

ignated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2849; amended Pub. L. 97-86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98-525, title V, §523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99-145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99-433, title IV, §403, Oct. 1, 1986, 100 Stat. 1031; Pub. L. 102-190, div. A, title V, §502(a), Dec. 5, 1991, 105 Stat. 1354; Pub. L. 104-106, div. A, title IV, §403(c), Feb. 10, 1996, 110 Stat. 287; Pub. L. 110-181, div. A, title V, §501(a), Jan. 28, 2008, 122 Stat. 94.)

#### AMENDMENTS

2008—Subsec. (b)(4), (5). Pub. L. 110-181 added par. (4) and redesignated former par. (4) as (5).

1996—Subsec. (b). Pub. L. 104-106, §403(c)(1), in introductory provisions substituted “designated under subsection (a) or by law” for “of importance and responsibility designated”.

Subsec. (b)(1). Pub. L. 104-106, §403(c)(2), struck out “of importance and responsibility” after “position”.

Subsec. (b)(2). Pub. L. 104-106, §403(c)(3), substituted “designated under subsection (a) or by law” for “designating”.

Subsec. (b)(4). Pub. L. 104-106, §403(c)(4), inserted “under subsection (a) or by law” after “designated”.

1991—Subsec. (b)(4). Pub. L. 102-190 substituted “60 days” for “90 days”.

1986—Subsec. (d). Pub. L. 99-433 added subsec. (d).

1985—Subsec. (c)(2). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1984—Subsec. (b). Pub. L. 98-525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a po-

sition designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2) by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

1981—Subsec. (c)(2). Pub. L. 97-86 substituted “commodore” for “commodore admiral”.

#### EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-190, div. A, title V, §502(b), Dec. 5, 1991, 105 Stat. 1355, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act [Dec. 5, 1991].”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97-86, set out as a note under section 101 of this title.

#### EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to temporary appointments of officers serving in grades above major general or rear admiral, see section 623 of Pub. L. 96-513, set out as a note under section 611 of this title.

#### **§ 602. Repealed. Pub. L. 102-190, div. A, title XI, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]**

Section, Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2849, related to temporary promotions of warrant officers.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

#### **§ 603. Appointments in time of war or national emergency**

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W-1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

- (1) The second anniversary of the appointment.
- (2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.
- (3) The date the person appointed is released from active duty.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2850; amended Pub. L. 101-189, div. A, title VI, §653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102-190, div. A, title XI, §1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

#### AMENDMENTS

1991—Pub. L. 102-190, §1113(d)(1)(A), substituted “Appointments in time of war or national emergency” for “Commissioned officer grades: time of war or national emergency” in section catchline.

Subsec. (a). Pub. L. 102-190, §1113(b), struck out “commissioned” before “officer grade in the Army” and “in warrant officer grades or” before “in grades above major general” and inserted before period at end “, except that an appointment in the grade warrant officer, W-1, shall be made by warrant by the Secretary concerned”.

1989—Subsec. (f). Pub. L. 101-189 substituted “terminates on the earliest of the following:” for “terminates—” in introductory provisions, and made numerous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: “Unless sooner terminated, an appointment under this section terminates—

- “(1) on the second anniversary of the appointment;
  - “(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or
  - “(3) on the date the person appointed is released from active duty;
- whichever is earliest.”

#### EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102-190, set out as a note under section 521 of this title.

#### EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

#### EX. ORD. NO. 13321. APPOINTMENTS DURING NATIONAL EMERGENCY

Ex. Ord. No. 13321, Dec. 17, 2003, 68 F.R. 74465, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, and in order to further respond to the national emergency I declared in Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], I hereby order as follows:

SECTION 1. *Emergency Appointments Authority.* The emergency appointments authority at section 603 of title 10, United States Code, is invoked and made available to the Secretary of Defense in accordance with the terms of that statute and of Executive Order 12396 of December 9, 1982 [3 U.S.C. 301 note].

SEC. 2. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees or agents, or any person.

SEC. 3. *Administration.* This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

#### § 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursu-