

(A) Those counted under section 526 of this title.

(B) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the Navy in subsection (a).

(2) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

(d) The following Marine Corps reserve officers shall not be counted for purposes of this section:

(1) Those counted under section 526 of this title.

(2) Those serving in a joint duty assignment for purposes of chapter 38 of this title, except that the number of officers who may be excluded under this paragraph may not exceed the number equal to 20 percent of the number of officers authorized for the Marine Corps in subsection (a).

(e)(1) A reserve general officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of general officers authorized under subsection (a).

(2) An officer of the Navy Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(f) The limitations in subsection (a) do not apply to an officer released from a joint duty assignment or other non-joint active duty assignment, but only during the 60-day period beginning on the date the officer departs the joint duty or other active duty assignment. The Secretary of Defense may authorize the Secretary of a military department to extend the 60-day period by an additional 120 days, except that not more than three officers in an active status from each reserve component may be covered by an extension under this sentence at the same time.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2984; amended Pub. L. 104-106, div. A, title XV, §1501(b)(9), Feb. 10, 1996, 110 Stat. 496; Pub. L. 105-261, div. A, title IV, §415, Oct. 17, 1998, 112 Stat. 1998; Pub. L. 109-163, div. A, title V, §§512, 515(b)(1)(EE), Jan. 6, 2006, 119 Stat. 3232, 3233; Pub. L. 110-417, [div. A], title V, §526, Oct. 14, 2008, 122 Stat. 4448; Pub. L. 111-84, div. A, title V, §502(h), Oct. 28, 2009, 123 Stat. 2276; Pub. L. 111-383, div. A, title V, §511, Jan. 7, 2011, 124 Stat. 4210.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3218, 5457(a), 5458(a), and 8218 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

AMENDMENTS

2011—Subsec. (c)(2) to (5). Pub. L. 111-383 redesignated par. (4) as (2) and struck out former pars. (2), (3), and (5). Former pars. (2) and (3) specified the distribution of Navy reserve officers authorized by subsection (a), and former par. (5) specified the Medical Department staff corps for purposes of par. (1).

2009—Subsec. (f). Pub. L. 111-84 added subsec. (f).

2008—Subsec. (b)(4). Pub. L. 110-417, §526(a), added par. (4).

Subsec. (c). Pub. L. 110-417, §526(b), added par. (1), redesignated former pars. (1) to (4) as (2) to (5), respectively, and in introductory provisions of par. (2) substituted “Of the number of Navy reserve officers authorized by subsection (a), 40 are distributed among the line and staff corps as follows:” for “The authorized strength of the Navy under subsection (a) is exclusive of officers counted under section 526 of this title. Of the number authorized under subsection (a), 40 are distributed among the line and the staff corps as follows:”.

Subsec. (d). Pub. L. 110-417, §526(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “The authorized strength of the Marine Corps under subsection (a) is exclusive of those counted under section 526 of this title.”

2006—Subsec. (c)(1). Pub. L. 109-163, §512(a), (b), (d), substituted “40” for “39” in introductory provisions and “33” for “28” and “5” for “9” in table.

Subsec. (c)(2)(A). Pub. L. 109-163, §512(c), substituted “six” for “seven”.

Subsec. (e)(2). Pub. L. 109-163, §515(b)(1)(EE), substituted “Navy Reserve” for “Naval Reserve”.

1998—Subsec. (c)(1). Pub. L. 105-261, §415(1), in table, inserted item relating to Medical Department staff corps and struck out items relating to Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps.

Subsec. (c)(4). Pub. L. 105-261, §415(2), added par. (4).

1996—Subsec. (a). Pub. L. 104-106 substituted “active status, are” for “active-status, are”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status

(a)(1) Subject to paragraph (2), the authorized strength of the Army and the Air Force in reserve commissioned officers in an active status in each grade named in paragraph (2) is as prescribed by the Secretary of the Army or the Secretary of the Air Force, respectively. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(2) A strength prescribed by the Secretary concerned under paragraph (1) for a grade may not be higher than the percentage of the strength authorized for the Army or the Air Force, as the case may be, under section 12003 of this title that is specified for that grade as follows:

| Grade | Army percentage | Air Force percentage |
|--|-----------------|----------------------|
| Colonel | 2 | 1.8 |
| Lieutenant colonel | 6 | 4.6 |
| Major | 13 | 14.0 |
| Captain | 35 | 32.0 |
| First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title) | 44 | 47.6 |

(3) Medical officers and dental officers shall not be counted for the purposes of this subsection.

(b)(1) The authorized strengths of the Navy Reserve in line officers in an active status in the grades of captain, commander, lieutenant commander, and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined, are the following percentages of the total authorized number of those officers:

| | |
|--|---------------|
| Captain | 1.5 percent |
| Commander | 7 percent |
| Lieutenant commander | 22 percent |
| Lieutenant | 37 percent |
| Lieutenant (junior grade) and ensign (when combined with the number authorized for flag officer grades under section 12004 of this title) | 32.5 percent. |

(2) When the actual number of line officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

| | |
|---|-------------|
| Colonel | 2 percent |
| Lieutenant colonel | 8 percent |
| Major | 16 percent |
| Captain | 39 percent |
| First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title) | 35 percent. |

(2) When the actual number of officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(d)(1) An officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of commissioned officers authorized for the officer's grade under this section.

(2) An officer of the Navy Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2985; amended Pub. L. 106-398, §1 [[div. A], title IV, §423], Oct. 30, 2000, 114 Stat. 1654, 1654A-96; Pub. L. 108-375, div. A, title V, §504, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109-163, div. A, title V, §515(b)(1)(FF), Jan. 6, 2006, 119 Stat. 3233.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3219, 5457(b)-(d), 5458(b)-(d), and 8219 of this title, prior to repeal by Pub. L. 103-337, §1662(a)(3).

AMENDMENTS

2006—Subsec. (b)(1). Pub. L. 109-163 substituted “Navy Reserve” for “Naval Reserve” in introductory provisions.

Subsec. (d)(2). Pub. L. 109-163 substituted “Navy Reserve” for “Naval Reserve”.

2004—Subsec. (c)(1). Pub. L. 108-375 amended table generally, increasing percentages of authorized number of officers in grades other than colonel.

2000—Subsec. (a)(3). Pub. L. 106-398 added par. (3).

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

§ 12006. Strength limitations: authority to waive in time of war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of section 12003, 12004, or 12005 of this title. So long as any such war or national emergency continues, any such suspension may be extended by the President.

(b) Any suspension under subsection (a) shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621, 1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of termination of the emergency.

(Added Pub. L. 103-337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as a note under section 10001 of this title.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

§ 12007. Reserve officers of the Army: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers, other than commissioned warrant officers, authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. The Secretary shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. The Secretary shall distribute the number who are not assigned to such units between—