

Public Law 88-130

AN ACT

September 24, 1963
[H. R. 5623]

To amend the provisions of title 14, United States Code, relating to the appointment, promotion, separation, and retirement of officers of the Coast Guard, and for other purposes.

Coast Guard.
Officers, promo-
tion, separation,
etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 14, United States Code, is amended as follows:

(1) The following new section is added after section 41:

“§ 41a. Active duty promotion list

“(a) The Secretary shall maintain a single active duty promotion list of officers of the Coast Guard on active duty in the grades of ensign and above. Retired officers, officers of the permanent commissioned teaching staff of the Coast Guard Academy, and officers of the Women’s Reserve shall not be included on the active duty promotion list. Reserve officers on extended active duty, other than those serving in connection with organizing, administering, recruiting, instructing, or training the Reserve components, shall be included on the active duty promotion list.

“(b) Officers shall be carried on the active duty promotion list in the order of seniority of the grades in which they are serving. Officers serving in the same grade shall be carried in the order of their seniority in that grade. The Secretary may correct any erroneous position on the active duty promotion list that was caused by administrative error.

“(c) A person appointed in the grade of ensign or above in the Regular Coast Guard shall be placed on the active duty promotion list in the order of his date of rank and seniority.

“(d) A Reserve officer, other than one excluded by subsection (a), shall, when he enters on extended active duty, be placed on the active duty promotion list in accordance with his grade and seniority. The position of such a Reserve officer among other officers of the Coast Guard on active duty who have the same date of rank shall be determined by the Secretary.”

(2) Section 42 is amended to read as follows:

“§ 42. Number and distribution of commissioned officers

“(a) The total number of commissioned officers, excluding commissioned warrant officers, on active duty in the Coast Guard shall not exceed three thousand five hundred.

“(b) The commissioned officers on the active duty promotion list shall be distributed in grade in the following percentages, respectively: rear admiral 0.75; captain 6.0; commander 12.0; lieutenant commander 18.0. The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce the percentage applicable to any grade above lieutenant commander, and in order to compensate for such reduction increase correspondingly the percentage applicable to any lower grade.

“(c) The Secretary shall, at least once each year, make a computation to determine the number of officers on the active duty promotion list authorized to be serving in each grade. The number in each grade shall be computed by applying the applicable percentage to the total number of such officers serving on active duty on the date the computation is made. In making computations under this section the nearest whole number shall be regarded as the authorized number in any case where there is a fraction in the final result.

“(d) The numbers resulting from such computations shall be for all purposes the authorized number in each grade, except that the authorized number for a grade is temporarily increased during the period between one computation and the next by the number of officers originally appointed in that grade during that period and the number of officers of that grade for whom vacancies exist in the next higher grade but whose promotion has been delayed for any reason.

“(e) Officers who are not included on the active duty promotion list, officers serving as extra numbers in grade under sections 432 and 433 of this title, and officers serving with other departments or agencies on a reimbursable basis shall not be counted in determining authorized strengths under subsection (c) and shall not count against those strengths. The number of officers authorized to be serving on active duty in each grade of the permanent commissioned teaching staff of the Coast Guard Academy, of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components, and of the Women's Reserve shall be prescribed by the Secretary.”

(3) The second and third sentences of section 44 are amended to read as follows: “The Commandant shall be appointed from the officers on the active duty promotion list serving in the grade of captain or above who have completed at least ten years of active service as a commissioned officer in the Coast Guard. The Commandant while so serving shall have the grade of admiral.”

(4) Subsections (a), (b), and (c) of section 46 are each amended by striking out the words “and retired pay of admiral” and inserting in place thereof the words “of admiral and retired pay computed at the highest rates of basic pay applicable to him while he served as Commandant”.

(5) Subsection (a) of section 47 is amended by striking out the words “active list of officers who hold a permanent commission as captain or above” and substituting therefor the words “officers on the active duty promotion list serving in the grade of captain or above”.

(6) Subsection (d) of section 47 is amended by striking out the figure “243” and substituting therefor the figure “334”.

(7) The analysis of chapter 3 is amended by striking out the following item:

14 USC 41-47.

“43. Relative rank of commissioned officers with respect to Army and Navy.” and inserting the following new item:

“41a. Active duty promotion list.”

(8) The first sentence of section 190 is amended to read as follows: “Professors, associate professors, assistant professors, and instructors in the Coast Guard shall be subject to retirement or discharge from active service for any cause on the same basis as other commissioned officers of the Coast Guard, except that they shall not be required to retire from active service under the provisions of section 288 of this title, nor shall they be subject to the provisions of section 289 of this title. Service as a civilian member of the teaching staff at the Academy in addition to creditable service authorized by any other law in any of the military services rendered prior to an appointment as a professor, associate professor, assistant professor, or instructor shall be credited in computing length of service for retirement purposes.”

(9) The analysis of chapter 11 is amended by striking out the subheads “COMMISSIONED OFFICERS” and “WARRANT OFFICERS” and the sections included thereunder and substituting in place thereof the following:

"OFFICERS

"A. APPOINTMENTS

"Sec.

- "211. Original appointment of permanent commissioned officers.
- "212. Original appointment of permanent commissioned warrant officers.
- "213. Original appointment of permanent warrant officers (W-1).
- "214. Original appointment of temporary officers.

"B. SELECTION FOR PROMOTION

- "251. Selection boards; convening of boards.
- "252. Selection boards; composition of boards.
- "253. Selection boards; notice of convening; communication with board.
- "254. Selection boards; oath of members.
- "255. Number of officers to be selected for promotion.
- "256. Promotion zones.
- "257. Eligibility of officers for consideration for promotion.
- "258. Selection boards; information to be furnished boards.
- "259. Officers to be recommended for promotion.
- "260. Selection boards; reports.
- "261. Selection boards; submission of reports.
- "262. Failure of selection for promotion.

