

§ 777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

(a) **AUTHORITY.**—An officer in a grade below the grade of major general or, in the case of the Navy, rear admiral, who has been selected for promotion to the next higher grade may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that next higher grade. An officer who is so authorized to wear the insignia of the next higher grade is said to be “frocked” to that grade.

(b) **RESTRICTIONS.**—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade;

(2) the officer is serving in, or has received orders to serve in, a position for which that grade is authorized; and

(3) in the case of an officer selected for promotion to a grade above colonel or, in the case of an officer of the Navy, a grade above captain—

(A) authority for that officer to wear the insignia of that grade has been approved by the Secretary of Defense (or a civilian officer within the Office of the Secretary of Defense whose appointment was made with the advice and consent of the Senate and to whom the Secretary delegates such approval authority); and

(B) the Secretary of Defense has submitted to Congress a written notification of the intent to authorize the officer to wear the insignia for that grade.

(c) **BENEFITS NOT TO BE CONSTRUED AS ACCRUING.**—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of the next higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of the next higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) **LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.**—(1) The total number of colonels, Navy captains, brigadier generals, and rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the next higher grade may not exceed 85.

(2) The number of officers of an armed force on the active-duty list who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the adminis-

tration of the limitation under that section for that fiscal year.

(Added Pub. L. 104–106, div. A, title V, § 503(a)(1), Feb. 10, 1996, 110 Stat. 294; amended Pub. L. 105–85, div. A, title V, § 505, Nov. 18, 1997, 111 Stat. 1726; Pub. L. 106–65, div. A, title V, § 502, Oct. 5, 1999, 113 Stat. 590; Pub. L. 108–136, div. A, title V, § 509(a), Nov. 24, 2003, 117 Stat. 1458; Pub. L. 108–375, div. A, title V, § 503, Oct. 28, 2004, 118 Stat. 1875; Pub. L. 109–163, div. A, title V, §§ 503(c), 504, Jan. 6, 2006, 119 Stat. 3226; Pub. L. 111–383, div. A, title V, § 505(b), Jan. 7, 2011, 124 Stat. 4210.)

AMENDMENTS

2011—Subsec. (b)(3)(B). Pub. L. 111–383 struck out “and a period of 30 days has elapsed after the date of the notification” after “grade”.

2006—Subsec. (a). Pub. L. 109–163, § 503(c), inserted “in a grade below the grade of major general or, in the case of the Navy, rear admiral,” after “An officer” in first sentence.

Subsec. (d)(1). Pub. L. 109–163, § 504(1), substituted “colonels, Navy captains, brigadier generals, and rear admirals (lower half)” for “brigadier generals and Navy rear admirals (lower half)” and “the next higher grade may not exceed 85” for “the grade of major general or rear admiral, as the case may be, may not exceed 30”.

Subsec. (d)(2), (3). Pub. L. 109–163, § 504(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “The total number of colonels and Navy captains on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.”

2004—Subsec. (d). Pub. L. 108–375 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

2003—Subsec. (b)(3). Pub. L. 108–136 added par. (3).

1999—Subsec. (d)(1). Pub. L. 106–65 substituted “55.” for “the following:” and struck out subpars. (A) to (C) which read as follows:

“(A) During fiscal years 1996 and 1997, 75.

“(B) During fiscal year 1998, 55.

“(C) After fiscal year 1998, 35.”

1997—Subsec. (d)(2). Pub. L. 105–85 inserted “, or, for the grades of colonel and Navy captain, 2 percent,” after “1 percent”.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title V, § 509(b), Nov. 24, 2003, 117 Stat. 1459, provided that: “Paragraph (3) of subsection (b) of section 777 of title 10, United States Code, as added by subsection (a), shall not apply with respect to the wearing by an officer of insignia for a grade that was authorized under that section before the date of the enactment of this Act [Nov. 24, 2003].”

TEMPORARY VARIATION OF LIMITATIONS ON NUMBERS OF FROCKED OFFICERS

Pub. L. 104–106, div. A, title V, § 503(b), Feb. 10, 1996, 110 Stat. 294, provided that in the administration of former subsec. (d)(2) of this section, the percent limitation applied under that section for fiscal year 1996 would be 2 percent, rather than 1 percent.

§ 777a. Wearing of insignia of higher grade before appointment to a grade above major general or rear admiral (frocking): authority; restrictions

(a) **AUTHORITY.**—An officer serving in a grade below the grade of lieutenant general or, in the case of the Navy, vice admiral, who has been selected for appointment to the grade of lieutenant general or general, or, in the case of the