

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2858; amended Pub. L. 97-86, title IV, §405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99-145, title V, §514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628; Pub. L. 116-283, div. A, title IX, §924(b)(3)(H), Jan. 1, 2021, 134 Stat. 3821.)

Editorial Notes

AMENDMENTS

2021—Subsec. (b). Pub. L. 116-283 substituted “Marine Corps, or Space Force” for “or Marine Corps”.

1985—Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore” in section catchline and subsecs. (a) and (c).

1981—Pub. L. 97-86 substituted “commodore” for “commodore admiral” in section catchline and subsecs. (a) and (c).

Statutory Notes and Related Subsidiaries

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 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.

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) 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 section 624 of this title.

(Added Pub. L. 96-513, title I, §105, Dec. 12, 1980, 94 Stat. 2858.)

Statutory Notes and Related Subsidiaries

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.

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec. 627.	Failure of selection for promotion.
628.	Special selection boards.
628a.	Special selection review boards.
629.	Removal from a list of officers recommended for promotion.
630.	Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).

Sec. 631.	Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade).
632.	Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy.
633.	Retirement for years of service: regular lieutenant colonels and commanders.
634.	Retirement for years of service: regular colonels and Navy captains.
635.	Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636.	Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half).

Editorial Notes

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.)

Statutory Notes and Related Subsidiaries

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 depart-

ment 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 and proceedings of a selection board convened under section 573 of this title.

(d) APPOINTMENT OF PERSONS SELECTED BY BOARDS.—(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) A person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) DECEASED PERSONS.—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) CONVENING OF BOARDS.—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to