"C. PROMOTIONS

- "271. Promotions; appointments.
- "272. Removal of officer from list of selectees for promotion.
- "273. Promotions; acceptance; oath of office.
- "274. Promotions; pay and allowances.
- "275. Wartime temporary service promotions.
- "276. Promotion of officers not included on active duty promotion list.
- "277. Temporary promotions of warrant officers.

"D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

- "281. Revocation of commissions during first three years of commissioned service.
- "282. Regular lieutenants (junior grade); separation for failure of selection for promotion.
- "283. Regular lieutenants; separation for failure of selection for promotion; continuation.
- "284. Regular Coast Guard; officers serving under temporary appointments.
- "285. Regular lieutenant commanders and commanders; retirement for failure of selection for promotion.
- "286. Discharge in lieu of retirement; severance pay.
- "287. Separation for failure of selection for promotion or continuation; time of.
- "288. Regular captains; retirement.
- "289. Captains; continuation on active duty; involuntary retirement.
- "290. Rear admirals; retention on the active list; involuntary retirement.
- "291. Voluntary retirement after twenty years' service.
- "292. Voluntary retirement after thirty years' service.
- "293. Compulsory retirement at age of sixty-two.
- "294. Retirement for physical disability after selection for promotion; grade in which retired.

"E. SEPARATION FOR CAUSE

- "321. Review of records of officers.
- "322. Boards of inquiry.
- "323. Boards of review.
- "324. Composition of boards.
- "325. Rights and procedures.
- "326. Removal of officer from active duty; action by Secretary.
- "327. Officers considered for removal; retirement or discharge; severance benefits.

"F. MISCELLANEOUS PROVISIONS

- "331. Recall to active duty during war or national emergency.
- "332. Recall to active duty with consent of officer.
- "333. Relief of retired officer promoted while on active duty.
- "334. Retirement in cases where higher grade has been held.
- "335. Physical fitness of officers."

(10) Chapter 11 is amended—

- (A) by repealing sections 221-248 and 301-313a;
- (B) by striking out the subheads "COMMISSIONED OFFICERS" and "WARRANT OFFICERS"; and
- (C) by inserting the following new matter preceding section 350:

Repeals.

"OFFICERS

"A. Appointments

"§ 211. Original appointment of permanent commissioned officers

"(a) The President may appoint, by and with the advice and consent of the Senate, permanent commissioned officers in the Regular Coast Guard in grades of ensign or above appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the following categories:

- "(1) graduates of the Coast Guard Academy;
- "(2) commissioned warrant officers, warrant officers, and enlisted men of the Regular Coast Guard;
- "(3) members of the Coast Guard Reserve who have served at least two years as such; and
- "(4) licensed officers of the United States merchant marine who have served four or more years aboard a vessel of the United States in the capacity of a licensed officer.

"(b) No person shall be appointed a commissioned officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned officer has been established under such regulations as the Secretary shall prescribe.

"(c) Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.

"§ 212. Original appointment of permanent commissioned warrant officers

"(a) The President may appoint, by and with the advice and consent of the Senate, permanent commissioned warrant officers in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the following categories:

- "(1) warrant officers (W-1) of the Regular Coast Guard;
- "(2) enlisted men of the Regular Coast Guard;
- "(3) members of the Coast Guard Reserve; and
- "(4) licensed officers of the United States merchant marine.

"(b) No person shall be appointed a commissioned warrant officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned warrant officer has been established under such regulations as the Secretary shall prescribe.

"(c) Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in the Coast Guard in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.

“§ 213. Original appointment of permanent warrant officers (W-1)

“(a) The Secretary may appoint permanent warrant officers (W-1), in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the following categories:

“(1) enlisted men of the Regular Coast Guard;

“(2) members of the Coast Guard Reserve; and

“(3) licensed officers of the United States merchant marine.

“(b) No person shall be appointed a warrant officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a warrant officer has been established under such regulations as the Secretary shall prescribe.

“(c) Appointees under this section shall take precedence with other warrant officers in accordance with the dates of their appointments. Appointees whose dates of appointment are the same shall take precedence with each other as the Secretary shall determine.

“§ 214. Original appointment of temporary officers

“(a) The President may appoint temporary commissioned officers in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted men of the Coast Guard.

“(b) The President may appoint temporary commissioned warrant officers in the Regular Coast Guard, as the needs of the Coast Guard may require, from among the warrant officers and enlisted men of the Coast Guard.

“(c) The Secretary may appoint temporary warrant officers (W-1) in the Regular Coast Guard, as the needs of the Coast Guard require, from among the enlisted men of the Coast Guard.

“(d) Temporary appointments under this section do not change the permanent, probationary, or acting status of persons so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person who is appointed under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment under this section.

“(e) An appointment under this section may be vacated by the appointing officer at any time. Each officer whose appointment is so vacated shall revert to his permanent status.

“(f) Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their appointments as officers in such grade. Appointees whose dates of appointment are the same shall take precedence with each other as the Secretary shall determine.

“B. Selection for Promotion**“§ 251. Selection boards; convening of boards**

“At least once a year and at such other times as the needs of the service require, the Secretary shall convene selection boards to recommend for promotion to the next higher grade officers on the active duty promotion list in each grade from lieutenant (junior grade) through captain, with separate boards for each grade. However, the Secretary is not required to convene a board to recommend officers for promotion to a grade when no vacancies exist in the grade concerned, and he estimates that none will occur in the next twelve months.

“§ 252. Selection boards; composition of boards

“A board convened under section 251 of this title shall consist of five or more officers on the active duty promotion list who are serving in or above the grade to which the board may recommend officers for promotion. No officer may be a member of two successive boards convened to consider officers of the same grade for promotion.

“§ 253. Selection boards; notice of convening; communication with board

“(a) Before a board is convened under section 251 of this title, notice of the convening date, the promotion zone to be considered, and the number of officers the board may recommend for promotion shall be given to the service at large.

