and forgery, see section 471 et seq. of Title 18, Crimes and Criminal Procedure.

Performance of notarial acts, see section 4215 of this title.

Perjury, see sections 1621, 1622, and 3185 of Title 18.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4191 of this title.

§ 4222. Authentication of documents of State of Vatican City by consular officer in Rome

Until the United States shall have consular officer resident in the State of the Vatican City, a copy of any document of record or on file in a

public office of said State of the Vatican City, certified by the lawful custodian of such document, may be authenticated, as provided in section 1741 of title 28, by a consular officer of the United States resident in the city of Rome, Kingdom of Italy, and such document or record shall, when so certified and authenticated, be admissible in evidence in any court of the United States.

(June 20, 1936, ch. 640, §6A, as added June 25, 1938, ch. 682, 52 Stat. 1163.)

CODIFICATION

“Section 1741 of title 28” substituted in text for “section 6 of this Act [28 U.S.C. 695e]” on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 1204 of this title, and prior thereto to section 695e-1 of Title 28.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CRIMINAL PROCEDURE

Proof of official records, see rule 27, Title 18, Appendix, Crimes and Criminal Procedure.

§ 4223. General duty to account for fees

All fees, official or unofficial, received by any officer in the Consular Service for services rendered in connection with the duties of his office or as a consular officer, including fees for notarial services, and fees for taking depositions, executing commissions or letters rogatory, settling estates, receiving or paying out moneys, caring for or disposing of property, shall be accounted for and paid into the Treasury of the United States, and the sole and only compensation of such officers shall be by salaries fixed by law. And vice-consuls, in addition to such compensation as they may be entitled to receive as consuls or clerks, may receive such portion of the salaries of the consul-general or consuls for whom they act as shall be provided by regulation.

(Apr. 5, 1906, ch. 1366, §8, 34 Stat. 101; Feb. 5, 1915, ch. 23, §§3, 6, 38 Stat. 805, 806; May 24, 1924, ch. 182, §11, 43 Stat. 142; Aug. 13, 1946, ch. 957, title XI, §1131(26), 60 Stat. 1037.)

CODIFICATION

Compensation provisions pertaining to the positions of vice-consuls-general, deputy consuls-general, and deputy consuls were omitted from this section on the authority of act Feb. 5, 1915.

Section was not enacted as a part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 99 of this title.

AMENDMENTS

1946—Act Aug. 13, 1946, struck out “but this shall not apply to consular agents, who shall be paid one-half of the fees received in their offices, up to a maximum sum of one thousand dollars in any one year, the other half being accounted for and paid into the Treasury of the United States.”

EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 13, 1946, effective three months after Aug. 13, 1946.

REPEALS

Act Aug. 13, 1946, ch. 957, title XI, §1131(26), 60 Stat. 1037, cited as a credit to this section, was repealed by Pub. L. 96-465, title II, §2205(1), Oct. 17, 1980, 94 Stat. 2159.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4224 of this title.

§ 4224. Fees; accounting; stamps

The provisions of sections 1196¹ and 4223 of this title, relative to official fees and the method of accounting therefor shall apply to diplomatic officers below the grade of minister and to consular officers.

(May 24, 1924, ch. 182, §18, formerly §11, 43 Stat. 142, renumbered and amended Feb. 23, 1931, ch. 276, §7, 46 Stat. 1209.)

REFERENCES IN TEXT

Section 1196 of this title, referred to in text, was repealed by act June 28, 1955, ch. 196, 69 Stat. 187.

CODIFICATION

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 812 of this title, and prior thereto to section 13 of this title.

AMENDMENTS

1931—Act Feb. 23, 1931, substituted “shall apply to diplomatic officers below the grade of minister and to consular officers” for “shall include both branches of the Foreign Service”.

EFFECTIVE DATE OF 1931 AMENDMENT

Section 7 of act Feb. 23, 1931, provided: “That this Act [see Tables for classification] shall take effect on July 1, 1931.”

