

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5503	34 U.S.C. 135a(a) (less last sentence).	May 29, 1954, ch. 249, §3(a) (less 3d and last sentence), 68 Stat. 157.

This section is included in subtitle C for completeness and clarity. In duplicates, in part, §§ 555 and 597 of this title, which cover, respectively, the “permanent regular warrant officer grades” and the “permanent reserve warrant officer grades” in the armed forces. The concept that regular grades differ from reserve grades and that a grade held under a permanent appointment differs from the grade of the same name held under a temporary appointment is foreign to the naval service. In the Navy and the Marine Corps, all officers serving, for example, in the grade of chief warrant officer, W-4, are considered to be serving in the same grade regardless of whether they are Regulars or Reserves and regardless of whether they are temporary or permanent officers holding temporary or permanent appointments in that grade. This section, therefore, lists the four warrant officer grades as applicable to all warrant officers of the naval service.

Reference to the pay grades corresponding to the military grades is omitted as unnecessary for the purpose of this section.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 5503 of this title as this section.

1991—Pub. L. 102-190 added par. (1) and redesignated former pars. (1) to (4) as (2) to (5), respectively.

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 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.

§ 8118. Rank of line and staff corps officers of the Navy and officers of the Marine Corps

Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade whether or not they are on an active-duty list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 317, §5508; Pub. L. 90-179, §4, Dec. 8, 1967, 81 Stat. 547; Pub. L. 96-513, title V, §503(27), Dec. 12, 1980, 94 Stat. 2913; renumbered §8118, Pub. L. 115-232, div. A, title VIII, §807(b)(2), Aug. 13, 2018, 132 Stat. 1834.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5508	34 U.S.C. 306f(d)(2).	Aug. 7, 1947, ch. 512, §311(d)(2), 61 Stat. 852; Aug. 5, 1949, ch. 402, §1(c), 63 Stat. 568.

The word “rank” is substituted for the words “take precedence” throughout the section for uniformity of expression.

In subsection (a) the first sentence is broadened to include officers of the Marine Corps and officers not on a lineal list. Inclusion of the Marine Corps is possible be-

cause the sentence reflects the rule referred to by the Attorney General (25 Op. Atty. Gen. 517) as “an unwritten law of the Army and Navy” as to relative rank between officers in different services. Officers not on a lineal list may properly be included since the statement is consistent with the provisions for assigning lineal position to such officers when they become entitled to be placed on a list.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 5508 of this title as this section.

1980—Pub. L. 96-513 struck out designation “(a)” before “Except for an officer”, substituted “an active-duty list” for “a lineal list”, struck out sentence which had provided that a staff corps officer with the same date of rank as his running mate ranked above all line and staff corps officers junior to his running mate, and struck out subsec. (b) which had provided for a hierarchy of 9 categories of officers of the Navy to be used in ranking officers of the Navy on active duty serving in the same grade and having the same date of rank in that grade.

1967—Subsec. (b). Pub. L. 90-179 added par. (6) and renumbered former pars. (6), (7), and (8) as pars. (7), (8), and (9), respectively.

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 813—ENLISTMENTS

Sec.

8120. Expiration; rights of member.

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 537 of this title as this chapter and item 5540 as 8120.

1968—Pub. L. 90-235, §2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756, struck out item 5531 “Recruiting campaigns: use of advertising agencies”, item 5532 “Prohibited classes”, item 5533 “Minors”, item 5534 “Term: grade”, item 5535 “Evidence of age required for certain enlistments of minors”, item 5537 “Extension: during disability incident to service”, item 5538 “Extension: during war or national emergency”, and item 5539 “Extension: voluntary, period and benefits.”

1958—Pub. L. 85-861, §1(115), Sept. 2, 1958, 72 Stat. 1493, struck out item 5536 “Extension: time lost through misconduct or unauthorized absence”.

§ 8120. Expiration; rights of member

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 320, §5540; renumbered §8120, Pub. L. 115-232, div. A, title VIII, §807(b)(3), Aug. 13, 2018, 132 Stat. 1834.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
5540	34 U.S.C. 201.	R.S. 1422; Mar. 3, 1875, ch. 155, 18 Stat. 484.
	34 U.S.C. 201a.	Aug. 18, 1941, ch. 364, §4, 55 Stat. 630.
	34 U.S.C. 201b.	Dec. 13, 1941, ch. 570, §2, 55 Stat. 799.

