retary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 208. Repealed. Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40

Section, act July 1, 1944, ch. 373, title II, § 207, 58 Stat. 685, related to establishment of special temporary provisions. See sections 206(c) and 207(c) of this title.

§ 209. Appointment of personnel

(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W–1), chief warrant officer (W–2), chief warrant officer (W–3), chief warrant officer (W–4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 212(d) of this title) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

(b) Grade and number of original appointments

(1) Not more than 10 per centum of the original appointments to the Regular Corps authorized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 205 of this title) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Reserve Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

(c) Issuance of commissions

Commissions evidencing the appointment by the President of officers of the Regular or Reserve Corps shall be issued by the Secretary under the seal of the Department of Health and Human Services.

(d) Date of appointment; credit for service

(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.

(2) For purposes of basic pay, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, in lieu of the credit provided in paragraph (1) of this subsection, be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1) of this subsection, plus whichever of the following is greater: (A) The excess of his total active service in the Reserve Corps (above the grade of junior assistant) over the length of service provided in such paragraph, to the extent that such excess is on account of service in the Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he would have had the training and experience necessary for such appointment.

(4) For purposes of promotion, any person whose original appointment is to the assistant grade in the Regular Corps shall be considered as having had on the date of appointment service equal to his total active service in the Reserve Corps in and above the assistant grade.

(e) Reappointment; credit for service

(1) A former officer of the Regular Corps may, if application for appointment is made within two years after the date of the termination of his prior commission in the Regular Corps, be reappointed to the Regular Corps without examination, except as the Surgeon General may otherwise prescribe, and without regard to the numerical limitations of subsection (b) of this section.

(2) Reappointments pursuant to this subsection may be made to the permanent grade held by the former officer at the time of the termination of his prior commission, or to the next higher grade if such officer meets the eligibility requirements prescribed by regulation for original appointment to such higher grade. For purposes of pay, promotion, and seniority in grade, such reappointed officer shall receive the credits for service to which he would be entitled if such appointment were an original appointment, but in no event less than the credits he held at the time his prior commission was terminated, except that if such officer is reappointed to the next higher grade he shall receive no credit for seniority in grade.

(3) No former officer shall be reappointed pursuant to this subsection unless he shall meet such standards as the Secretary may prescribe.

(f) Special consultants

In accordance with regulations, special consultants may be employed to assist and advise in the operations of the Service. Such consultants may be appointed without regard to the civil-service laws.

(g) Designation for fellowships; duties; pay

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

(h) Aliens

Persons who are not citizens may be employed as consultants pursuant to subsection (f) of this section and may be appointed to fellowships pursuant to subsection (g) of this section. Unless otherwise specifically provided, any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them, shall not be applicable in the case of persons employed or appointed pursuant to such subsections.

(i) Civil service appointments by Secretary

The appointment of any officer or employee of the Service made in accordance with the civil-service laws shall be made by the Secretary, and may be made effective as of the date on which such officer or employee enters upon duty.

(July 1, 1944, ch. 373, title II, § 207, formerly § 208, 58 Stat. 685; July 3, 1946, ch. 538, § 4, 60 Stat. 421; Aug. 13, 1946, ch. 958, § 3, 60 Stat. 1049; renumbered § 207 and amended Feb. 28, 1948, ch. 83, § 5(a)–(d), 62 Stat. 40; Oct. 12, 1949, ch. 681, title V, § 521(a), 63 Stat. 834; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 3(a)–(c)(1), 70 Stat. 116; Pub. L. 86–415, §§ 2, 3, Apr. 8, 1960, 74 Stat. 32; Pub. L. 96–76, title III, § 305, Sept. 29, 1979, 93 Stat. 585; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXVII, § 2765(c), Aug. 13, 1981, 95 Stat. 933; Pub. L. 97–414, § 8(a), Jan. 4, 1983, 96 Stat. 2060.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsecs. (f), (g), and (i), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (f), the words ''and their compensation may be fixed without regard to the Classification Act of 1923, as amended'', and in subsec. (g), the words ''and compensated without regard to the Classification Act of 1923, as amended'' were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in subsecs. (f) and (g) because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In subsec. (h), the references to subsections (f) and (g) of this section were, in the original, references to subsections (e) and (f) and were changed to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 207 of act July 1, 1944, was classified to section 208 of this title, prior to repeal by act Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–414 inserted ''psychology,'' after ''pharmacy,''.

