

Executive Documents**EX. ORD. NO. 14106. UNITED STATES COAST GUARD
OFFICER PERSONNEL MANAGEMENT**

Ex. Ord. No. 14106, Aug. 14, 2023, 88 F.R. 55905, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to delegate certain functions concerning the appointment, promotion, separation, and retirement of commissioned officers of the United States Coast Guard, it is hereby ordered as follows:

SECTION 1. The Secretary of Homeland Security is directed to perform, without approval, ratification, or other action by the President, the following functions vested in the President:

(a) the authority vested in the President by section 2118(a) of title 14, United States Code, to approve, modify, or disapprove the report of a selection board;

(b) the authority vested in the President by sections 2118(b) and 2122(a) of title 14, United States Code, to remove a name of an officer from a selection board report or a list of selectees;

(c) the authority vested in the President by section 2101 of title 14, United States Code, to appoint officers from the categories described in section 2101(a)(1) of title 14, United States Code, to the grades of ensign, lieutenant (junior grade), and lieutenant, and to accept the resignations of officers appointed pursuant to section 2101 of title 14, United States Code;

(d) the authority vested in the President by section 2121(e) of title 14, United States Code, to appoint officers in the grades of lieutenant (junior grade) and lieutenant;

(e) the authority vested in the President by section 2104(a) of title 14, United States Code, to make temporary appointments not above lieutenant in the Regular Coast Guard and Coast Guard Reserve;

(f) the authority vested in the President by section 2150(f) of title 14, United States Code, to approve the report of a board convened to recommend for continuation on active duty officers serving in the grade of captain;

(g) the authority vested in the President by section 571(b) of title 10, United States Code, to appoint by commission regular chief warrant officers in the Coast Guard; and

(h) the authority vested in the President by sections 12241(b) and 571(b) of title 10, United States Code, to appoint by commission reserve chief warrant officers in the Coast Guard.

SEC. 2. (a) During a time of war or national emergency, the Secretary of Homeland Security is directed to perform the authority vested in the President by section 2125 of title 14, United States Code, to suspend the operation of any law relating to the selection, promotion, or involuntary separation of officers of the Coast Guard, and to temporarily promote officers serving on active duty and chief warrant officers serving on active duty, as authorized by section 2125 of title 14, United States Code, without the approval, ratification, or other action by the President.

(b) During a time of war or national emergency, the Secretary of Homeland Security is directed to perform the authority vested in the President by section 3733 of title 14, United States Code, to suspend the operation of subchapter II of chapter 37 of title 14, United States Code, concerning officers of the Coast Guard Reserve without the approval, ratification, or other action by the President.

(c) The authority delegated to the Secretary of Homeland Security by this section may not be exercised during the time of a national emergency declared by the President, unless the exercise of any such authority is specifically directed by the President in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631).

(d) The Secretary of Homeland Security shall ensure that actions taken pursuant to the authority delegated

by this section are accounted for as required by section 401 of the National Emergencies Act (50 U.S.C. 1641).

SEC. 3. All actions heretofore taken by the President with respect to the matters affected by this order and in force at the time of issuance of this order, including any regulations prescribed or approved by the President with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 4. As used in this order, the term “functions” embraces duties, powers, responsibilities, authority, or discretion, and the term “perform” may be construed to mean “exercise.”

SEC. 5. Whenever the entire Coast Guard operates as a service in the Navy, the references to the Secretary of Homeland Security in sections 1 and 2 of this order shall be deemed to be references to the Secretary of Defense.

SEC. 6. If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§ 2102. 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. Reserve officers on active duty, other than pursuant to an active duty agreement executed under section 12311 of title 10, retired officers, and officers of the permanent commissioned teaching staff of the Coast Guard Academy shall not 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) An individual 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 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.

(Added Pub. L. 88-130, §1(1), Sept. 24, 1963, 77 Stat. 174, §41a; amended Pub. L. 91-278, §1(2), June 12, 1970, 84 Stat. 304; Pub. L. 93-174, §1(1),

Dec. 5, 1973, 87 Stat. 692; Pub. L. 97-136, §6(a), Dec. 29, 1981, 95 Stat. 1706; Pub. L. 103-206, title II, §205(a), Dec. 20, 1993, 107 Stat. 2422; Pub. L. 103-337, div. A, title XVI, §1677(b)(1), Oct. 5, 1994, 108 Stat. 3019; renumbered §2102, Pub. L. 115-282, title I, §112(b), Dec. 4, 2018, 132 Stat. 4216; Pub. L. 116-283, div. G, title LVXXXV [LXXXV], §8505(a)(14), Jan. 1, 2021, 134 Stat. 4748.)