“(b) Each officer eligible for consideration by a selection board convened under section 251 of this title may send a communication through official channels to the board, to arrive not later than the date the board convenes, inviting attention to any matter of record in the armed forces concerning himself. A communication sent under this section may not criticize any officer or reflect upon the character, conduct, or motive of any officer.

“§ 254. Selection boards; oath of members

“Each member of a selection board shall swear that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard, perform the duties imposed upon him.

“§ 255. Number of officers to be selected for promotion

“Before convening a board under section 251 of this title to recommend officers for promotion to any grade, the Secretary shall determine the total number of officers to be selected for promotion to that grade. This number shall be equal to the number of vacancies existing in the grade, plus the number of additional vacancies estimated for the next twelve months, less the number of officers on the selection list for the grade.

“§ 256. Promotion zones

“(a) Before convening a selection board to recommend officers for promotion to any grade above lieutenant (junior grade) and below rear admiral, the Secretary shall establish a promotion zone for the grade to be considered. The promotion zone for each grade shall consist of the most senior officers of that grade on the active duty promotion list who have not previously been placed in a promotion zone for selection for promotion to the next higher grade. The number of officers in each zone shall be determined after considering—

“(1) the needs of the service;

“(2) the estimated numbers of vacancies available in future years to provide comparable opportunity for promotion of officers in successive year groups; and

“(3) the extent to which current terms of service in that grade conform to a desirable career promotion pattern.

However, such number of officers shall not exceed the number to be selected for promotion divided by six-tenths.

“(b) Promotion zones from which officers will be selected for promotion to the grade of rear admiral shall be established by the Secretary as the needs of the service require.

“§ 257. Eligibility of officers for consideration for promotion

“(a) An officer on the active duty promotion list becomes eligible for consideration for promotion to the next higher grade at the beginning of the fiscal year in which he completes the following amount of

service computed from his date of rank in the grade in which he is serving:

- "(1) two years in the grade of lieutenant (junior grade);
- "(2) three years in the grade of lieutenant;
- "(3) four years in the grade of lieutenant commander;
- "(4) four years in the grade of commander; and
- "(5) three years in the grade of captain.

"(b) For the purpose of this section, service in a grade includes all qualifying service in that grade or a higher grade, under either a temporary or permanent appointment. However, service in a grade under a temporary service appointment under section 275 of this title is considered as service only in the grade that the officer concerned would have held had he not been so appointed.

"(c) No officer may become eligible for consideration for promotion until all officers of his grade senior to him are so eligible.

"(d) Except when his name is on a list of selectees, each officer who becomes eligible for consideration for promotion to the next higher grade remains eligible so long as he—

- "(1) continues on active duty;
- "(2) is not promoted to that grade; and
- "(3) if serving in a grade below captain, has not twice failed of selection for promotion to the next higher grade.

"§ 258. Selection boards; information to be furnished boards

"The Secretary shall furnish the appropriate selection board convened under section 251 of this title with:

- "(1) the number of officers that the board may recommend for promotion to the next higher grade; and
- "(2) the names and records of all officers to be considered by the board, with identification of those officers who are in the promotion zone.

"§ 259. Officers to be recommended for promotion

"(a) A selection board convened to recommend officers for promotion shall recommend those eligible officers whom the board considers best qualified of the officers under consideration for promotion. No officer may be recommended for promotion unless he receives the recommendation of at least a majority of the members of a board composed of five members, or at least two-thirds of the members of a board composed of more than five members.

"(b) The number of officers that a board convened under section 251 of this title may recommend for promotion to a grade below rear admiral from among eligible officers junior in rank to the junior officer in the appropriate promotion zone may not exceed—

- "(1) 5 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of lieutenant or lieutenant commander;
- "(2) $7\frac{1}{2}$ percent of the total number of officers that the board is authorized to recommend for promotion to the grade of commander; and
- "(3) 10 percent of the total number of officers that the board is authorized to recommend for promotion to the grade of captain; unless such percentage is a number less than one, in which case the board may recommend one such officer for promotion.

"§ 260. Selection boards; reports

"(a) Each board convened under section 251 of this title shall submit a report in writing, signed by all the members thereof, containing the names of the officers recommended for promotion.

"(b) A board convened under section 251 of this title shall certify that, in the opinion of at least a majority of the members if the board

has five members, or in the opinion of at least two-thirds of the members if the board has more than five members, the officers recommended for promotion are the best qualified for promotion of those officers whose names have been furnished to the board.

“§ 261. Selection boards; submission of reports

“(a) A board convened under section 251 of this title shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After his final review, the Secretary shall submit the report of the board to the President for his approval, modification, or disapproval.

“(b) If any officer recommended for promotion is not acceptable to the President, the President may remove the name of that officer from the report of the board.

“(c) Upon approval by the President the names of officers selected for promotion by a board convened under section 251 of this title shall be promptly disseminated to the service at large.

“(d) Except as required by this section, the proceedings of a selection board shall not be disclosed to any person not a member of the board.

“§ 262. Failure of selection for promotion

“(a) An officer, other than an officer serving in the grade of captain, who is, or is senior to, the junior officer in the promotion zone established for his grade under section 256 of this title, fails of selection if he is not selected for promotion by the selection board which considered him, or if having been recommended for promotion by the board, his name is thereafter removed from the report of the board by the President.

“(b) An officer shall not be considered to have failed of selection if he was not considered by a selection board because of administrative error. If he is selected by the next succeeding selection board and promoted, he shall be given the date of rank and position on the active duty promotion list in the grade to which promoted that he would have held had he been recommended by the first selection board.

“C. Promotions

“§ 271. Promotions; appointments

“(a) When the report of a board convened to recommend officers for promotion has been approved by the President, the Secretary shall place the names of all officers selected and approved on a list of selectees in the order of their seniority on the active duty promotion list.