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to exception for an appointment under section 205 of this title.

1979—Subsec. (a)(1). Pub. L. 96–76 inserted applicability to warrant officers and chief warrant officers.

1960—Subsec. (a)(3). Pub. L. 86–415, § 2, added par. (3).

Subsec. (b). Pub. L. 86–415, § 3, designated first, second and third sentences as par. (1), fourth sentence as par. (3), and added par. (2).

1956—Subsec. (a)(1). Act Apr. 27, 1956, § 3(a), inserted reference to subsection (e) of this section.

Subsec. (a)(2). Act Apr. 27, 1956, § 3(c)(1), substituted ''an indefinite period'' for ''a period of not more than five years''.

Subsecs. (e) to (i). Act Apr. 27, 1956, § 3(b), added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''base pay'' for ''pay and pay period'' wherever appearing.

1948—Subsec. (a)(1). Act Feb. 28, 1948, struck out ''surgery'' after ''several branches of medicine''.

Subsec. (a)(2). Act Feb. 28, 1948, struck out ''any such commission'' before ''may be terminated'', and ''in his discretion'' after ''at any time''.

Subsec. (b). Act Feb. 28, 1948, provided for grade and number of original appointments.

Subsecs. (c) to (f). Act Feb. 28, 1948, added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively. Former subsecs. (e) and (f) redesignated (g) and (h).

Subsec. (g). Act Feb. 28, 1948, redesignated former subsec. (e) as (g) and changed reference in text from ''subsection (c) of this section'' to ''subsection (e) of this section'', and ''subsection (d) of this section'' to ''subsection (g) of this section''.

Subsec. (h). Act Feb. 28, 1948, redesignated former subsec. (f) as (h).

1946—Subsec. (b). Act July 3, 1946, authorized appointment of additional officers to grades above that of senior assistant but not above that of director, and limits the number so appointed to 20.

Subsec. (b)(2). Act Aug. 13, 1946, inserted ''(A)'' before ''to assist'', substituted ''clause'' for ''paragraphs'', and inserted cl. (B).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(a) of Pub. L. 86–415 provided that: ''The amendments made by sections 2 and 5(b) [amending this section and section 210 of this title] shall become effective July 1, 1960.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949, set out as a note under section 854a of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

PERSONAL SERVICES CONTRACTING

Pub. L. 109–149, title II, § 216, Dec. 30, 2005, 119 Stat. 2861, provided that: ''The Division of Federal Occupational Health hereafter may utilize personal services contracting to employ professional management/administrative and occupational health professionals.''

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. F, title II, § 216, Dec. 8, 2004, 118 Stat. 3141.

Pub. L. 108–199, div. E, title II, § 216, Jan. 23, 2004, 118 Stat. 255.

Pub. L. 108–7, div. G, title II, § 216, Feb. 20, 2003, 117 Stat. 325.

Pub. L. 107–116, title II, § 216, Jan. 10, 2002, 115 Stat. 2201.

Pub. L. 106–554, § 1(a)(1) [title II], Dec. 21, 2000, 114 Stat. 2763, 2763A–13.

Pub. L. 106–113, div. B, § 1000(a)(4) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–225.

Pub. L. 105–277, div. A, § 101(f) [title II], Oct. 21, 1998, 112 Stat. 2681–337, 2681–347.

Pub. L. 105–78, title II, Nov. 13, 1997, 111 Stat. 1477.

Pub. L. 104–208, div. A, title I, § 101(e) [title II], Sept. 30, 1996, 110 Stat. 3009–233, 3009–242.

Pub. L. 104–134, title I, § 101(d) [title II], Apr. 26, 1996, 110 Stat. 1321–211, 1321–221; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.

TERM OF RESERVE COMMISSIONS IN EFFECT ON APRIL 27, 1956

Section 3(c)(2) of act Apr. 27, 1956, provided that: ''The enactment of paragraph (1) of this subsection [amending subsec. (a)(2) of this section] shall not affect the term of the commission of any officer in the Reserve Corps in effect on the date of such enactment [Apr. 27, 1956] unless such officer consents in writing to the extension of his commission for an indefinite period, in which event his commission shall be so extended without the necessity of a new appointment.''

§§ 209a, 209b. Omitted

CODIFICATION

Section 209a, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 856, which related to number of regular commissioned nurses to be appointed, their grades, and their length of service for purposes of pay and pay periods, was not repeated in subsequent appropriation acts.