

- (f) Chief Chemical Officer, and
(g) Chief of Transportation.

SEC. 2. *Transfer of functions from Chief of Engineers.* The functions vested in the Chief of Engineers by sections 3038 and 3533, Title 10, United States Code, are hereby transferred to the Secretary of the Army.

SEC. 3. *Performance of transferred functions.* The Secretary of the Army may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any office, agency, or employee of the Department of the Army of any function transferred to the Secretary by the provisions of this order.

SEC. 4. *Transitional provisions.* In order to assist in the orderly transfer of functions and to promote continuity of operation, the Secretary of the Army may, if he considers it necessary, delay beyond the effective date of this order the abolition of any office or transfer of any function.

SEC. 5. *Effective date.* The provisions of this order shall take effect on the date determined under section 202(c) of the National Security Act of 1947, as amended (72 Stat. 514; 5 U.S.C. 171a(c)), or the 16th day of February 1962, whichever is later.

J. C. LAMBERT,
Major General, U.S. Army,
THE ADJUTANT GENERAL.

§ 3037. Judge Advocate General, Deputy Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Deputy Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the Army. The term of office of the Judge Advocate General and the Deputy Judge Advocate General is four years. The Judge Advocate General, while so serving, has the grade of lieutenant general. An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

(b) The Judge Advocate General shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

- (1) is the legal adviser of the Secretary of the Army and of all officers and agencies of the Department of the Army;
- (2) shall direct the members of the Judge Advocate General's Corps in the performance of their duties; and
- (3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(d) Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(e) No officer or employee of the Department of Defense may interfere with—

- (1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Army or the Chief of Staff of the Army; or
- (2) the ability of judge advocates of the Army assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 164; Pub. L. 85-861, §33(a)(18), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 103-337, div. A, title V, §504(a), Oct. 5, 1994, 108 Stat. 2750; Pub. L. 108-375, div. A, title V, §574(a), Oct. 28, 2004, 118 Stat. 1921; Pub. L. 109-163, div. A, title V, §508(a), title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3229, 3440; Pub. L. 110-181, div. A, title V, §543(a)(1)-(3)(A), Jan. 28, 2008, 122 Stat. 114.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
3037(a)	10:21h(c). 10:61a.	June 28, 1950, ch. 383, §208(c), 64 Stat. 267.
3037(b)	50:741.	June 24, 1948, ch. 625, §§248, 249, 62 Stat. 643.
3037(c)	10:62. 10:62a. 10:63.	May 5, 1950, ch. 169, §13, 64 Stat. 147. R.S. 1199. June 23, 1874, ch. 458, §2, 18 Stat. 244. R.S. 1201.

In subsection (a), the words "Notwithstanding any other provision of law" and "for such positions" are omitted as surplusage. The last sentence is substituted for 10:61a (last sentence). 10:21h(c) is omitted as covered by 10:61a.

In subsection (b), the words "Hereafter" and "exclusive of the present incumbents" are omitted as surplusage.

In subsection (c), the words "In addition to duties elsewhere prescribed for him by law", in 10:62, are omitted as surplusage. The words "and perform such other duties as may be prescribed by the Secretary of the Army", in 10:62, are omitted as superseded by sections 3012(e) and 3036(d) of this title. Clause (2) is substituted for 10:62a (words after semicolon) and 63. The Act of June 23, 1874, ch. 458, §2 (words before semicolon of 1st sentence, and last sentence), 18 Stat. 244, are not contained in 10:62. They are also omitted from the revised section as superseded by sections 3037(a) and 3211 of this title.

1958 ACT

The change corrects an inadvertence. The source statute for section 3036(c) of title 10 (the third sentence of sec. 513(a) of the Officer Personnel Act of 1947, 61 Stat. 901), providing for a 4-year term of office, applied also to the Judge Advocate General and the Assistant Judge Advocate General. As restated in section 3036(c), it now applies only to the officers named in section 3036(b), which excludes the two officers named. For this reason, the effect of the source statute with respect to those officers is added to section 3037(a), relating to their appointment.