“(b) Officers on the list of selectees may be promoted by appointment in the next higher grade to fill vacancies in the authorized active duty strength of the grade as determined under section 42 of this title after officers on any previous list of selectees for that grade have been promoted. Officers shall be promoted in the order that their names appear on the list of selectees. The date of rank of an officer promoted under this subsection shall be the date of his appointment in that grade.

“(c) An officer serving on active duty in the grade of ensign may if found fully qualified for promotion in accordance with regulations prescribed by the Secretary, be promoted to the grade of lieutenant (junior grade) by appointment after he has completed eighteen months' active service in grade. The date of rank of an officer promoted under this subsection shall be the date of his appointment in the grade of lieutenant (junior grade) as specified by the Secretary.

70A Stat. 25.

“(d) Appointments of regular officers under this section shall be made by the President, by and with the advice and consent of the Senate. Appointments of Reserve officers shall be made as prescribed in section 593 of title 10.

“(e) The promotion of an officer who is under investigation or against whom proceedings of a court-martial or a board of officers are pending may be delayed without prejudice by the Secretary until completion of the investigation or proceedings. However, unless the Secretary determines that a further delay is necessary in the public interest, a promotion may not be delayed under this subsection for more than one year after the date the officer would otherwise have been promoted. An officer whose promotion is delayed under this subsection and who is subsequently promoted shall be given the date of rank and position on the active duty promotion list in the grade to which promoted that he would have held had his promotion not been so delayed.

“§ 272. Removal of officer from list of selectees for promotion

“(a) The President may remove the name of any officer from a list of selectees established under section 271 of this title.

“(b) If the Senate does not consent to the appointment of an officer whose name is on a list of selectees established under section 271 of this title, that officer's name shall be removed from this list.

“(c) An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is selected for promotion by the next selection board and promoted, he shall be given the date of rank and position on the active duty promotion list in the grade to which promoted that he would have held if his name had not been removed. However, if the officer is not selected by the next selection board or if his name is again removed from the list of selectees, he shall be considered for all purposes as having twice failed of selection for promotion.

“§ 273. Promotions; acceptance; oath of office

“(a) An officer who receives an appointment under section 271 of this title is considered to have accepted his appointment on its effective date, unless he expressly declines the appointment.

“(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 16 of title 5 is not required to take a new oath upon his appointment in a higher grade.

“§ 274. Promotions; pay and allowances

“An officer who is promoted under section 271 of this title shall be entitled to the pay and allowances of the grade to which promoted from his date of rank in such grade.

“§ 275. Wartime temporary service promotions

“(a) In time of war, or of national emergency declared by the President or Congress, the President may suspend any section of this chapter relating to the selection, promotion, or involuntary separation of officers. Such a suspension may not continue beyond six months after the termination of the war or national emergency.

“(b) When the preceding sections of this chapter relating to selection and promotion of officers are suspended in accordance with subsection (a), and the needs of the service require, the President may, under regulations prescribed by him, promote to a higher grade any officer serving on active duty in the grade of ensign or above in the Coast Guard.

“(c) In time of war, or of national emergency declared by the President or Congress, the President may, under regulations to be prescribed by him, promote to the next higher warrant officer grade

any warrant officer serving on active duty in a grade below chief warrant officer, W-4.

“(d) The grade of commodore in the Coast Guard is established for the purposes of this section.

“(e) A promotion under this section to a grade above lieutenant may be made only upon the recommendation of a board of officers convened for that purpose.

“(f) A promotion under this section shall be made by an appointment for temporary service. An appointment under this section to a grade above captain shall be made by the President by and with the advice and consent of the Senate. Any other appointments under this section shall be made by the President alone.

“(g) An appointment under this section, unless expressly declined, is regarded as accepted on the date specified by the Secretary as the date of the appointment, and the officer so promoted is entitled to pay and allowances of the grade to which appointed from that date.

“(h) An appointment under this section does not terminate any appointments held by an officer concerned under any other provisions of this title. The President may terminate temporary appointments made under this section at any time. An appointment under this section is effective for such period as the President determines. However, an appointment may not be effective later than six months after the end of the war or national emergency. When his temporary appointment under this section is terminated or expires, the officer shall revert to his former grade.

“(i) Not later than six months after the end of the war or national emergency the President shall, under such regulations as he may prescribe, reestablish the active duty promotion list with adjustments and additions appropriate to the conditions of original appointment and wartime service of all officers to be included thereon. The President may, by and with the advice and consent of the Senate, appoint officers on the reestablished active duty promotion list to fill vacancies in the authorized active duty strength of each grade. Such appointments shall be considered to have been made under section 271 of this title.

“§ 276. Promotion of officers not included on active duty promotion list

“Officers who are not included on the active duty promotion list may be promoted under regulations to be prescribed by the Secretary. These regulations shall, as to officers serving in connection with organizing, administering, recruiting, instructing, or training the reserve components, provide, as nearly as practicable, that such officers will be selected and promoted in the same manner and will be afforded equal opportunity for promotion as officers of the corresponding grade on the active duty promotion list.

“§ 277. Temporary promotions of warrant officers

“Warrant officers may be temporarily promoted to higher warrant officer grades under such regulations as the Secretary may prescribe.

“D. Discharges; Retirements; Revocation of Commissions

“§ 281. Revocation of commissions during first three years of commissioned service

“The Secretary, under such regulations as he may prescribe, may revoke the commission of any regular officer on active duty who, at the date of such revocation, has had less than three years of continuous service as a commissioned officer in the Regular Coast Guard.

“§ 282. Regular lieutenants (junior grade); separation for failure of selection for promotion

“Each officer of the Regular Coast Guard appointed under section 211 of this title who is serving in the grade of lieutenant (junior grade) and who has failed of selection for promotion to the grade of lieutenant for the second time, shall:

“(1) be honorably discharged on June 30 of the fiscal year in which his second failure of selection occurs; or

“(2) if he so requests, be honorably discharged at an earlier date without loss of benefits that would accrue if he were discharged on that date under clause (1); or

“(3) if, on the date specified for his discharge in this section, he is eligible for retirement under any law, be retired on that date.