§ 4225. Fiscal districts; establishment; district accounting and disbursing offices; personnel; duties

The President is authorized, whenever the necessity for such offices with a view to effecting economies in accounting procedure is apparent, to prescribe certain fiscal districts or areas and to establish within each such district as a part of the Department of State service, a district accounting and disbursing office to exercise control over the accounts and returns of all diplomatic missions and consular offices within the district in such manner as the President may direct. To each such office may be assigned the administrative accounting responsibility for receipts and expenditures of the diplomatic missions and consular offices within the district. Each district office shall be in charge of an accountable officer, to whom all fees, and other official monies, received by any diplomatic, consular, or Foreign Service officer may be accounted for, under such rules and regulations as may be prescribed by the Secretary of State, all such fees and monies, or the residue thereof after the payment of salaries, allowances, and current expenses of the diplomatic missions and consular offices within the district, to be paid by the district accounting and disbursing officer into the Treasury of the United States. Such

district accounting and disbursing officers accountable for public monies may entrust monies to other officers for the purpose of having them make disbursements as his agent, and the officer to whom the monies are entrusted, as well as the officer who entrusts the monies to him, shall be held pecuniarily responsible therefor to the United States. All diplomatic, consular or Foreign Service officers on duty within the area covered by such district offices may be required to render accounts of their disbursements to the officer in charge of such district office to be included in his accounts.

Provided further, That the Secretary of State is authorized to appoint such district accounting and disbursing officers and their assistants in the same manner as clerks in diplomatic missions and consular offices are appointed.

Section 3522 of title 31, and any other existing statutes, in so far as they conflict with this section are hereby amended.

(May 24, 1924, ch. 182, §35, as added Feb. 23, 1931, ch. 276, §7, 46 Stat. 1216; amended June 6, 1972, Pub. L. 92-310, title II, §227(b), 86 Stat. 207.)

CODIFICATION

“Section 3522 of title 31” substituted in text for “Section 3622 of the Revised Statutes of the United States (U.S.C., title 31, sec. 496)”, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 813 of this title, and prior thereto to section 23k of this title.

AMENDMENTS

1972—Pub. L. 92-310 struck out provisions which required district accounting and disbursing officers and their agents to be bonded.

EFFECTIVE DATE

Section effective July 1, 1931, see section 7 of act Feb. 23, 1931, set out as an Effective Date of 1931 Amendment note under section 4224 of this title.

TRANSFER OF FUNCTIONS

Function of disbursement of moneys of the United States of any agency (with certain exceptions) transferred to Treasury Department by Ex. Ord. No. 6166, §4, June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees. Section 4 of Ex. Ord. No. 6166 was repealed by Pub. L. 97-258, §5(b), Sept. 13, 1982, 96 Stat. 1086, the first section of which enacted Title 31, Money and Finance. See section 3321 of Title 31.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4226 of this title.

§ 4226. Fees and official monies from diplomatic missions, consular offices and district accounting and disbursing offices; disposition

All fees and other official monies received by diplomatic missions or consular offices or by the district accounting and disbursing offices provided in section 4225 of this title, may be transmitted through the Department of State for deposit in the United States Treasury, or may be used in payment of salaries, allowances, and current expenses of said missions and offices, under such rules and regulations as the President may from time to time prescribe; the resi-

¹ See References in Text note below.

due, if any, to be transmitted through the Department of State for deposit in the United States Treasury. Section 3302(b) of title 31 is hereby amended.

(May 24, 1924, ch. 182, §36, as added Feb. 23, 1931, ch. 276, §7, 46 Stat. 1216.)

CODIFICATION

“Section 3302(b) of title 31” substituted in text for “Section 3617 of the Revised Statutes of the United States (U.S.C., title 31, sec. 484)”, on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was not enacted as part of the Foreign Service Act of 1980 which comprises this chapter.

Section was formerly classified to section 814 of this title, and prior thereto to section 237 of this title.

EFFECTIVE DATE

Section effective July 1, 1931, see section 7 of act Feb. 23, 1931, set out as an Effective Date of 1931 Amendment note under section 4224 of this title.

