

§ 5144. Office of Marine Forces Reserve: appointment of Commander

(a) ESTABLISHMENT OF OFFICE; COMMANDER, MARINE FORCES RESERVE.—There is in the executive part of the Department of the Navy an Office of the Marine Forces Reserve, which is headed by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, is the principal adviser to the Commandant on Marine Forces Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from general officers of the Marine Corps (as defined in section 5001(2)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Commander, Marine Forces Reserve, unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Commander, Marine Forces Reserve, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2006, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Commander, Marine Forces Reserve, if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT.—The Commander, Marine Forces Reserve, is appointed for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. An officer serving as Commander, Marine Forces Reserve, may be reappointed for one additional term of up to four years.

(d) ANNUAL REPORT.—The Commander, Marine Forces Reserve, shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Marine Corps Reserve and the ability of the Marine Corps Reserve to meet its missions. The report shall be prepared in conjunction with the Commandant of the Marine Corps and may be submitted in classified and unclassified versions.

(Added Pub. L. 104-201, div. A, title XII, § 1212(c)(1), Sept. 23, 1996, 110 Stat. 2692; amended Pub. L. 106-65, div. A, title V, § 554(d), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106-398, § 1 [[div. A], title V, § 507(c), title X, § 1087(a)(19)], Oct. 30, 2000, 114 Stat. 1654, 1654A-103, 1654A-291; Pub. L. 107-314, div. A, title V, § 501(a), Dec. 2, 2002, 116 Stat. 2529; Pub. L. 108-375, div. A, title V, § 536(a),

Oct. 28, 2004, 118 Stat. 1901; Pub. L. 114-328, div. A, title V, § 502(ee), Dec. 23, 2016, 130 Stat. 2105; Pub. L. 115-91, div. A, title X, § 1051(a)(29), Dec. 12, 2017, 131 Stat. 1562.)

PRIOR PROVISIONS

A prior section 5144, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, related to appointment and term of Chief of Bureau of Ordnance, and authorized detail of an officer as Deputy Chief of Bureau, prior to repeal by Pub. L. 86-174, § 2(3), Aug. 18, 1959, 73 Stat. 396, effective July 1, 1960, or any earlier date on which the Secretary of the Navy made a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance had been transferred to the Bureau of Naval Weapons or elsewhere.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-91 struck out par. (1) designation before “The Commander,” and struck out par. (2) which read as follows: “The Secretary of Defense shall transmit the annual report of the Commander, Marine Forces Reserve, under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.”

2016—Subsec. (c). Pub. L. 114-328, in heading, struck out “; Grade” after “Reappointment”, and in text, struck out par. (1) designation before “The Commander, Marine Forces Reserve,” and struck out par. (2) which read as follows: “The Commander, Marine Forces Reserve, while so serving, holds the grade of lieutenant general.”

2004—Subsec. (b)(4). Pub. L. 108-375 substituted “December 31, 2006” for “December 31, 2004”.

2002—Subsec. (b)(4). Pub. L. 107-314 substituted “December 31, 2004” for “October 1, 2003”.

2000—Subsec. (b). Pub. L. 106-398, § 1 [[div. A], title V, § 507(c)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from officers of the Marine Corps who—

“(1) have had at least 10 years of commissioned service;

“(2) are in a grade above colonel; and

“(3) have been recommended by the Secretary of the Navy.”

Subsec. (c). Pub. L. 106-398, § 1 [[div. A], title V, § 507(c)], amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c) TERM OF OFFICE; GRADE.—(1) The Commander, Marine Forces Reserve, holds office for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. He is eligible to succeed himself.

“(2) The Commander, Marine Forces Reserve, while so serving, has the grade of major general, without vacating the officer’s permanent grade. However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.”

Subsec. (c)(2). Pub. L. 106-398, § 1 [[div. A], title X, § 1087(a)(19)], substituted “has the grade of” for “has a grade”.

1999—Subsec. (c)(2). Pub. L. 106-65 substituted “major general” for “above brigadier general” and inserted at end “However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.”

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106-65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106-65, set out as a note under section 3038 of this title.

§§ 5145 to 5147. Repealed. Pub. L. 89-718, § 35(5), Nov. 2, 1966, 80 Stat. 1120]

Section 5145, acts Aug. 10, 1956, ch. 1041, 70A Stat. 289; May 13, 1960, Pub. L. 86-454, 74 Stat. 103; Sept. 7, 1962, Pub. L. 87-649, §14(c)(19), 76 Stat. 501, provided for appointment of Chief of Bureau of Ships, detailing and rank of Deputy Chief, and detailing of heads of major divisions of Bureau of Ships.