“§ 283. Regular lieutenants; separation for failure of selection for promotion; continuation

“(a) Each officer of the Regular Coast Guard appointed under section 211 of this title who is serving in the grade of lieutenant and who has failed of selection for promotion to the grade of lieutenant commander for the second time shall:

“(1) be honorably discharged on June 30 of the fiscal year in which his second failure of selection occurs; or

“(2) if he so requests, be honorably discharged at an earlier date without loss of benefits that would accrue if he were discharged on that date under clause (1); or

“(3) if, on the date specified for his discharge in this section, he is eligible for retirement under any law, be retired on that date; or

“(4) if, on the date specified for his discharge in clause (1), he has completed at least eighteen years of active service, be retained on active duty and retired on the last day of the month in which he completes twenty years of active service, unless earlier removed under another provision of law.

“(b) When the needs of the service require, the Secretary may direct a selection board, which has been convened under section 251 of this chapter, to recommend for continuation on active duty for terms of not less than two nor more than four years a designated number of officers of the grade of lieutenant who would otherwise be discharged or retired under this section. When so directed, the board shall recommend for continuation on active duty those officers under consideration who are, in the opinion of the board, best qualified for continuation. Each officer so recommended may, with the approval of the Secretary, and notwithstanding subsection (a), be continued on active duty for the term recommended. Upon the completion of such a term he shall, unless selected for further continuation, be honorably discharged with severance pay computed under section 286 of this title, or, if eligible for retirement under any law, be retired.

“(c) Each officer who has been continued on active duty under subsection (b) shall, unless earlier removed from active duty, be retired on the last day of the month in which he completes twenty years of active service.

“§ 284. Regular Coast Guard; officers serving under temporary appointments

“(a) Each officer of the Regular Coast Guard appointed under section 214 of this title who is serving in the grade of lieutenant (junior grade) or lieutenant and who has failed of selection for promotion to

the grade of lieutenant or lieutenant commander, respectively, for the second time shall:

“(1) be honorably discharged on June 30 of the fiscal year in which his second failure of selection occurs; or

“(2) if he so requests, be honorably discharged at an earlier date without loss of benefits that would accrue if he were discharged on that date under clause (1); or

“(3) if on the date specified for his discharge in this section he is eligible for retirement under any law, be retired under that law on that date.

“(b) Each officer subject to discharge or retirement under subsection (a) may elect to revert to his permanent grade.

“§ 285. Regular lieutenant commanders and commanders; retirement for failure of selection for promotion

“Each officer of the Regular Coast Guard serving in the grade of lieutenant commander or commander, who has failed of selection for promotion to the grade of commander or captain, respectively, for the second time shall:

“(1) if eligible for retirement under any law on June 30 of the fiscal year in which his second failure of selection occurs, be retired on that date; or

“(2) if ineligible for retirement on the date specified in clause (1) be retained on active duty and retired on the last day of the month in which he completes twenty years of active service, unless earlier removed under another provision of law.

“§ 286. Discharge in lieu of retirement; severance pay

“(a) Each officer who is retained on active duty under section 283(a)(4), 283(b), or 285 of this title may, if he so requests, with the approval of the Secretary, be honorably discharged at any time prior to the date otherwise specified for his retirement or discharge.

“(b) Each officer discharged under this section or under section 282, 283, or 284 of this title is entitled to a lump-sum payment computed by multiplying his years of active commissioned service, but not more than twelve, by two months' basic pay of the grade in which he is serving on the date of his discharge. In determining the total number of years of active service to be used as a multiplier in computing this payment, a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. The acceptance of a lump-sum payment under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received payment under this section until the total amount deducted equals the amount of the lump-sum payment.

“§ 287. Separation for failure of selection for promotion or continuation; time of

“If, under section 282, 283, 284, 285, or 289 of this title, the discharge or retirement of any officer would be required less than six months following approval of the report of the board which considered but did not select him for promotion or continuation, the discharge or retirement of such officer shall be deferred until the last day of the sixth calendar month after such approval.

“§ 288. Regular captains; retirement

“(a) Each officer of the Regular Coast Guard serving in the grade of captain whose name is not carried on an approved list of officers selected for promotion to the grade of rear admiral shall, if not earlier retired, be retired on June 30 of the fiscal year in which he, or any

captain junior to him on the active duty promotion list who has not lost numbers or precedence, completes thirty years of active commissioned service in the Coast Guard.

“(b) Notwithstanding section 423 of this title, the retired pay of an officer retired under this section shall not be less than 50 percent of the basic pay upon which the computation of his retired pay is based.

“§ 289. Captains; continuation on active duty; involuntary retirement

“(a) The Secretary may, whenever the needs of the service require, but not more often than annually, convene a board consisting of not less than six officers of the grade of rear admiral to recommend for continuation on active duty officers on the active duty promotion list serving in the grade of captain, who during the fiscal year in which the board meets will complete at least three years’ service in that grade and who have not been selected for promotion to the grade of rear admiral. Officers who are subject to retirement under section 288 of this title during the fiscal year in which the board meets shall not be considered by this board.

“(b) Whenever he convenes a board under this section, the Secretary shall establish a continuation zone. The zone shall consist of the most senior captains eligible for consideration for continuation on active duty who have not previously been placed in a continuation zone under this section. The Secretary shall, based upon the needs of the service, prescribe the number of captains to be included in the zone.

“(c) Based on the needs of the service the Secretary shall furnish the board with the number of officers that may be recommended for continuation on active duty. This number shall be no less than 75 percent of the number considered. The board shall select from the designated continuation zone, in the number directed by the Secretary, those officers who are, in the opinion of the board, best qualified for continuation on active duty.

