

Sec.

AMENDMENTS

2021—Pub. L. 116-283, div. A, title V, § 505(a)(2), Jan. 1, 2021, 134 Stat. 3568, added item 628a.

2008—Pub. L. 110-181, div. A, title V, § 503(a)(3), Jan. 28, 2008, 122 Stat. 95, substituted “six years” for “five years” in item 630.

2001—Pub. L. 107-107, div. A, title V, § 505(d)(4), Dec. 28, 2001, 115 Stat. 1088, struck out “regular” before “commissioned officers” in item 630, struck out “regular” before “first lieutenants” in item 631, and struck out “regular” before “captains and majors” and before “lieutenants and lieutenant commanders” in item 632.

1997—Pub. L. 105-85, div. A, title V, § 506(c), Nov. 18, 1997, 111 Stat. 1726, substituted “regular officers in grades above brigadier general and rear admiral (lower half)” for “regular major generals and rear admirals” in item 636.

1985—Pub. L. 99-145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted “rear admirals (lower half)” for “commodores” in item 635.

1981—Pub. L. 97-86, title IV, § 405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted “commodores” for “commodore admirals” in item 635.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96-513, title I, § 105, Dec. 12, 1980, 94 Stat. 2859.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter 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 to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96-513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96-513, see section 601 et seq. of Pub. L. 96-513, set out as a note under section 611 of this title.

§ 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion from in or above the promotion zone by a promotion board was not so considered, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That

record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law in a matter material to the decision of the board or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d), 576(f), and 613a of this title (rather than the provisions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report