Section 5146, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Supplies and Accounts and detailing of Deputy Chief.

Section 5147, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Yards and Docks and detailing of Deputy Chief.

§ 5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State and who have had at least eight years of experience in legal duties as commissioned officers.

(c) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

- (1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;
- (2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;
- (3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and
- (4) perform such other duties as may be assigned to him.

(e) No officer or employee of the Department of Defense may interfere with—

- (1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations; or
- (2) the ability of judge advocates of the Navy assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 289; Pub. L. 87-649, §14(c)(20), Sept. 7, 1962, 76 Stat. 501; Pub. L.

90-179, §2(1), Dec. 8, 1967, 81 Stat. 546; Pub. L. 96-513, title III, §343, Dec. 12, 1980, 94 Stat. 2901; Pub. L. 103-337, div. A, title V, §504(b)(1), Oct. 5, 1994, 108 Stat. 2750; Pub. L. 108-375, div. A, title V, §574(b)(1), Oct. 28, 2004, 118 Stat. 1922; Pub. L. 109-163, div. A, title V, §508(b), title X, §1057(a)(2), Jan. 6, 2006, 119 Stat. 3229, 3440; Pub. L. 110-181, div. A, title V, §543(b), Jan. 28, 2008, 122 Stat. 115; Pub. L. 114-328, div. A, title V, §502(ff), Dec. 23, 2016, 130 Stat. 2105.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5148	5 U.S.C. 428.	June 8, 1880, ch. 129, 21 Stat. 164; June 5, 1896, ch. 331, 29 Stat. 251.
	50 U.S.C. 741 (as applicable to Navy JAG).	May 5, 1950, ch. 169, §13 (as applicable to Navy JAG), 64 Stat. 147.
	5 U.S.C. 441 (as applicable to JAG).	July 1, 1918, ch. 114, 40 Stat. 717 (1st sentence on p. 717, as applicable to JAG).
	5 U.S.C. 425a (as applicable to JAG).	June 22, 1938, ch. 567 (as applicable to JAG), 52 Stat. 839.

In subsection (b) the rank, pay, allowances, and privileges of retirement of chiefs of bureaus of the Navy are incorporated. 5 U.S.C. 441 apparently relates the Judge Advocate General of the Navy to the Judge Advocate General of the Army, as well as to bureau chiefs. However, since the creation of the Department of the Air Force by the National Security Act of 1947, if the incorporation to the Army provision is retained, the saving provisions in the act require an incorporation also to the rank, etc., of the Judge Advocate General of the Air Force. The rank of the Judge Advocate General of each of the other departments is now specified in organizational law to be major general. Since it is possible that these ranks may at some future time not be the same, incorporation by reference to them is no longer appropriate. Instead, the section relates the Judge Advocate General's rank, pay, allowances, and privileges of retirement to those of bureau chiefs as does 5 U.S.C. 441, in part.

In subsection (c), clauses (1) and (4) are substituted for the words "and perform such other duties as have heretofore been performed by the Solicitor and Naval Judge Advocate General" to describe the duties of the Judge Advocate General directly instead of by reference to the duties performed by an officer whose office was abolished more than 75 years ago.

Subsection (c)(2) is substituted for the reference, in 5 U.S.C. 428, to courts-martial and courts of inquiry, since the Uniform Code of Military Justice has superseded prior law as to the duties of the Judge Advocates General relating to these courts.

AMENDMENTS

2016—Subsec. (b). Pub. L. 114-328 struck out last sentence which read as follows: "The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate."

2008—Subsec. (b). Pub. L. 110-181 substituted "The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate." for "The Judge Advocate General, while so serving, shall hold a grade not lower than rear admiral or major general, as appropriate."

2006—Subsec. (b). Pub. L. 109-163, §1057(a)(2), struck out "or Territory" after "highest court of a State".

Pub. L. 109-163, §508(b), substituted "The Judge Advocate General, while so serving, shall hold a grade not lower than rear admiral or major general, as appropriate." for "If an officer appointed as the Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate."

2004—Subsec. (e). Pub. L. 108-375 added subsec. (e).