

to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

- (1) The second anniversary of the appointment.
- (2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.
- (3) The date the person appointed is released from active duty.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2850; amended Pub. L. 101-189, div. A, title VI, §653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102-190, div. A, title XI, §1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

#### AMENDMENTS

1991—Pub. L. 102-190, §1113(d)(1)(A), substituted “Appointments in time of war or national emergency” for “Commissioned officer grades: time of war or national emergency” in section catchline.

Subsec. (a). Pub. L. 102-190, §1113(b), struck out “commissioned” before “officer grade in the Army” and “in warrant officer grades or” before “in grades above major general” and inserted before period at end “, except that an appointment in the grade warrant officer, W-1, shall be made by warrant by the Secretary concerned”.

1989—Subsec. (f). Pub. L. 101-189 substituted “terminates on the earliest of the following:” for “terminates—” in introductory provisions, and made numerous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: “Unless sooner terminated, an appointment under this section terminates—

- “(1) on the second anniversary of the appointment;
  - “(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or
  - “(3) on the date the person appointed is released from active duty;
- whichever is earliest.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### EX. ORD. NO. 13321. APPOINTMENTS DURING NATIONAL EMERGENCY

Ex. Ord. No. 13321, Dec. 17, 2003, 68 F.R. 74465, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United

States Code, and in order to further respond to the national emergency I declared in Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], I hereby order as follows:

SECTION 1. *Emergency Appointments Authority.* The emergency appointments authority at section 603 of title 10, United States Code, is invoked and made available to the Secretary of Defense in accordance with the terms of that statute and of Executive Order 12396 of December 9, 1982 [3 U.S.C. 301 note].

SEC. 2. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any person.

SEC. 3. *Administration.* This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

#### § 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman’s evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman’s evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer’s performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

- (1) Commander of a combatant command.
- (2) Commander, United States Forces, Korea.
- (3) Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe.

(Added Pub. L. 103-337, div. A, title IV, §405(c)(1), Oct. 5, 1994, 108 Stat. 2745; amended Pub. L. 104-201, div. A, title IV, §404(a), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 106-65, div. A, title V, §509(a), Oct. 5, 1999, 113 Stat. 592; Pub. L. 107-314, div. A,

title IV, § 405(a), Dec. 2, 2002, 116 Stat. 2526; Pub. L. 108-136, div. A, title V, § 504(a), Nov. 24, 2003, 117 Stat. 1456.)

AMENDMENTS

2003—Subsec. (c). Pub. L. 108-136 struck out heading and text of subsec. (c). Text read as follows: "This section shall cease to be effective at the end of December 31, 2004."

2002—Subsec. (c). Pub. L. 107-314 substituted "December 31, 2004" for "September 30, 2003".

1999—Subsec. (c). Pub. L. 106-65 substituted "September 30, 2003" for "September 30, 2000".

1996—Subsec. (c). Pub. L. 104-201 substituted "September 30, 2000" for "September 30, 1997".

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

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AMENDMENTS

2006—Pub. L. 109-364, div. A, title V, § 547(d)(1), Oct. 17, 2006, 120 Stat. 2216, added item 613a.

1991—Pub. L. 102-190, div. A, title V, § 504(a)(2)(B), Dec. 5, 1991, 105 Stat. 1357, struck out "; communications with boards" after "selection boards" in item 614.

§ 611. Convening of selection boards

(a) Whenever the needs of the service require, the Secretary of the military department concerned shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy. The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) Whenever the needs of the service require, the Secretary of the military department concerned may convene selection boards to recommend officers for continuation on active duty

under section 637 of this title or for early retirement under section 638 of this title.

(c) The convening of selection boards under subsections (a) and (b) shall be under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97-86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 107-107, div. A, title V, § 505(a)(3), Dec. 28, 2001, 115 Stat. 1086.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-107, § 505(a)(3)(A), substituted "Whenever the needs of the service require, the Secretary of the military department concerned" for "Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require," and inserted at end "The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion."

Subsec. (b). Pub. L. 107-107, § 505(a)(3)(B), substituted "Whenever the needs of the service require, the Secretary of the military department concerned" for "Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,".

Subsec. (c). Pub. L. 107-107, § 505(a)(3)(C), added subsec. (c).

1985—Subsec. (a). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1981—Subsec. (a). Pub. L. 97-86 substituted "commodore" for "commodore admiral".

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

EFFECTIVE DATE

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

TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Pub. L. 99-145, title V, § 514(e), Nov. 8, 1985, 99 Stat. 630, provided that:

"(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

"(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half)."

TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [Pub. L. 96-513]

Parts A to C of title VI of Pub. L. 96-513, Dec. 12, 1980, 94 Stat. 2940, as amended by Pub. L. 97-22, § 8(a)-(n), July 10, 1981, 95 Stat. 132-135; Pub. L. 97-86, title IV, § 405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98-525, title V, §§ 530-532, Oct. 19, 1984, 98 Stat. 2527; Pub. L. 100-456, div. A, title V, § 503, Sept. 29, 1988, 102 Stat. 1967, provided that: