

section 209(a)(1) of this title or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Assignment of officers

Each officer of the Regular Corps on active duty shall, on the basis of his training and experience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a). Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W-1) grade to the director grade, inclusive.

(d) Vacancies in grade for purposes of promotion

The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including in the case of the director grade, officers holding such grade in accordance with section 207(c) of this title) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 207(c) of this title shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 206(c) of this title, the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) Absence of vacancy in grade as affecting promotion

The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 209 of this title, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Vacancy in grade as affecting maximum number for each category

Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 207(d) of this title; and in that event the vacancy in the higher grade shall not be filled except by a permanent pro-

motion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

(July 1, 1944, ch. 373, title II, § 209, as added Feb. 28, 1948, ch. 83, § 5(i), 62 Stat. 41; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 96-76, title III, § 306, Sept. 29, 1979, 93 Stat. 585.)

PRIOR PROVISIONS

A prior section 209 of act July 1, 1944, was renumbered section 208 and is classified to section 210 of this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76 substituted “warrant officer (W-1)” for “assistant”.

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.

TRANSFER OF FUNCTIONS

Office of 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. 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.

§ 211. Promotion of commissioned officers

(a) Permanent or temporary promotions; examination

Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, and temporary promotions shall be made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) Promotion to certain grades only to fill vacancies; regulations; “restricted grade” defined

The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which

such regulations have been issued is referred to in this section as a "restricted grade".

(c) Examinations

Examinations to determine qualification for permanent promotions may be either non-competitive or competitive, as the Surgeon General shall in each case determine; except that examinations for promotions to the assistant or senior assistant grade shall in all cases be non-competitive. The officers to be examined shall be selected by the Surgeon General from the professional category, and in the order of seniority in the grade, from which promotion is to be recommended. In the case of a competitive examination the Surgeon General shall determine in advance of the examination the number (which may be one or more) of officers who, after passing the examination, will be recommended to the President for promotion; but if the examination is one for promotions based on length of service, or is one for promotions to fill vacancies other than vacancies in the director grade or in a restricted grade, such number shall not be less than 80 per centum of the number of officers to be examined.

(d) Permanent promotions to qualified officers on length of service

Officers of the Regular Corps, found pursuant to subsection (c) to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W-1) grade, chief warrant officer (W-2) grade, chief warrant officer (W-3) grade, chief warrant officer (W-4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

(2) Officers with permanent rank in the assistant grade, the senior assistant grade, and the full grade shall (except as provided in regulations under subsection (b)) be promoted after completion of three, ten, and seventeen years, respectively, of service in grades above the junior assistant grade; and such promotions, when made, shall be effective, for purposes of pay and seniority in grade, as of the day following the completion of such years of service. An officer with permanent rank in the assistant, senior assistant, or full grade who has not completed such years of service shall be promoted at the same time, and his promotion shall be effective as of the same day, as any officer junior to him in the same grade in the same professional category who is promoted under this paragraph.

(e) Promotion of professional category officers to fill certain vacancies

Officers in a professional category of the Regular Corps, found pursuant to subsection (c) to be qualified, may be given permanent promotions to fill any or all vacancies in such category in the senior assistant grade, the full grade, the senior grade, or the director grade; but no officer who has not had one year of service with permanent or temporary rank in the next lower grade shall be promoted to any restricted grade or to the director grade.

(f) Reexamination upon failure of promotion; effective date of promotion

If an officer who has completed the years of service required for promotion to a grade under paragraph (2) of subsection (d) fails to receive such promotion, he shall (unless he has already been twice examined for promotion to such grade) be once reexamined for promotion to such grade. If he is thereupon promoted (otherwise than under subsection (e)), the effective date of such promotion shall be one year later than it would have been but for such failure. Upon the effective date of any permanent promotion of such officer to such grade, he shall be considered as having had only the length of service required for such promotion which he previously failed to receive.

(g) Separation from service upon failure of promotion

If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W-1) grade or junior assistant grade is found pursuant to subsection (c) not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W-2), chief warrant officer (W-3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W-2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W-3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

(3) if in the full grade he shall be considered as not in line for promotion and shall, at such time thereafter as the Surgeon General may determine, be retired from the Service with retired pay (unless he is entitled to a greater amount by reason of another provision of law)—

(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ per cent of the retired pay base determined under section 1406(h) of title 10 for each year, not in excess of 30, of his active commissioned service in the Service; or

(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying—

(i) the retired pay base determined under section 1407 of title 10; by

(ii) the retired pay multiplier determined under section 1409 of such title for the number of years of his active commissioned service in the Service.

(h) Separation from service upon refusal to stand examination

If an officer of the Regular Corps, eligible to take an examination for promotion, refuses to take such examination, he may be separated from the Service in accordance with regulations of the President.

(i) Review of record; separation from service

At the end of his first three years of service, the record of each officer of the Regular Corps originally appointed to the senior assistant grade or above, shall be reviewed in accordance with regulations of the President and, if found not qualified for further service, he shall be separated from the Service and paid six months' pay and allowances.

(j) Determination of order of seniority

(1) The order of seniority of officers in a grade in the Regular Corps shall be determined, subject to the provisions of paragraph (2) of this subsection, by the relative length of time spent in active service after the effective date of each such officer's original appointment or permanent promotion to that grade. When permanent promotions of two or more officers to the same grade are effective on the same day, their relative seniority shall be the same as it was in the grade from which promoted. In all other cases of original appointments or permanent promotions (or both) to the same grade effective on the same day, relative seniority shall be determined in accordance with regulations of the President.

(2) In the case of an officer originally appointed in the Regular Corps to the grade of assistant or above, his seniority in the grade to which appointed shall be determined after inclusion, as service in such grade, of any active service in such grade or in any higher grade in the Reserve Corps, but (if the appointment is to the grade of senior assistant or above) only to the extent of whichever of the following is greater: (A) His active service in such grade or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he had the training and experience necessary for such appointment, or (B) the excess of his total active service in the Reserve Corps (above the grade of junior assistant) over three years if his appointment in the Regular Corps is to the senior assistant grade, over ten years if the appointment is to the full grade, or over seventeen years if the appointment is to the senior grade.

(k) Temporary promotions; fill vacancy in higher grade; war or national emergency; selection of officers; termination of appointment

Any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for temporary promotion to fill a vacancy in any higher grade in such category, up to and including the director grade. In time of war, or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in such grade. The selection of officers to be recommended for temporary promotions shall be made in accordance with regulations of the President. Promotion of an officer recommended pursuant to this subsection may be made without regard to length of service, without examination, and without vacating his permanent appointment, and shall carry with it

the pay and allowances of the grade to which promoted. Such promotions may be terminated at any time, as may be directed by the President.

(l) Determination of requirements of Service by Secretary; assignment of Reserve Officers to professional categories; temporary promotions; termination of temporary promotions

Whenever the number of officers of the Regular Corps on active duty, plus the number of officers of the Reserve Corps who have been on active duty for thirty days or more, exceeds the authorized strength of the Regular Corps, the Secretary shall determine the requirements of the Service in each grade in each category, based upon the total number of officers so serving on active duty and the tasks being performed by the Service; and the Surgeon General shall thereupon assign each officer of the Reserve Corps on active duty to a professional category. If the Secretary finds that the number of officers fixed under section 210b(c) of this title for any grade and category (or the number of officers, including officers of the Reserve Corps, on active duty in such grade in such category, if such number is greater than the number fixed under section 210b(c) of this title) is insufficient to meet such requirements of the Service, officers of either the Regular Corps or the Reserve Corps may be recommended for temporary promotion to such grade in such category. Any such promotion may be terminated at any time, as may be directed by the President.

(m) Acceptance of promotion; oath and affidavit

Any officer of the Regular Corps, or any officer of the Reserve Corps on active duty, who is promoted to a higher grade shall, unless he expressly declines such promotion, be deemed for all purposes to have accepted such promotion; and shall not be required to renew his oath of office, or to execute a new affidavit as required by section 3332 of title 5.

(July 1, 1944, ch. 373, title II, §210, 58 Stat. 687; Feb. 28, 1948, ch. 83, §6(a), 62 Stat. 42; Oct. 12, 1949, ch. 681, title V, §521(c), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, §4(a), 70 Stat. 117; Pub. L. 86-415, §5(c), Apr. 8, 1960, 74 Stat. 34; Pub. L. 87-649, §11(2), Sept. 7, 1962, 76 Stat. 497; Pub. L. 96-76, title III, §307, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96-342, title VIII, §813(h)(1), Sept. 8, 1980, 94 Stat. 1110; Pub. L. 99-348, title II, §207(a), July 1, 1986, 100 Stat. 701; Pub. L. 112-166, §2(ff)(2), Aug. 10, 2012, 126 Stat. 1290.)

