

and enacting provisions set out as notes under this section and section 210 of this title] are inconsistent therewith, leave regulations adopted prior to the enactment of this Act [Aug. 9, 1950], pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.], shall remain in effect until repealed, amended, or superseded.”

§ 210a. Repealed. Pub. L. 87-649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act Feb. 28, 1948, ch. 83, §5(e), (f), 62 Stat. 41, related to service credit for commissioned officers on active duty Feb. 28, 1948, and to service credit for pay and promotion purposes of certain appointees during period Feb. 28, 1948, to July 1, 1948.

§ 210b. Professional categories

(a) Division of corps; basis of categories

For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in 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 promotion, 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, Education. 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.