

brigadier general is vacated under this section, the officer then holds the reserve grade held by that officer immediately before the officer's appointment as adjutant general or assistant adjutant general.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2942; amended Pub. L. 109-163, div. A, title V, §515(b)(1)(SS), Jan. 6, 2006, 119 Stat. 3234.)

#### Editorial Notes

##### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163 substituted “Navy Reserve” for “Naval Reserve”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general

(a) GENERAL OFFICERS.—Within 30 days after a reserve officer of the Army or the Air Force on the reserve active-status list in a general officer grade ceases to occupy a position commensurate with that grade (or commensurate with a higher grade), the Secretary concerned shall transfer or discharge the officer in accordance with whichever of the following the officer elects:

(1) Transfer the officer in grade to the Retired Reserve, if the officer is qualified and applies for the transfer.

(2) Transfer the officer in grade to the inactive status list of the Standby Reserve, if the officer is qualified.

(3) Discharge the officer from the officer's reserve appointment and, if the officer is qualified and applies therefor, appoint the officer in the reserve grade held by the officer as a reserve officer before the officer's appointment in a general officer grade.

(4) Discharge the officer from the officer's reserve appointment.

(b) ADJUTANTS GENERAL.—If a reserve officer who is federally recognized in the Army National Guard or the Air National Guard solely because of the officer's appointment as adjutant general or assistant adjutant general of a State ceases to occupy that position, the Secretary concerned, not later than 30 days after the date on which the officer ceases to occupy that position, shall—

(1) withdraw that officer's Federal recognition; and

(2) require that the officer—

(A) be transferred in grade to the Retired Reserve, if the officer is qualified and applies for the transfer;

(B) be discharged from the officer's reserve appointment and appointed in the reserve grade held by the officer as a reserve officer immediately before the appointment of that officer as adjutant general or assistant adjutant general, if the officer is qualified and applies for that appointment; or

(C) be discharged from the officer's reserve appointment.

(c) CREDIT FOR SERVICE IN GRADE.—An officer who is appointed under subsection (a)(3) or (b)(2)(B) shall be credited with an amount of service in the grade in which appointed that is equal to the amount of prior service in an active status in that grade and in any higher grade.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2942; amended Pub. L. 104-201, div. A, title V, §544(c), Sept. 23, 1996, 110 Stat. 2523.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3375, 8375, and 8381 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

##### AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104-201 struck out “of the Air Force” after “reserve officer”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 14315. Position vacancy promotions: Army and Air Force officers

(a) OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.—A reserve officer of the Army who is in the Army Reserve, or a reserve officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, under regulations prescribed by the Secretary concerned, has been recommended to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

(2) The officer is fully qualified to meet all requirements for the position as established by the Secretary of the military department concerned.

(3) The officer has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade.

(b) CONSIDERATION FOR VACANCY PROMOTION TO BRIGADIER GENERAL OR MAJOR GENERAL.—(1) A reserve officer of the Army who is in the Army Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade in the Army Reserve or is recommended for such an assignment under regulations prescribed by the Secretary of the Army, (B) has held the officer's present grade

for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade, and (C) meets the standards for consideration prescribed by the Secretary of the Army.

(2) A reserve officer of the Air Force who is in the Air Force Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the Air Force who is considered as failed of selection for promotion under section 14501 of this title to a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2943; amended Pub. L. 104-106, div. A, title XV, §1501(b)(25), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105-85, div. A, title V, §514(d), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 106-398, §1 [div. A], title V, §501, Oct. 30, 2000, 114 Stat. 1654, 1654A-98; Pub. L. 108-136, div. A, title V, §512(b), Nov. 24, 2003, 117 Stat. 1460.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3384 and 8373 of this title, prior to repeal by Pub. L. 103-337, §1629(a)(1), (c)(1).

##### AMENDMENTS

2003—Subsec. (a)(1). Pub. L. 108-136 substituted “under regulations prescribed by the Secretary concerned, has been recommended” for “as determined by the Secretary concerned, is available”.

2000—Subsec. (b)(1)(A). Pub. L. 106-398, §1 [div. A], title V, §501(1)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Army” after “Army Reserve”.

Subsec. (b)(2)(A). Pub. L. 106-398, §1 [div. A], title V, §501(2)], inserted “or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force” after “reserve grade”.

1997—Subsec. (b)(1)(A). Pub. L. 105-85 substituted “duties of a general officer of the next higher reserve grade in the Army Reserve,” for “duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit.”.

1996—Subsec. (a). Pub. L. 104-106 substituted “or a reserve officer” for “or a Reserve officer” in introductory provisions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103-337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104-106, set out as a note under section 113 of this title.

##### EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103-337, set out as a note under section 10001 of this title.

#### § 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103-337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2944.)