CODIFICATION

In subsec. (m), "section 3332 of title 5" substituted for "the Act of December 11, 1926, as amended (5 U.S.C. 21a)" on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112-166 struck out " , by and with the advice and consent of the Senate" after "Permanent promotions shall be made by the President".

1986—Subsec. (g)(3). Pub. L. 99-348 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ per centum of basic pay of the permanent grade held by him at the time of retirement for each year, not in excess of thirty, of his active commissioned service in the Service; or

“(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, 2½ per centum of the monthly retired pay base computed under section 1407(h) of title 10, for each year, not in excess of thirty, of his active commissioned service in the Service.”

1980—Subsec. (g)(3). Pub. L. 96-342 revised provisions into subpars. (A) and (B) and substituted provisions respecting computation of retired pay for officers who became members of the uniformed service before Sept. 8, 1980, and for officers who became members of the uniformed service on or after Sept. 8, 1980, for provisions respecting computation of retired pay for officers.

1979—Subsec. (d)(1). Pub. L. 96-76, §307(a), inserted applicability to warrant officers and chief warrant officers.

Subsec. (g). Pub. L. 96-76, §307(b), in provision before par. (1), inserted applicability to separation from Service of warrant officers and chief warrant officers subsequent to one examination or two examinations, respectively, in par. (1), inserted applicability to a chief warrant officer (W-2), and in par. (2), inserted applicability to a chief warrant officer (W-3).

1962—Subsec. (g). Pub. L. 87-649 substituted “basic pay” for “pay” in cls. (1) and (2).

1960—Subsec. (g). Pub. L. 86-415 substituted “of the basic pay of the permanent grade held by him at the time of retirement for each year” for “of his active duty pay at the time of retirement for each complete year” in cl. (3).

1956—Subsec. (d)(2). Act Apr. 27, 1956, struck out “pay period and for purposes of” before “seniority in grade”.

1949—Subsec. (g). Act Oct. 12, 1949, struck out “incurred in line of duty” wherever appearing.

1948—Act Feb. 28, 1948, amended subsecs. (a) to (c) generally and added subsecs. (d) to (m).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112-166, set out as a note under section 113 of Title 6, Domestic Security.

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.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, 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.

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 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.

§ 211a. Repealed. Pub. L. 93-222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, §1311, formerly title VII, §711, as added Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; renumbered title VIII, §811, July 30, 1956, ch. 779, §3(b), 70 Stat. 721; renumbered title IX, §911, Sept. 4, 1964, Pub. L. 88-581, §4(b), 78 Stat. 919; renumbered title X, §1011, Oct. 6, 1965, Pub. L. 89-239, §3(b), 79 Stat. 931; renumbered title XI, §1111, Dec. 24, 1970, Pub. L. 91-572, §6(b), 84 Stat. 1506; renumbered title XII, §1211, May 16, 1972, Pub. L. 92-294, §3(b), 86 Stat. 137; renumbered title XIII, §1311, Nov. 16, 1973, Pub. L. 93-154, §2(b)(2), 87 Stat. 604, provided for appointment to higher grades of Public Health Service officers for mental health and hospital construction activities.

§ 211b. Repealed. Pub. L. 94-412, title V, § 501(f), Sept. 14, 1976, 90 Stat. 1258

Section, act Feb. 28, 1948, ch. 83, §6(b)-(f), 62 Stat. 45, dealt with promotion of Public Health Service officers.

SAVINGS PROVISION

Repeal not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94-412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 211c. Promotion credit for medical officers in assistant grade

Any medical officer of the Regular Corps of the Public Health Service who—

(1)(A) was appointed to the assistant grade in the Regular Corps and whose service in such Corps has been continuous from the date of appointment or (B) may hereafter be appointed to the assistant grade in the Regular Corps, and

(2) had or will have completed a medical internship on the date of such appointment,

shall be credited with one year for purposes of promotion and seniority in grade, except that no such credit shall be authorized if the officer has received or will receive similar credit for his internship under other provisions of law. In the case of an officer on active duty on the effective date of this section who is entitled to the credit authorized herein, the one year shall be added to the promotion and seniority-in-grade credits with which he is credited on such date.

(July 1, 1944, ch. 373, title II, §220, as added Apr. 30, 1956, ch. 223, §3, 70 Stat. 121.)

REFERENCES IN TEXT

For “the effective date of this section”, referred to in text, see section 7 of act Apr. 30, 1956, which provided