

officers on the active list; permanent grade”, and substituted: “Navy: women line officers on active duty; Marine Corps: women officers on active duty” for “Navy: women line officers on the active list; permanent grade” in item 5452.

1958—Pub. L. 85-861, §1(113)(B), Sept. 2, 1958, 72 Stat. 1492, added items 5457 and 5458.

### § 8101. Prescribed number; vacancies

In this chapter, the term “prescribed number” or “number . . . prescribed” as applied to a grade, means the number of officers of a described corps, designation, or other category that shall be maintained in the grade concerned. Except as otherwise specifically provided, the actual number of officers in a grade may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

(Aug. 10, 1956, ch. 1041, 70A Stat. 299, §5441; Pub. L. 96-513, title III, §313(a), Dec. 12, 1980, 94 Stat. 2889; Pub. L. 101-189, div. A, title XVI, §1622(e)(8), Nov. 29, 1989, 103 Stat. 1605; renumbered §8101, Pub. L. 115-232, div. A, title VIII, §807(b)(1), Aug. 13, 2018, 132 Stat. 1834.)

#### HISTORICAL AND REVISION NOTES

This section is derived from the distribution-in-grade provisions of the Officers Personnel Act of 1947. It is inserted here to show clearly what is meant by the “authorized number” of officers in a grade as used in the distribution-in-grade sections of the Officer Personnel Act. “Prescribed number” is substituted for “authorized number” because the latter, as used in other provisions of law, means simply the maximum number of persons authorized to be in a designated category. As used in the distribution-in-grade provisions of the Officer Personnel Act the term means not only the maximum number of officers that may be in a particular grade, but also the number of officers that should be maintained in that grade. It places not only a ceiling but a floor on the number of officers for the grade concerned. This is accomplished by establishing vacancies when the actual number of officers in the grade concerned falls below the “authorized” or, as used here, the “prescribed” number. Where there is a prescribed number for a grade, an officer should, in the absence of other controlling provisions of law, be promoted to that grade to fill an existing vacancy, as of the date on which the vacancy occurred. In this manner, at least constructively, the prescribed number is maintained.

There is no source for the section because the Officer Personnel Act did not attempt specifically to define “authorized number” in this context. The meaning of the term is derived only from understanding the effect given it throughout the Officer Personnel Act and from the imperative requirements of sections 103, 203, and 303 of the act.

#### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 5441 of this title as this section.

1989—Pub. L. 101-189 inserted “, the term” after “In this chapter”.

1980—Pub. L. 96-513 struck out “or combination of grades” after “to a grade”, after “in the grade”, and after “in a grade”.

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, but the authority to prescribe regulations under the

amendment by Pub. L. 96-513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

### § 8102. Regular Navy: retired flag officers on active duty

Except in time of war or national emergency, not more than ten retired flag officers of the Regular Navy may be on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312, §5450; Pub. L. 96-513, title V, §503(21), Dec. 12, 1980, 94 Stat. 2912; renumbered §8102, Pub. L. 115-232, div. A, title VIII, §807(b)(1), Aug. 13, 2018, 132 Stat. 1834.)

#### HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5450 .....	34 U.S.C. 211e.	Aug. 7, 1947, ch. 512, §430, 61 Stat. 881; Sept. 3, 1954, ch. 1257, §702(a), 68 Stat. 1188.

In subsection (a) the words “In addition \* \* \* to the number of rear admirals and above authorized by titles I, II, and III and by section 413 of this Act, a total of” are omitted as surplusage. Titles I, II, and III, and section 413 of the Officer Personnel Act of 1947 prescribe the number of officers on the lineal list who may have the grade of rear admiral. Retired officers are excluded from the lineal lists and are not counted for any purpose in the computations under the cited titles and section. The source text does not affect the authorized numbers so computed; it sets up an authorized number for a category of officers not previously covered.

The limitation on reserve flag officers on active duty contained in section 430 of the Officer Personnel Act of 1947 was repealed by section 702(a) of the Reserve Officer Personnel Act of 1954.

#### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 5450 of this title as this section.

1980—Pub. L. 96-513 struck out designation “(a)” before “Except in time of war or national emergency”, substituted “flag officers of the Regular Navy” for “officers of the Regular Navy in the grade of rear admiral and above”, and struck out subsec. (b) which provided that this section did not apply to fleet admirals or to retired officers ordered to temporary duty to serve on boards convened under chapter 543 of this title.

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Sept. 15, 1981, see section 701 of Pub. L. 96-513, set out as a note under section 101 of this title.

### § 8103. Suspension: preceding sections

The President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312, §5451; Pub. L. 94-273, §2(3), Apr. 21, 1976, 90 Stat. 375; Pub. L. 96-513, title V, §503(22), Dec. 12, 1980, 94 Stat. 2913; Pub. L. 102-190, div. A, title X, §1061(a)(21), Dec. 5, 1991, 105 Stat. 1473; renumbered §8103,

Pub. L. 115–232, div. A, title VIII, § 807(b)(1), Aug. 13, 2018, 132 Stat. 1834.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5451(a) .....	34 U.S.C. 3e.	Aug. 7, 1947, ch. 512, § 426(c); added June 30, 1951, ch. 196, § 1(h), 65 Stat. 109.
5451(b) .....	34 U.S.C. 5a–1.	May 5, 1954, ch. 180, § 403 68 Stat. 70.