“(d) The provisions of sections 253, 254, 258, and 260 of this title relating to selection for promotion shall, to the extent that they are not inconsistent with the provisions of this section, apply to boards convened under this section.

“(e) The Secretary shall prescribe by regulation the detailed procedures whereby officers in a continuation zone will be selected for continuation on active duty.

“(f) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After his final review the Secretary shall submit the report of the board to the President for his approval. Upon approval by the President, the names of the officers selected for continuation on active duty by the board shall be promptly disseminated to the service at large. Except as required by the procedures of this section, the proceedings of the board shall not be disclosed to any person not a member of the board.

“(g) Each officer who is considered but not recommended for continuation on active duty under the provisions of this section shall, unless retired under some other provision of law, be retired on June 30 of the fiscal year in which the report of the continuation board convened under this section is approved, or the last day of the month in which he completes twenty years of active service, whichever is later.

“§ 290. Rear admirals; retention on the active list; involuntary retirement

“(a) Any rear admiral, unless retired under some other provision of law or retained on active duty under subsection (b) of this section, shall be retired on June 30 of the fiscal year in which he completes a total of seven years of service in the permanent grade of rear admiral or a total of thirty-five years of active commissioned service, including service creditable for retirement purposes under sections 432, 433, and 434 of this title.

“(b) Notwithstanding subsection (a) of this section, the Commandant, with the approval of the Secretary, may by annual action retain on active duty from fiscal year to fiscal year any rear admiral who would otherwise be retired under subsection (a). A rear admiral so retained, unless retired under some other provision of law, shall be retired on June 30 of that fiscal year in which no action is taken to further retain him under this subsection.

“(c) Subsections (a) and (b) of this section do not apply to any officer serving as Commandant.

“§ 291. Voluntary retirement after twenty years' service

“Any regular commissioned officer who has completed twenty years' active service in the Coast Guard, Navy, Army, Air Force, or Marine Corps, or the Reserve components thereof, including active duty for training, at least ten years of which shall have been active commissioned service, may, upon his own application, in the discretion of the President, be retired from active service, with retired pay of the grade with which retired.

“§ 292. Voluntary retirement after thirty years' service

“Any regular commissioned officer who has completed thirty years' service may, upon his own application, in the discretion of the Secretary, be retired from active service with retired pay of the grade with which retired.

“§ 293. Compulsory retirement at age of sixty-two

“Any regular commissioned officer, except a commissioned warrant officer, who has reached the age of sixty-two shall be retired from active service, with retired pay of the grade with which retired.

“§ 294. Retirement for physical disability after selection for promotion; grade in which retired

“An officer whose name appears on an approved list of officers selected for promotion to the next higher grade and who is retired for physical disability under the provisions of chapter 61 of title 10 prior to being promoted shall be retired in the grade to which he was selected for promotion.

70A Stat. 91.
10 USC 1201-
1221.

“E. Separation for Cause**“§ 321. Review of records of officers**

“The Secretary may at any time convene a board of officers to review the record of any officer of the Regular Coast Guard to determine whether he shall be required to show cause for his retention on active duty—

“(1) because his performance of duty has fallen below the standards prescribed by the Secretary, or

“(2) because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security.

“§ 322. Boards of inquiry

“(a) Boards of inquiry shall be convened at such places as the Secretary may prescribe to receive evidence and make findings and recommendations whether an officer who is required to show cause for retention under section 321 of this title should be retained on active duty.

“(b) A fair and impartial hearing before a board of inquiry shall be given to each officer so required to show cause for retention.

“(c) If a board of inquiry determines that the officer has failed to establish that he should be retained, it shall send the record of its proceedings to a board of review.

“(d) If a board of inquiry determines that the officer has established that he should be retained, his case is closed. However, at any time after one year from the date of the determination in a case arising under clause (1) of section 321, and at any time after the date of the determination in a case arising under clause (2) of that section, an officer may again be required to show cause for retention.

“§ 323. Boards of review

“(a) Boards of review shall be convened at such times as the Secretary may prescribe, to review the records of cases of officers recommended by boards of inquiry for removal.

“(b) If, after reviewing the record of the case, a board of review determines that the officer has failed to establish that he should be retained, it shall send its recommendation to the Secretary for his action.

“(c) If, after reviewing the record of the case, a board of review determines that the officer has established that he should be retained on active duty, his case is closed. However, at any time after one year from the date of the determination in a case arising under clause (1) of section 321 and at any time after the date of the determination in a case arising under clause (2) of that section, an officer may again be required to show cause for retention.

“§ 324. Composition of boards

“(a) A board convened under section 321, 322, or 323 of this title shall consist of at least three officers of the grade of commander or above, all of whom are serving in a grade senior to the grade of any officer considered by the board.

“(b) No person may be a member of more than one board convened under section 321, 322, or 323 of this title to consider the same officer.

“§ 325. Rights and procedures

“Each officer under consideration for removal under section 322 of this title shall be—

“(1) notified in writing at least thirty days before the hearing of the case by a board of inquiry of the reasons for which the officer is being required to show cause for retention;

“(2) allowed reasonable time, as determined by the board of inquiry under regulations of the Secretary, to prepare his defense;

“(3) allowed to appear in person and by counsel at proceedings before a board of inquiry; and

“(4) allowed full access to, and furnished copies of, records relevant to the case at all stages of the proceeding, except that a board shall withhold any records that the Secretary determines should be withheld in the interests of national security. In any case where any records are withheld under this clause, the officer

whose case is under consideration shall, to the extent that the national security permits, be furnished a summary of the records so withheld.

“§ 326. Removal of officer from active duty; action by Secretary

“The Secretary may remove an officer from active duty if his removal is recommended by a board of review under section 323 of this title. The Secretary’s action in such a case is final and conclusive.

