

ment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this chapter) any officer to be separated from the Service or reduced in grade.

**(e) Exception to grade limitations for officers assigned to Department of Defense**

In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policy-making position in the Department of Defense.

**(f) Exception to maximum number limitations for officers assigned to Department of Defense**

In computing the maximum number of commissioned officers of the Public Health Service authorized by law or administrative determination to serve on active duty, there may be excluded from such computation officers who are assigned to duty in the Department of Defense.

(July 1, 1944, ch. 373, title II, §206, 58 Stat. 684; Feb. 28, 1948, ch. 83, §4, 62 Stat. 39; Oct. 31, 1951, ch. 653, 65 Stat. 700; July 17, 1952, ch. 931, 66 Stat. 758; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 87-649, §11(1), Sept. 7, 1962, 76 Stat. 497; Pub. L. 95-215, §8(b), Dec. 19, 1977, 91 Stat. 1507; Pub. L. 96-76, title III, §304, Sept. 29, 1979, 93 Stat. 584; Pub. L. 99-117, §9, Oct. 7, 1985, 99 Stat. 494; Pub. L. 101-93, §5(p), Aug. 16, 1989, 103 Stat. 614; Pub. L. 101-502, §5(k)(1), Nov. 3, 1990, 104 Stat. 1289; Pub. L. 104-201, div. A, title V, §582, Sept. 23, 1996, 110 Stat. 2538.)

AMENDMENTS

1996—Subsec. (f). Pub. L. 104-201 added subsec. (f).

1990—Subsec. (a). Pub. L. 101-502 inserted after first sentence “During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army.”

1989—Subsec. (e). Pub. L. 101-93, which directed the substitution of “the Department of Defense” for “the office of Assistant Secretary of Defense for Health Affairs”, was executed by making the substitution for “the office of the Assistant Secretary of Defense for Health Affairs” as the probable intent of Congress.

1985—Subsec. (e). Pub. L. 99-117 added subsec. (e).

1979—Subsec. (a). Pub. L. 96-76, §304(a), added pars. (7) to (10).

Subsec. (c). Pub. L. 96-76, §304(b), struck out subsec. (c) setting forth the grade and pay and allowances as director for a commissioned officer below the grade of director assigned to serve as chief of a division.

Subsec. (d). Pub. L. 96-76, §304(c), substituted “warrant officer (W-1)” for “junior assistant”.

1977—Subsec. (b)(6). Pub. L. 95-215 substituted “junior assistant” for “senior assistant”.

1962—Subsec. (a). Pub. L. 87-649 struck out provisions which related to pay and allowances.

1952—Subsec. (a). Act July 17, 1952, provided that the Chief Medical Officer of the Coast Guard should have the grade, pay, and allowances of a major general.

1951—Subsec. (a). Act Oct. 31, 1951, provided equality of grade, pay, and allowances between the Chief Dental Officer and the comparable officer in the Army.

1948—Subsec. (a). Act Feb. 28, 1948, increased grade of Deputy Surgeon General from brigadier general to

major general and increased grade of certain Assistant Surgeons General from brigadier general to major general as the Federal Security Administrator might determine.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsecs. (c) and (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-502 effective Dec. 1, 1990, see section 5(k)(3) of Pub. L. 101-502, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-649 effective Nov. 1, 1962, see section 15 of Pub. L. 87-649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General, together with office held by Deputy Surgeon General, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education. Office of Surgeon General reestablished within the Office of the Assistant Secretary for Health, see Notice of Department of Health and Human Services, Office of the Assistant Secretary for Health, Mar. 30, 1987, 52 F.R. 11754.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

**§ 208. Repealed. Feb. 28, 1948, ch. 83, §5(a), 62 Stat. 40**

Section, act July 1, 1944, ch. 373, title II, §207, 58 Stat. 685, related to establishment of special temporary provisions. See sections 206(c) and 207(c) of this title.

**§ 209. Appointment of personnel**

**(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty**

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W-1), chief warrant officer (W-2), chief warrant officer (W-3), chief warrant officer (W-4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 212(d) of this title) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

**(b) Grade and number of original appointments**

(1) Not more than 10 per centum of the original appointments to the Regular Corps authorized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 205 of this title) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of

senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Reserve Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

**(c) Issuance of commissions**

Commissions evidencing the appointment by the President of officers of the Regular or Reserve Corps shall be issued by the Secretary under the seal of the Department of Health and Human Services.

**(d) Date of appointment; credit for service**

(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.

(2) For purposes of basic pay, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, in lieu of the credit provided in paragraph (1) of this subsection, be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1) of this subsection, plus whichever of the following is greater: (A) The excess of his total active service in the Reserve Corps (above the grade of junior assistant) over the length of service provided in such paragraph, to the extent that such excess is on account of service in the Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Reserve Corps after the first day on which,