In subsection (a) the words “the senior officer present afloat” are substituted for the words “the commanding officer of any fleet, squadron, or vessel acting singly” to modernize the terminology. At the time of the enactment of the Revised Statutes the word “squadron” meant an organization of any number of vessels more than one, so that all cases were covered by R.S. 1422. The concept of “senior officer present afloat”, today, covers as nearly as possible the current equivalent of the concept in the original section. The words “in foreign waters” are inserted to conform to the interpretation of the Supreme Court in *Wilkes v. Dinsman*, 7 How. 89 (1849). The words “on service” are omitted, as they have no current ascertainable meaning. The words “by Government or other transportation” are substituted for the words “in some public or other vessel”, since this provision is interpreted as directing transportation by either ship or aircraft. The words “to the United States” are substituted for the words “to an Atlantic or to a Pacific port of the United States, as their enlistment may have occurred on either the Atlantic or Pacific coast, of the United States” because aircraft now land at inland airports as well as coastal airports and the duty to return an enlisted member to the United States under this provision is considered complete upon the member’s arrival in the United States. The extensive transportation system in the United States presently obviates the necessity of returning a member to a particular area. Furthermore, under 37 U.S.C. 253, the Government bears the cost of transporting the discharged member to his home or to the place from which he was called to active duty. The words “enlisted member of the naval service” are substituted for the words “all petty officers and persons of inferior ratings” in accordance with present terminology. Members of the Marine Corps are included because of interpretations of the Comptroller General, in construing the language of the statute. (14 Comp. Gen. 807, 808, May 1, 1935.) The reference to persons enlisted without the limits of the United States is omitted as unnecessary, since return to the United States is optional with the member and the basic rule applies irrespective of place of enlistment. The language requiring that persons who are detained or sent home be subject to the laws and regulations for the Government of the Navy is omitted as unnecessary in view of the Uniform Code of Military Justice. The provision referring to reentry to serve until the vessel returns to the United States is omitted because no law authorizes entry or reentry into the service for this restricted purpose.

In subsection (b) the words “an increase in basic pay of 25 percent” are substituted for the words “an addition of one-fourth of their former pay” in conformity with the Career Compensation Act of 1949. 34 U.S.C. 201b permanently suspended the detention pay increase in time of war and this effect is expressed in subsection (b)(2) by the words “except in time of war”. 34 U.S.C. 201a, declaring that the pay addition authorized by this section does not apply to enlistments extended under

other provisions of law, is omitted as unnecessary, since the increased pay provision is specifically limited to detentions under this section.

In subsection (c) the term “enlistment contract” is substituted for the term “shipping-articles” to conform to present terminology.

AMENDMENTS

2018—Pub. L. 115-232 renumbered section 5540 of this title as this section.

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.

CHAPTER 815—ORIGINAL APPOINTMENTS

Sec.

- 8132. Regular Navy: transfers, line and staff corps.
- 8135. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.
- 8137. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
- 8138. Regular Marine Corps: judge advocates.
- 8139. Regular Navy and Regular Marine Corps: officers designated for limited duty.
- 8146. Navy and Marine Corps: temporary appointments of officers designated for limited duty.

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 539 of this title as this chapter and items 5582, 5585, 5587, 5587a, 5589, and 5596 as 8132, 8135, 8137, 8138, 8139, and 8146, respectively.

1994—Pub. L. 103-337, div. A, title XVI, §1673(b)(2), Oct. 5, 1994, 108 Stat. 3016, struck out item 5600 “Naval Reserve and Marine Corps Reserve: service credit upon original appointment”.

1991—Pub. L. 102-190, div. A, title XI, §1113(d)(2)(B), Dec. 5, 1991, 105 Stat. 1502, struck out “warrant officers and” before “officers designated” in item 5596.

1981—Pub. L. 97-22, §10(b)(7), July 10, 1981, 95 Stat. 137, struck out item 5573a “Regular Navy and Regular Marine Corps: from reserve and temporary officers” and in item 5596 substituted “Navy and Marine Corps: temporary appointments of warrant officers and officers designated for limited duty” for “Navy and Marine Corps: temporary appointments”.

1980—Pub. L. 96-513, title V, §503(28), Dec. 12, 1980, 94 Stat. 2913, struck out items 5571 “Regular Navy and Regular Marine Corps: citizenship of officers”, 5572 “Regular Navy and Regular Marine Corps: appointing power” 5573 “Regular Navy and Regular Marine Corps: from graduates of the Naval Academy”, 5574 “Regular Navy: Medical Corps”, 5575 “Regular Navy: Supply Corps”, 5576 “Regular Navy: Chaplain Corps”, 5577 “Regular Navy: Civil Engineer Corps”, 5578 “Regular Navy: Dental Corps”, 5578a “Regular Navy: Judge Advocate General’s Corps”, 5579 “Regular Navy: Medical Service Corps”, 5580 “Regular Navy: Nurse Corps”, 5581 “Naval Reserve: Medical Corps, Dental Corps, Medical Service Corps: women”, 5583 “Regular Marine Corps: from non-commissioned officers”, 5584 “Regular Marine Corps: from former officers”, 5586 “Regular Navy and Regular Marine Corps: from warrant officers and enlisted members”, 5590 “Regular Navy and Regular Marine Corps: women”, 5591 “Regular Navy: Supply Corps: maximum number of ensigns appointed annually”, 5592 “Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually”, 5593 “Regular Navy: Medical Service Corps: maximum number of ensigns appointed annually”, 5594 “Regular Navy: Nurse Corps: maximum number of ensigns appointed annu-