“§ 327. Officers considered for removal; retirement or discharge; severance benefits

“(a) At any time during proceedings under section 322 or 323, and before the removal of an officer, the Secretary may grant a request—

“(1) for voluntary retirement, if the officer is otherwise qualified therefor; or

“(2) for honorable discharge with severance benefits under subsection (b) in those cases arising under clause (1) of section 321; or

“(3) for discharge with severance benefits under subsection (b) in those cases arising under clause (2) of section 321.

“(b) Each officer removed from active duty under section 326 of this title shall—

“(1) if on the date of removal the officer is eligible for voluntary retirement under any law, be retired in the grade and with the pay for which he would be eligible if retired at his request; or

“(2) if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month’s basic pay of that grade, in those cases arising under clause (1) of section 321; or

“(3) if on that date the officer is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month’s basic pay of that grade, in those cases arising under clause (2) of section 321.

“F. Miscellaneous Provisions

“§ 331. Recall to active duty during war or national emergency

“In time of war or national emergency, the Secretary may order any regular officer on the retired list to active duty.

“§ 332. Recall to active duty with consent of officer

“(a) Any regular officer on the retired list may, with his consent, be assigned to such duties as he may be able to perform but no officer on the retired list who has reached the age of sixty-two years shall be recalled in time of peace.

“(b) The number of retired officers on active duty in the grade of lieutenant commander, commander, or captain shall not exceed 1 percent of the authorized number of officers on active duty in each such grade.

“§ 333. Relief of retired officer promoted while on active duty

“Any regular officer on the retired list recalled to active duty who during such active duty is advanced to a higher grade under an appointment shall, upon relief from active duty, if his performance of duty under such appointment has been satisfactory, be advanced on the retired list to the highest grade held while on such active duty.

“§ 334. Retirement in cases where higher grade has been held

“(a) Any commissioned officer, other than a commissioned warrant officer, who is retired under any provision of this title, shall be retired from active service with the highest grade held by him for not less than six months while on active duty in which, as determined by the Secretary, his performance of duty was satisfactory, with retired pay of the grade with which retired.

70A Stat. 22,
101.

“(b) Any warrant officer who is retired under any provision of section 564, 1263, 1293, or 1305 of title 10, shall be retired from active service with the highest commissioned grade above chief warrant officer, W-4, held by him for not less than six months on active duty in which, as determined by the Secretary, his performance of duty was satisfactory, with retired pay of the grade with which retired. However, when the rate of pay of such highest grade is less than the pay of the warrant grade with which the officer would otherwise be retired under section 1371 of title 10, the retired pay shall be based on the higher rate of pay.

70A Stat. 104.

“§ 335. Physical fitness of officers

“The Secretary shall prescribe regulations under which the physical fitness of officers to perform their duties shall be periodically determined.”

(11) Section 433 is amended—

(A) by striking out the words “two thousand two hundred and fifty” in subsection (a) and substituting in place thereof the words “total number of”, and

(B) by adding the following new subsection at the end:

“(i) No personnel of the former Bureau of Marine Inspection and Navigation and Bureau of Customs transferred from those Bureaus to the Coast Guard by Executive Order 9083 and by Reorganization Plan Numbered 3, effective July 16, 1946, who are serving as commissioned officers in the Coast Guard, shall be required to retire from active service under the provisions of section 288 of this title prior to completion of thirty years of active commissioned service, including service creditable for retirement purposes under this section, nor shall any such officers be subject to the provisions of section 289 of this title.”

50 USC app. 601
note.

5 USC 133y-16
note.

(12) Section 759a is amended—

(A) by striking out the figure “436” in subsection (a) and substituting in place thereof the figure “275”;

(B) by striking out the figure “435” in subsection (a) and substituting in place thereof the figure “214”.

(13) Section 791 is amended by striking out the words “for temporary service”.

SEC. 2. (a) Officers who have been placed permanently out of line of promotion under laws and regulations of the Secretary in effect the day before the effective date of this Act shall be considered as having failed of selection for promotion to the next higher grade for the second time on the day before the effective date of this Act, and shall be subject to the provisions of sections 282 through 285 of title 14, United States Code, as appropriate. No officer shall be separated from the service under the above provisions prior to the last day of the sixth calendar month following the effective date of this Act.

(b) Officers who have been placed temporarily out of line of promotion for appointment for temporary service under laws and regulations of the Secretary in effect the day before the effective date of this Act shall be considered as having once failed of selection for promotion to the next higher grade.

(c) Officers who, prior to the effective date of this Act, were considered but not selected for retention on active duty under the provisions of section 248, title 14, United States Code, shall remain subject to the provisions of subsections (b) and (c) of that section.

INTERIM PROVISIONS

SEC. 3. (a) For a period of three years following the effective date of this Act, or until July 1, 1966, whichever is longer, the Secretary of the Treasury may, whenever the needs of the service require but not more than once annually, convene boards to recommend for continuation on active duty officers of the Coast Guard on the active duty promotion list in the following categories:

(1) officers serving in the grade of captain who have not been selected for promotion to the grade of rear admiral and who are not subject to retirement under section 288 of title 14, United States Code, during the fiscal year in which a board is convened under this section, and

(2) officers serving in the grade of commander.

(b) Officers who are selected for promotion after the effective date of this Act and officers who are serving as extra numbers in grade under section 432 or 433, title 14, United States Code, may not be considered by boards convened under this section.

(c) No officer may be considered more than once for continuation on active duty by a board convened under this section.

(d) At the time he convenes a board to recommend officers for continuation on active duty under this section, the Secretary shall establish a continuation zone for the category to be considered. The continuation zone for each category shall consist of the most senior officers of that category who have not previously been considered for continuation under this section. The zone shall include such number of officers as the Secretary determines to be necessary to meet the needs of the service.

(e) The Secretary shall furnish a board convened under this section with the names and records of the officers who shall be considered by the board, and, based on the needs of the service, the number of officers that may be recommended for continuation on active duty. In the case of officers serving in the grade of captain this number shall not be less than 90 percent of the total number of captains in the continuation zone. In the case of officers serving in the grade of commander this number shall not be less than 80 percent of the total number of commanders in the continuation zone.