CHAPTER 53—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

- Sec. 4301. Congressional declaration of findings and policy.
 - (a) Findings.
 - (b) Policy.
 - (c) Treatment of foreign missions in United States.
- 4302. Definitions.
- 4303. Authorities of Secretary of State.
- 4304. Provision of benefits.
 - (a) Request by foreign mission; terms and conditions as approved by Secretary.
 - (b) Benefits through Secretary as mandatory; compliance with terms and conditions.
 - (c) Surcharge or fee; waiver of recourse.
 - (d) Agent for waiver of recourse.
 - (e) Secret Service protection.
 - (f) In-kind exchange of properties with foreign government; transfer of funds; reciprocal agreement; regulations.
- 4304a. Enforcement of compliance with liability insurance requirements.
 - (a) Notice to Secretary by head of foreign mission of lapse or termination of coverage; report to Secretary by head of foreign mission respecting motor vehicles, vessels and aircraft registered in United States.
 - (b) Surcharge or fee covering unsatisfied part of judgment; preconditions for imposition.
 - (c) Definitions.
- 4305. Property of foreign missions.
 - (a) Proposed acquisition, sale, or other disposition.
 - (b) Divestiture.
 - (c) Cessation of diplomatic, consular, and other governmental activities in United States; protecting power or other agent; disposition of property.
 - (d) Protection from future hostile intelligence activities in United States.
- 4306. Location of foreign missions in the District of Columbia.
 - (a) Section as governing location, replacement, or expansion.
 - (b) Acceptable areas; limitations and conditions.
 - (c) Filing of application with Board of Zoning Adjustment; publication of notice; public participation; final determination.

- Sec. (d) Criteria for determination.
- (e) Consistency of regulations, proceedings, and other actions; review and comment by National Planning Commission.
- (f) Rule-making nature of proceedings.
- (g) Compliance with District of Columbia building and related codes.
- (h) Approval of Board of Zoning Adjustment or Zoning Commission not required.
- (i) Membership on Zoning Commission and Board of Zoning Adjustment.
- (j) Application of other laws.
- 4307. Preemption.
- 4308. General provisions.
 - (a) Issuance of regulations.
 - (b) Discharge of obligation; liability.
 - (c) Use of employees from other Federal agencies; experts and consultants.
 - (d) Contracts and subcontracts for supplies and services; advertisement; factors considered.
 - (e) Transfer or loan of property to or from Department of State.
 - (f) Attachment, execution, etc., of assets.
 - (g) Discretion of Secretary.
 - (h) Transfer and credit of funds.
- 4309. Application to public international organizations and official missions to such organizations.
 - (a) Determination by Secretary.
 - (b) “International organization” defined.
- 4309a. United States responsibilities for employees of the United Nations.
 - (a) Findings.
 - (b) Activities of United Nations employees.
 - (c) Reports.
 - (d) United States nationals.
 - (e) “United Nations Headquarters District” defined.
- 4310. Privileges and immunities.
- 4311. Enforcement.
 - (a) Benefits to foreign missions contrary to this chapter; standing of United States to bring action for compliance.
 - (b) Advice of Secretary concerning transactions with foreign missions.
- 4312. Presidential guidelines.
- 4313. Severability.
- 4314. Extraordinary protective services.
 - (a) General authority.
 - (b) Requirement of extraordinary circumstances.
 - (c) Repealed.
 - (d) Restrictions on use of funds.
 - (e) Period of agreement with State or local authority.
 - (f) Requirement for appropriations.
 - (g) Working capital fund.
- 4315. Use of foreign mission in manner incompatible with its status as foreign mission.
 - (a) Establishment of limitation on certain uses.
 - (b) Temporary lodging.
 - (c) Waiver.
 - (d) Report.
 - (e) Definitions.
- 4316. Application of travel restrictions to personnel of certain countries and organizations.
 - (a) Requirement for restrictions.
 - (b) Individuals subject to restrictions.
 - (c) Waivers.
 - (d) Repealed.
 - (e) Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 302, 2684, 4852 of this title; title 3 section 208.