AMENDMENTS

2018—Pub. L. 115–232 renumbered section 5451 of this title as this section.

1991—Pub. L. 102–190 substituted “The President” for “(a) Except as provided in subsection (b), the President” and struck out subsec. (b) which authorized President to suspend provisions of sections 5442, 5443, and 5444 of this title only during war or national emergency declared by Congress or President after May 5, 1954.

1980—Subsec. (b). Pub. L. 96–513 struck out “relating to officers serving in grades above lieutenant in the Navy or captain in the Marine Corps” after “and 5444 of this title”.

1976—Subsec. (a). Pub. L. 94–273 substituted “September” for “June”.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115–232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

**CHAPTER 812—GRADE AND RANK OF OFFICERS**

- Sec.
8111. Navy: grades above chief warrant officer, W–5.
8112. Marine Corps: grades above chief warrant officer, W–5.
8113. Navy and Marine Corps: warrant officer grades.
8118. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

AMENDMENTS

2018—Pub. L. 115–232, div. A, title VIII, § 807(e)(2)(B), (f)(1), Aug. 13, 2018, 132 Stat. 1837, 1838, redesignated chapter 535 of this title as this chapter and items 5501 to 5503 and 5508 as 8111 to 8113 and 8118, respectively.

1994—Pub. L. 103–337, div. A, title XVI, § 1673(d)(2), Oct. 5, 1994, 108 Stat. 3016, struck out item 5506 “Naval Reserve and Marine Corps Reserve; officers: precedence”.

1991—Pub. L. 102–190, div. A, title XI, § 1131(8)(B), Dec. 5, 1991, 105 Stat. 1506, substituted “W–5” for “W–4” in items 5501 and 5502.

1980—Pub. L. 96–513, title V, §§ 503(25), 513(10), Dec. 12, 1980, 94 Stat. 2913, 2932, struck out items 5504 “Lineal lists: maintenance”, 5505 “Reserve officers: change of lineal position”, and 5507 “Rear admirals: determination of upper half”.

1958—Pub. L. 85–861, § 1(114)(B), Sept. 2, 1958, 72 Stat. 1493, added item 5506.

**§ 8111. Navy: grades above chief warrant officer, W–5**

The commissioned grades in the Navy above the grade of chief warrant officer, W–5, are the following:

- (1) Admiral.
- (2) Vice admiral.
- (3) Rear admiral.
- (4) Rear admiral (lower half).
- (5) Captain.
- (6) Commander.
- (7) Lieutenant commander.
- (8) Lieutenant.
- (9) Lieutenant (junior grade).
- (10) Ensign.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314, § 5501; Pub. L. 96–513, title III, § 301, Dec. 12, 1980, 94 Stat. 2887; Pub. L. 97–86, title IV, § 405(a), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(a)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; renumbered § 8111, Pub. L. 115–232, div. A, title VIII, § 807(b)(2), Aug. 13, 2018, 132 Stat. 1834.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5501(a) .....	34 U.S.C. 1.	R.S. 1362; Mar. 3, 1883, ch. 97, § 1 (2d par. on p. 472, as applicable to masters and junior grade lieutenants), 22 Stat. 472; Mar. 3, 1899, ch. 413, § 7 (1st sentence, less proviso), 30 Stat. 1005.
	34 U.S.C. 211d(a) (as applicable to grades of admiral and vice admiral).	Aug. 7, 1947, ch. 512, § 413(a) (as applicable to grades of admiral and vice admiral), 61 Stat. 875.
	34 U.S.C. 10a (1st sentence).	Aug. 7, 1947, ch. 512, § 405 (1st sentence), 61 Stat. 872.
5501(b) .....	34 U.S.C. 350e (1st sentence).	July 24, 1941, ch. 320, § 6 (1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531(b)(28), 63 Stat. 839.

The Act of July 24, 1941, ch. 320, as amended (34 U.S.C. 350 et seq.), and § 413 of the Officer Personnel Act of 1947 (34 U.S.C. 211d) provide for the temporary appointment of officers to grades up to and including admiral. Staff corps officers, women officers, and reserve officers are not excluded from the operation of the provisions of the 1941 Act. Since authority exists for the appointment of officers of any category in any grade in the Navy, the existence of every grade in the several staff corps and in the Naval Reserve is recognized, and the restriction of these grades to the active list of the line is removed.

The grade of Fleet Admiral is omitted inasmuch as the law authorizing appointments in this grade was limited.

In subsection (a) the words “above the grade of chief warrant officer, W–4” are inserted for clarity.

Subsection (c) is added to make clear the fact that an officer serving in a position, such as chief of bureau, which entitles him to the rank, pay, and allowances of a rear admiral of the upper half ranks rear admirals receiving the pay and allowances of the lower half even though he has not been appointed to the grade of rear admiral or, if so appointed, is in the lower half. A statement of this fact is necessary to give full effect to 5 U.S.C. 441 which provides that chiefs of bureaus of the Navy Department and the Judge Advocate General of the Navy, while so serving, shall have “corresponding rank and shall receive the same pay and allowances \* \* \* as \* \* \* chiefs of bureaus of the War Department and the Judge Advocate General of the Army”. The rank so conferred, corresponding to the Army rank of major general, is rear admiral of the upper half. In §§ 5133 and 5148 of this title, based on 5 U.S.C. 441, the reference to the Army rank is eliminated and the corresponding Navy rank is substituted. The substitution is made because, as stated in the revision notes on