

item 5444, struck out items 5445 “Suspension: sections 5442, 5443, 5444”, 5447 “Navy: line officers on the active list; permanent grade”, 5448 “Marine Corps: officers on the active list; permanent grade”, 5449 “Navy: staff corps officers on the active list; permanent grade”, and 5452 “Navy: women line officers on active duty; Marine Corps: women officers on active duty”, and substituted “in grades” for “in permanent grades” in items 5457 and 5458.

1967—Pub. L. 90-130, §1(17)(F), (H), Nov. 8, 1967, 81 Stat. 377, struck out item 5453 “Marine Corps: women 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.

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.