

## EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

EX. ORD. NO. 12728. DELEGATING PRESIDENT'S AUTHORITY TO SUSPEND ANY PROVISION OF LAW RELATING TO PROMOTION, RETIREMENT, OR SEPARATION OF MEMBERS OF ARMED FORCES

Ex. Ord. No. 12728, Aug. 22, 1990, 55 F.R. 35029, as amended by Ex. Ord. No. 13286, § 38, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 673c [now 12305] of title 10 of the United States Code and section 301 of title 3 of the United States Code, I hereby order:

SECTION 1. The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by section 673c [now 12305] of title 10 of the United States Code (1) to suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces determined to be essential to the national security of the United States, and (2) to determine, for the purposes of said section, that members of the armed forces are essential to the national security of the United States.

SEC. 2. The authority delegated to the Secretary of Defense and the Secretary of Homeland Security by this order may be redelegated and further subdelegated to subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 3. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

### § 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b).

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty under section 12301(a) of this title, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 674; Pub. L. 87-651, title I, § 130, Sept. 7, 1962, 76 Stat. 514; renumbered § 12306 and amended Pub. L. 103-337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(4), Oct. 5,

1994, 108 Stat. 2992, 3017; Pub. L. 108-375, div. A, title V, § 514(d), Oct. 28, 2004, 118 Stat. 1883.)

### HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
674(a) .....	50:926(a) (less 1st 28 words).	July 9, 1952, ch. 608, § 206 (less 1st 28 words of (a)), 66 Stat. 483.
674(b) .....	50:926(b).	

In subsection (b), the words “to serve” are substituted for the words “for the purpose of serving”. The words “there are not enough \* \* \* that are” are substituted for the words “adequate numbers of \* \* \* are not”. The words “(other than for training)” are inserted, since the words “active duty” were defined in the source statute cited above to exclude “active duty for training”.

### 1962 ACT

The change is made to conform section 674(a) more closely to the source law for that section, section 206(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 483). Section 206(a) of that Act defined the Standby Reserve in terms of units and members of the reserve components according to their liability to be ordered to active duty. It did not provide authority to order units and members of the Standby Reserve to active duty. This authority was provided by section 233(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 489), which is restated in section 672(a) of title 10. Since the present language of section 674(a) may be interpreted to provide independent authority to order units and members of the Standby Reserve to active duty, it is revised to make clear that this is not the case and that section 672 is the authority for that action.

### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375, § 514(d)(1), substituted “active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)” for “active duty (other than for training) only as provided in section 12301 of this title”.

Subsec. (b)(1). Pub. L. 108-375, § 514(d)(2)(A), substituted “under section 12301(a) of this title” for “(other than for training)”.

Subsec. (b)(2). Pub. L. 108-375, § 514(d)(2)(B), substituted “notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent” for “no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent”.

1994—Pub. L. 103-337, § 1662(e)(2), renumbered section 674 of this title as this section.

Subsec. (a). Pub. L. 103-337, § 1675(c)(4), substituted “12301” for “672”.

1962—Subsec. (a). Pub. L. 87-651 substituted “only as provided in section 672 of this title” for “only in time of war, of national emergency declared by Congress, or when otherwise authorized by law”.

### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

### § 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Retired Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this

title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §675; Pub. L. 98-94, title X, §1017(a), Sept. 24, 1983, 97 Stat. 669; Pub. L. 101-189, div. A, title VI, §651(d), Nov. 29, 1989, 103 Stat. 1461; renumbered §12307 and amended Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(5), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104-106, div. A, title XV, §1501(b)(17), Feb. 10, 1996, 110 Stat. 497.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
675 .....	50:927(c).	July 9, 1952, ch. 608, §207(c), 66 Stat. 483.

AMENDMENTS

1996—Pub. L. 104-106 substituted “Retired Reserve (other)” for “Ready Reserve (other)”.

1994—Pub. L. 103-337, §1675(c)(5), substituted “688 or 12301(a)” for “672(a) or 688”, “12641(b)” for “1001(b)”, and “1223” for “67”.

Pub. L. 103-337, §1662(e)(2), renumbered section 675 of this title as this section.

1989—Pub. L. 101-189 inserted at end “A member of the Ready Reserve (other than a member transferred to the Retired Reserve under section 1001(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 67 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.”

1983—Pub. L. 98-94 inserted reference to section 688.

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 OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of this title.

**§ 12308. Retention after becoming qualified for retired pay**

Any person who has qualified for retired pay under chapter 1223 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 12732(b) of this title. A member so retained shall be credited with that service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §676; renumbered §12308 and amended Pub. L. 103-337, div. A, title XVI, §§1662(e)(2), 1675(c)(6), Oct. 5, 1994, 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
676 .....	10:1036a(e). 34:440i(e).	June 29, 1948, ch. 708, §302(e), 62 Stat. 1088.

The words “active duty, or in service, in a reserve component other than that listed in section 1332(b) of this title” are inserted to reflect the words “Federal service”, as used in Title III of the source statute. The words “that service for all purposes” are substituted for 10:1036a(e) (last 11 words) and 34:440i(e) (last 11 words). The words “upon attaining the age of sixty years” are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103-337, §1675(c)(6), substituted “1223” for “67” and “12732(b)” for “1332(b)”.

Pub. L. 103-337, §1662(e)(2), renumbered section 676 of this title as this section.

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**§ 12309. Reserve officers: use of in expansion of armed forces**

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §677; renumbered §12309, Pub. L. 103-337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
677 .....	50:961(f).	July 9, 1952, ch. 608, §233(f), 66 Stat. 490.

The words “without their consent” are substituted for the word “involuntarily”. The words “it shall be the policy” are omitted as surplusage. The words “to active duty (other than for training)” are substituted for the words “into the active military service”.

AMENDMENTS

1994—Pub. L. 103-337 renumbered section 677 of this title as this section.

**§ 12310. Reserves: for organizing, administering, etc., reserve components**

(a) AUTHORITY.—(1) The Secretary concerned may order a member of a reserve component under the Secretary’s jurisdiction to active duty pursuant to section 12301(d) of this title to perform Active Guard and Reserve duty organizing, administering, recruiting, instructing, or training the reserve components.

(2) A Reserve ordered to active duty under paragraph (1) shall be ordered in the Reserve’s reserve grade. While so serving, the Reserve continues to be eligible for promotion as a Reserve, if otherwise qualified.

(b) DUTIES.—A Reserve on active duty under subsection (a) may perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the Reserve’s primary Active Guard and Reserve duties described in subsection (a)(1):

(1) Supporting operations or missions assigned in whole or in part to the reserve components.