AMENDMENTS

2008—Pub. L. 110-181, §543(a)(3)(A), amended section catchline generally, substituting "Deputy" for "Assistant".

Subsec. (a). Pub. L. 110-181, §543(a)(1), (2)(A), substituted "Deputy Judge Advocate General" for "Assistant Judge Advocate General" wherever appearing and substituted "The Judge Advocate General, while so serving, has the grade of lieutenant general." for "The

Judge Advocate General, while so serving, shall hold a grade not lower than major general.”

Subsec. (d). Pub. L. 110-181, § 543(a)(2)(B), substituted “Deputy Judge Advocate General” for “Assistant Judge Advocate General”.

2006—Subsec. (a). Pub. L. 109-163, § 508(a), substituted “The Judge Advocate General, while so serving, shall hold a grade not lower than major general. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.” for “If an officer who is so appointed holds a lower regular grade, he shall be appointed in the regular grade of major general.”

Subsec. (b). Pub. L. 109-163, § 1057(a)(2), struck out “or Territory” after “a State”.

2004—Subsec. (a). Pub. L. 108-375, § 574(a)(1), substituted “The term of office of the Judge Advocate General and the Assistant Judge Advocate General is four years.” for “An officer appointed as the Judge Advocate General or Assistant Judge Advocate General normally holds office for four years. However, the President may terminate or extend the appointment at any time.”

Subsec. (e). Pub. L. 108-375, § 574(a)(2), added subsec. (e).

1994—Subsec. (d). Pub. L. 103-337 added subsec. (d).

1958—Subsec. (a). Pub. L. 85-861 provided that the Judge Advocate General or Assistant Judge Advocate General shall normally hold office for four years, and empowered the President to terminate or extend the appointment at any time.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

§ 3038. Office of Army Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Army an Office of the Army Reserve which is headed by a chief who is the adviser to the Chief of Staff on Army Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from general officers of the Army Reserve who have had at least 10 years of commissioned service in the Army Reserve.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Army Reserve unless the officer—

(A) is recommended by the Secretary of the Army; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Army Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Army Reserve if the Secretary of the Army requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Army Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Army Reserve may be reappointed for one additional four-year period.

(2) The Chief of Army Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Army Reserve is the official within the executive part of the Department of the Army who, subject to the authority, direction, and control of the Secretary of the Army and the Chief of Staff, is responsible for justification and execution of the personnel, operation and maintenance, and construction budgets for the Army Reserve. As such, the Chief of Army Reserve is the director and functional manager of appropriations made for the Army Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Army Reserve manages, with respect to the Army Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Army Reserve shall submit to the Secretary of Defense, through the Secretary of the Army, an annual report on the state of the Army Reserve and the ability of the Army Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Army and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Army Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 90-168, § 2(16), Dec. 1, 1967, 81 Stat. 523, § 3019; renumbered § 3038 and amended Pub. L. 99-433, title V, §§ 501(a)(4), 502(g)(1), Oct. 1, 1986, 100 Stat. 1034, 1042; Pub. L. 103-337, div. A, title XVI, § 1672(c)(1), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 104-201, div. A, title XII, § 1212(a), Sept. 23, 1996, 110 Stat. 2691; Pub. L. 106-65, div. A, title V, § 554(b), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106-398, § 1 [[div. A], title V, § 507(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-102; Pub. L. 107-314, div. A, title V, § 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108-375, div. A, title V, § 536(a), Oct. 28, 2004, 118 Stat. 1901.)

PRIOR PROVISIONS

A prior section 3038, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, charged Chief of Engineers with responsibility for Army construction, real estate acquisition and management, and the operation of water, gas, electric, and sewer utilities, prior to repeal by Pub. L. 89-718, § 25(a), Nov. 2, 1966, 80 Stat. 1119.

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108-375 substituted “December 31, 2006” for “December 31, 2004” in introductory provisions.

2002—Subsec. (b)(4). Pub. L. 107-314 substituted “December 31, 2004” for “October 1, 2003” in introductory provisions.