

Pub. L. 97-22, §10(b)(6)(B), July 10, 1981, 95 Stat. 137, struck out item 5455 “Computations and determinations: effect on status of officers”.

1980—Pub. L. 96-513, title V, §§503(18), 513(9)(A), Dec. 12, 1980, 94 Stat. 2912, 2931, inserted “; commodore admirals and rear admirals” in item 5442, inserted “; brigadier generals and major generals” in item 5443, inserted “; commodore admirals and rear admirals” in item 5444, struck out items 5445 “Suspension: sections 5442, 5443, 5444”, 5447 “Navy: line officers on the active list; permanent grade”, 5448 “Marine Corps: officers on the active list; permanent grade”, 5449 “Navy: staff corps officers on the active list; permanent grade”, and 5452 “Navy: women line officers on active duty; Marine Corps: women officers on active duty”, and substituted “in grades” for “in permanent grades” in items 5457 and 5458.

1967—Pub. L. 90-130, §1(17)(F), (H), Nov. 8, 1967, 81 Stat. 377, struck out item 5453 “Marine Corps: women officers on the active list; permanent grade”, and substituted: “Navy: women line officers on active duty; Marine Corps: women officers on active duty” for “Navy: women line officers on the active list; permanent grade” in item 5452.

1958—Pub. L. 85-861, §1(113)(B), Sept. 2, 1958, 72 Stat. 1492, added items 5457 and 5458.

#### § 5441. Prescribed number; vacancies

In this chapter, the term “prescribed number” or “number . . . prescribed” as applied to a grade, means the number of officers of a described corps, designation, or other category that shall be maintained in the grade concerned. Except as otherwise specifically provided, the actual number of officers in a grade may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

(Aug. 10, 1956, ch. 1041, 70A Stat. 299; Pub. L. 96-513, title III, §313(a), Dec. 12, 1980, 94 Stat. 2889; Pub. L. 101-189, div. A, title XVI, §1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

#### HISTORICAL AND REVISION NOTES

This section is derived from the distribution-in-grade provisions of the Officers Personnel Act of 1947. It is inserted here to show clearly what is meant by the “authorized number” of officers in a grade as used in the distribution-in-grade sections of the Officer Personnel Act. “Prescribed number” is substituted for “authorized number” because the latter, as used in other provisions of law, means simply the maximum number of persons authorized to be in a designated category. As used in the distribution-in-grade provisions of the Officer Personnel Act the term means not only the maximum number of officers that may be in a particular grade, but also the number of officers that should be maintained in that grade. It places not only a ceiling but a floor on the number of officers for the grade concerned. This is accomplished by establishing vacancies when the actual number of officers in the grade concerned falls below the “authorized” or, as used here, the “prescribed” number. Where there is a prescribed number for a grade, an officer should, in the absence of other controlling provisions of law, be promoted to that grade to fill an existing vacancy, as of the date on which the vacancy occurred. In this manner, at least constructively, the prescribed number is maintained.

There is no source for the section because the Officer Personnel Act did not attempt specifically to define “authorized number” in this context. The meaning of the term is derived only from understanding the effect given it throughout the Officer Personnel Act and from the imperative requirements of sections 103, 203, and 303 of the act.

#### AMENDMENTS

1989—Pub. L. 101-189 inserted “, the term” after “In this chapter”.

1980—Pub. L. 96-513 struck out “or combination of grades” after “to a grade”, after “in the grade”, and after “in a grade”.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

#### [§§ 5442 to 5444. Repealed. Pub. L. 101-510, div. A, title IV, § 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]

Section 5442, acts Aug. 10, 1956, ch. 1041, 70A Stat. 300; Pub. L. 90-386, §1(4), July 5, 1968, 82 Stat. 293; Dec. 12, 1980, Pub. L. 96-513, title III, §313(b), 94 Stat. 2889; Dec. 1, 1981, Pub. L. 97-86, title IV, §405(b)(1), (3), (6)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99-145, title V, §514(b)(1), (3), (6)(A), 99 Stat. 628; Nov. 14, 1986, Pub. L. 99-661, div. A, title XIII, §1343(a)(24), 100 Stat. 3994, set forth number of officers serving on active duty in Navy who may serve in grades of rear admiral (lower half) and rear admiral.

Section 5443, acts Aug. 10, 1956, ch. 1041, 70A Stat. 302; Aug. 3, 1961, Pub. L. 87-123, §5(6), 75 Stat. 265; Nov. 2, 1966, Pub. L. 89-731, §1, 80 Stat. 1160; Dec. 12, 1980, Pub. L. 96-513, title III, §313(c), 94 Stat. 2891, related to number of officers in Marine Corps on active duty who may serve in grades of brigadier general and major general.

Section 5444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 304; Aug. 21, 1957, Pub. L. 85-155, title II, §201(1)-(3), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90-130, §1(17)(A), (B), 81 Stat. 376; Dec. 12, 1980, Pub. L. 96-513, title III, §302, title V, §503(19), 94 Stat. 2888, 2912; July 10, 1981, Pub. L. 97-22, §§6(b), 10(a)(3), 95 Stat. 130, 136; Dec. 1, 1981, Pub. L. 97-86, title IV, §405(b)(1)-(3), (7)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99-145, title V, §514(b)(1)-(3), (7)(A), 99 Stat. 628, 629, related to total number of officers who may serve on active duty in Navy in grades of rear admiral (lower half) and rear admiral in staff corps.

#### [§ 5445. Repealed. Pub. L. 96-513, title III, § 313(d)(1), Dec. 12, 1980, 94 Stat. 2892]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 306, related to suspension of sections 5442, 5443, and 5444 of this title. See section 526 of this title.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### [§ 5446. Repealed. Pub. L. 101-510, div. A, title IV, § 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 306; Dec. 12, 1980, Pub. L. 96-513, title III, §373(a), title V, §503(20), 94 Stat. 2903, 2912, related to applicability of sections 5442, 5443, and 5444 of this title.

#### [§§ 5447 to 5449. Repealed. Pub. L. 96-513, title III, § 313(d)(2)-(4), Dec. 12, 1980, 94 Stat. 2892]

Section 5447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 307; July 5, 1968, Pub. L. 90-386, §1(4), 82 Stat. 293, related to permanent grade distribution of Navy line officers on active list. See section 521 et seq. of this title.

Section 5448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 309; Aug. 3, 1961, Pub. L. 87-123, §5(7), 75 Stat. 265, related to permanent grade distribution of Marine Corps officers on active list. See section 521 et seq. of this title.

Section 5449, acts Aug. 10, 1956, ch. 1041, 70A Stat. 311; Aug. 21, 1957, Pub. L. 85-155, title II, §201(4), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90-130, §1(17)(C), (D), 81 Stat. 376, related to number of Navy staff corps officers on active list in permanent grade of rear admiral. See section 525 of this title.