Editorial Notes

AMENDMENTS

2021—Subsec. (c). Pub. L. 116-283 substituted “An individual” for “A person”.

2018—Pub. L. 115-282 renumbered section 41a of this title as this section.

1994—Subsec. (a). Pub. L. 103-337 substituted “section 12311 of title 10” for “section 679 of title 10”.

1993—Subsec. (b). Pub. L. 103-206 struck out before period at end of second sentence “, except that the rear admiral serving as Chief of Staff shall be the senior rear admiral for all purposes other than pay”.

1981—Subsec. (a). Pub. L. 97-136, §6(a)(1), substituted “Reserve officers on active duty, other than pursuant to an active duty agreement executed under section 679 of title 10, retired officers, and officers of the permanent commissioned teaching staff of the Coast Guard Academy shall not” for “Retired officers and officers of the permanent commissioned teaching staff of the Coast Guard Academy 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 or assigned to the Selective Service System, shall”.

Subsec. (b). Pub. L. 97-136, §6(a)(2), inserted exception that rear admiral serving as Chief of Staff shall be senior rear admiral for all purposes other than pay.

Subsec. (d). Pub. L. 97-136, §6(a)(3), substituted “enters on active duty” for “enters on extended active duty”.

1973—Subsec. (a). Pub. L. 93-174 substituted “Retired officers and officers” for “Retired officers, officers” and struck out “, and officers of the Women’s Reserve” after “Coast Guard Academy”.

1970—Subsec. (a). Pub. L. 91-278 inserted “or assigned to the Selective Service System” after “components” in last sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

§ 2103. Number and distribution of commissioned officers on active duty promotion list

(a) MAXIMUM TOTAL NUMBER.—

(1) IN GENERAL.—The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed—

- (A) 7,100 in fiscal year 2022;
- (B) 7,200 in fiscal year 2023;
- (C) 7,300 in fiscal year 2024; and
- (D) 7,400 in fiscal year 2025 and each subsequent fiscal year.

(2) TEMPORARY INCREASE.—Notwithstanding paragraph (1), the Commandant may temporarily increase the total number of commissioned officers permitted under such paragraph by up to 4 percent for not more than 60 days after the date of the commissioning of a Coast Guard Academy class.

(3) NOTIFICATION.—Not later than 30 days after exceeding the total number of commissioned officers permitted under paragraphs (1) and (2), and each 30 days thereafter until the total number of commissioned officers no longer exceeds the number of such officers permitted under paragraphs (1) and (2), the Commandant shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the number of officers on the active duty promotion list on the last day of the preceding 30-day period.

(b) DISTRIBUTION PERCENTAGES BY GRADE.—

(1) REQUIRED.—The total number of commissioned officers authorized by this section shall be distributed in grade in the following percentages: 0.375 percent for rear admiral; 0.375 percent for rear admiral (lower half); 6.0 percent for captain; 15.0 percent for commander; and 22.0 percent for lieutenant commander.

(2) DISCRETIONARY.—The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign.

(3) AUTHORITY OF SECRETARY TO REDUCE PERCENTAGE.—The Secretary—

(A) may reduce, as the needs of the Coast Guard require, any of the percentages set forth in paragraph (1); and

(B) shall apply that total percentage reduction to any other lower grade or combination of lower grades.

(c) COMPUTATIONS.—

(1) IN GENERAL.—The Secretary shall compute, at least once each year, the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages established by or under this section to the total number of commissioned officers listed on the current active duty promotion list.

(2) ROUNDING FRACTIONS.—Subject to subsection (a), in making the computations under paragraph (1), any fraction shall be rounded to the nearest whole number.

(3) TREATMENT OF OFFICERS SERVING OUTSIDE COAST GUARD.—The number of commissioned officers on the active duty promotion list below the rank of vice admiral serving with other Federal departments or agencies on a reimbursable basis or excluded under section 324(d) of title 49 shall not be counted against the total number of commissioned officers authorized to serve in each grade.

(d) USE OF NUMBERS; TEMPORARY INCREASES.—The numbers resulting from computations under subsection (c) 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 SERVING COAST GUARD ACADEMY AND RESERVE.—The number of officers author-