(f) A board convened under this section shall consist of six or more officers who are serving on active duty in any grade above the grade being considered for continuation.

(g) Before a board is convened under this section, notice of the convening date, the zone to be considered, and the number of officers to be continued on active duty shall be given the service at large. Any officer to be considered by the board may send a communication through official channels to the board, to arrive not later than the date the board convenes, inviting attention to any matter of record in the Coast Guard concerning himself. A communication sent under this section may not criticize any officer or reflect upon his character, conduct, or motives.

(h) Each member of a board convened under this section shall swear or affirm that he will, without prejudice or partiality, and having in view both the special fitness of officers and the efficiency of the Coast Guard, perform the duties imposed upon him.

(i) A board convened under this section shall recommend for continuation on active duty those officers in the zone whom the board considers best qualified for continuation.

(j) A board convened under this section shall submit its report to the Secretary. If the board has acted contrary to law or regulation, the Secretary may return the report for proceedings in revision and resubmission to the Secretary. After his final review the Secretary shall submit the report of the board to the President for his approval. Upon approval by the President, the names of the officers selected for continuation on active duty by the board shall be promptly disseminated to the service at large. Except as required by the procedures of this section, the proceedings of the board shall not be disclosed to any person not a member of the board.

(k) The Secretary shall prescribe regulations governing the detailed procedure whereby officers in a designated zone will be selected for continuation on active duty.

(l) Each officer who is considered for continuation on active duty under this section and who is not recommended for continuation in the approved report of the board shall not thereafter be eligible for promotion and, unless earlier retired under some other provision of law, shall be retired on June 30 of the fiscal year in which the report of the board is approved, or on the last day of the month in which he completes twenty years of active service, whichever is later.

(m) Each officer who is retired under this section shall be paid, in addition to his retired pay, a lump-sum payment of \$2,000, effective on the date of his retirement.

(n) An officer whose retirement is required under this section shall be considered for the purposes of subsection (m) of this section as being retired under this section if the officer retires voluntarily prior to the date specified for his retirement under this section.

(o) Notwithstanding subsection (l) above, no officer shall be retired under this section until the last day of the sixth month following the month in which the report of the board which considered him is approved.

(p) Notwithstanding the provisions of subsection (l) of this section, any officer who has failed of selection for continuation may, at his own request, and with the approval of the Secretary, at any time prior to completion of twenty years of active service, be honorably discharged with severance pay computed in accordance with section 286 of title 14, United States Code.

(q) Notwithstanding section 1431 of title 10, United States Code, an original election, change, or revocation of an election made under that section by an officer who—

(1) is considered for continuation on active duty under this section, and

(2) is not recommended for continuation, and

(3) either retires under this section, or voluntarily retires under another provision of law before the date specified for his retirement under this section,

is effective if such original election, change, or revocation is made prior to the convening date of the board which considers him.

REPEALS

SEC. 4. (a) Sections 435, 436, 437, 439, and 440 of title 14, United States Code, are repealed.

14 USC 435 note. (b) The Act of September 21, 1961 (75 Stat. 538), is repealed.

(c) The analysis of chapter 11 of title 14, United States Code, is amended by striking out the following items:

- "435. Temporary appointments in time of war or national emergency.
- "436. Temporary promotions in time of war or national emergency.
- "437. Officers having less than 20 years of service; discharge during war or emergency for unsatisfactory performance of duty.
- "439. Oath of office.
- "440. Temporary promotions of warrant officers."

SAVING CLAUSES

SEC. 5. (a) Officers in each grade who have been recommended as qualified for temporary promotion under laws and regulations in effect the day before the effective date of this Act but not promoted to the grade for which they were recommended shall be placed on a list of selectees in order of their precedence, and they shall be promoted as if they had been selected for promotion in the approved report of a selection board convened under this Act.

(b) Officers who have been recommended for promotion to the grade of rear admiral under laws and regulations in effect the day before the effective date of this Act but have not been promoted to that grade shall be promoted as if they had been so recommended in the approved report of a selection board convened under this Act.

(c) The enactment of this Act does not terminate the appointment of any officer.

(d) An officer of the Regular Coast Guard who on the day before the effective date of this Act had been promoted to and was serving on active duty in a temporary grade higher than his permanent grade shall be considered to have been promoted to that grade under section 271 of title 14, United States Code.

(e) An officer of the Regular Coast Guard who was appointed as a temporary commissioned officer under any provision of law in effect prior to the effective date of this Act and who is serving on active duty shall be considered to have been appointed under section 214 of title 14, United States Code, and subject to the provisions thereof.

(f) Each officer who would have been required to retire on June 30, 1962, under the provisions of section 288 of title 14, United States Code, had that section been in effect on that date, shall be retired on the last day of the sixth month following the month in which this Act becomes effective. If, under section 288 of title 14, United States Code, the retirement of any other officer would be required after June 30, 1962, but less than six months following the effective date of this Act, his retirement shall be deferred until the last day of the twelfth month following the month in which this Act becomes effective, or June 30, 1964, whichever is earlier.

(g) The enactment of this Act does not increase or decrease the retired pay of any person retired on or prior to the effective date of this Act.

(h) Notwithstanding section 1431 of title 10, United States Code, an original election, change, or revocation of an election, made under that section by an officer who is retired under the provisions of section 282, 283, 284, 285, or 288 of title 14, United States Code, is effective if made prior to the first day of the third month following the month in which this Act is enacted.

75 Stat. 810.

EFFECTIVE DATE

SEC. 6. Section 289 of title 14, United States Code, as enacted by section 1(10)(C) of this Act, becomes effective three years after the effective date of this Act, or on July 1, 1966, whichever is later.

Approved September 24, 1963.