

tions prescribed by the Secretary of the Air Force, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the Air Force who is considered as failed of selection for promotion under section 14501 of this title to a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2943; amended Pub. L. 104-106, div. A, title XV, §1501(b)(25), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-85, div. A, title V, §514(d), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 106-398, §1 [[div. A], title V, §501], Oct. 30, 2000, 114 Stat. 1654, 1654A-98; Pub. L. 108-136, div. A, title V, §512(b), Nov. 24, 2003, 117 Stat. 1460.)

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3384 and 8373 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

#### AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-136 substituted “under regulations prescribed by the Secretary concerned, has been recommended” for “as determined by the Secretary concerned, is available”.

2000—Subsec. (b)(1)(A). Pub. L. 106-398, §1 [[div. A], title V, §501(1)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Army” after “Army Reserve”.

Subsec. (b)(2)(A). Pub. L. 106-398, §1 [[div. A], title V, §501(2)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force” after “reserve grade”.

1997—Subsec. (b)(1)(A). Pub. L. 105-85 substituted “duties of a general officer of the next higher reserve grade in the Army Reserve,” for “duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit.”

1996—Subsec. (a). Pub. L. 104-106 substituted “or a reserve officer” for “or a Reserve officer” in introductory provisions.

#### 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 Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2944.)

#### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

### § 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having