

§ 313(2), Nov. 25, 2002, 116 Stat. 2103; Pub. L. 111-281, title II, § 212(4), Oct. 15, 2010, 124 Stat. 2915; renumbered § 2117 and amended Pub. L. 115-282, title I, §§ 112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-282, § 112(b), renumbered section 260 of this title as this section.

Subsec. (a). Pub. L. 115-282, § 123(b)(2), substituted “section 2106” for “section 251” and “section 2121(a)” for “section 271(a)”.

Subsec. (b). Pub. L. 115-282, § 123(b)(2), substituted “section 2106” for “section 251” and “section 2115” for “section 258”.

2010—Subsec. (b). Pub. L. 111-281 inserted “to meet the needs of the service (as noted in specific direction furnished the board by the Secretary under section 258 of this title)” after “qualified for promotion”.

2002—Subsec. (a). Pub. L. 107-295 inserted “and the names of those officers recommended to be advanced to the top of the list of selectees established by the Secretary under section 271(a) of this title” before period at end.

§ 2118. Selection boards; submission of reports

(a) A board convened under section 2106 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 2106 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, including a special selection board convened under section 2120, shall not be disclosed to any individual who is not a member of the board.

(e) If the Secretary makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 88-130, § 1(10)(C), Sept. 24, 1963, 77 Stat. 181, § 261; amended Pub. L. 112-213, title II, § 208(b), Dec. 20, 2012, 126 Stat. 1549; renumbered § 2118 and amended Pub. L. 115-282, title I, §§ 112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240; Pub. L. 116-283, div. G, title LVXXXV [LXXXV], § 8505(a)(16), Jan. 1, 2021, 134 Stat. 4748; Pub. L.

117-263, div. K, title CXII, § 11245(c), Dec. 23, 2022, 136 Stat. 4045.)

Editorial Notes

AMENDMENTS

2022—Subsec. (e). Pub. L. 117-263 added subsec. (e).

2021—Subsec. (d). Pub. L. 116-283 substituted “individual who is” for “person”.

2018—Pub. L. 115-282, § 112(b), renumbered section 261 of this title as this section.

Subsecs. (a), (c). Pub. L. 115-282, § 123(b)(2), substituted “section 2106” for “section 251”.

Subsec. (d). Pub. L. 115-282, § 123(b)(2), substituted “section 2120” for “section 263”.

2012—Subsec. (d). Pub. L. 112-213 substituted “selection board, including a special selection board convened under section 263,” for “selection board”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-213, title II, § 208(e)(1), Dec. 20, 2012, 126 Stat. 1549, provided that: “The amendments made by this section [enacting section 263 of this title and amending this section and section 262 of this title] shall take effect on the date of enactment of this Act [Dec. 20, 2012] and the Secretary may convene a special selection board on or after that date under section 263 [now 2120] of title 14, United States Code, with respect to any error or other action for which such a board may be convened if that error or other action occurred on or after the date that is 1 year before the date of enactment of this Act.”

Executive Documents

DELEGATION OF AUTHORITY

Authority of President under subsecs. (a) and (b) of this section to approve, modify, or disapprove the report of a selection board, and to remove a name of an officer from a selection board report, respectively, delegated to Secretary of Homeland Security by Ex. Ord. No. 14106, § 1(a), (b), Aug. 14, 2023, 88 F.R. 55905, set out in a note under section 2101 of this title.

§ 2119. Failure of selection for promotion

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 2111 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.

(Added Pub. L. 88-130, § 1(10)(C), Sept. 24, 1963, 77 Stat. 181, § 262; amended Pub. L. 112-213, title II, § 208(c), Dec. 20, 2012, 126 Stat. 1549; renumbered § 2119 and amended Pub. L. 115-282, title I, §§ 112(b), 123(b)(2), Dec. 4, 2018, 132 Stat. 4216, 4240.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-282, § 123(b)(2), substituted “section 2111” for “section 256”.

Pub. L. 115-282, § 112(b), renumbered section 262 of this title as this section.

2012—Pub. L. 112-213 amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) describing failure of selection for promotion with an exception made if an officer was not considered because of administrative error.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-213 effective Dec. 20, 2012, with provision for convening a special selection board for certain errors occurring on or after the date that is 1 year before Dec. 20, 2012, see section 208(e)(1) of Pub. L. 112-213, set out as a note under section 2118 of this title.

PLACEMENT OUT OF LINE OF PROMOTION PRIOR TO SEPTEMBER 24, 1963

Pub. L. 88-130, §2(a), (b), Sept. 24, 1963, 77 Stat. 190, provided that:

“(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 [Sept. 24, 1963] 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 [now 2142 through 2145] 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 [Sept. 24, 1963] shall be considered as having once failed of selection for promotion to the next higher grade.”

§ 2120. Special selection boards; correction of errors**(a) OFFICERS NOT CONSIDERED DUE TO ADMINISTRATIVE ERROR.—**

(1) IN GENERAL.—If the Secretary determines that as the result of an administrative error—

(A) an officer or former officer was not considered for selection for promotion by a selection board convened under section 2106; or

(B) the name of an officer or former officer was not placed on an all-fully-qualified-officers list;

the Secretary shall convene a special selection board to determine whether such officer or former officer should be recommended for promotion and such officer or former officer shall not be considered to have failed of selection for promotion prior to the consideration of the special selection board.

(2) EFFECT OF FAILURE TO RECOMMEND FOR PROMOTION.—If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is below the grade of captain and whose name was referred to that board for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—

(1) IN GENERAL.—In the case of an officer or former officer who was eligible for promotion, was considered for selection for promotion by a selection board convened under section 2106, and was not selected for promotion by that board, the Secretary may convene a special selection board to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

(A) an action of the selection board that considered the officer or former officer—

(i) was contrary to law in a matter material to the decision of the board; or

(ii) involved material error of fact or material administrative error; or

(B) the selection board that considered the officer or former officer did not have before it for consideration material information.

(2) EFFECT OF FAILURE TO RECOMMEND FOR PROMOTION.—If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer, whose grade is that of commander or below and whose name was referred to that board for consideration, the officer or former officer shall be considered—

(A) to have failed of selection for promotion with respect to the board that considered the officer or former officer prior to the consideration of the special selection board; and

(B) to incur no additional failure of selection for promotion as a result of the action of the special selection board.

(c) REQUIREMENTS FOR SPECIAL SELECTION BOARDS.—Each special selection board convened under this section shall—

(1) be composed in accordance with section 2107 and the members of the board shall be required to swear the oaths described in section 2109;

(2) consider the record of an applicable officer or former officer as that record, if corrected, would have appeared to the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board and that record shall be compared with a sampling of the records of—

(A) those officers of the same grade who were recommended for promotion by such prior selection board; and

(B) those officers of the same grade who were not recommended for promotion by such prior selection board; and

(3) submit to the Secretary a written report in a manner consistent with sections 2117 and 2118.

(d) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—

(1) IN GENERAL.—An officer or former officer whose name is placed on a promotion list as a result of the recommendation of a special selection board convened under this section shall be appointed, as soon as practicable, to the next higher grade in accordance with the law and policies that would have been applicable to the officer or former officer had the officer or former officer been recommended for promotion by the selection board that should have considered or did consider the officer or former officer prior to the consideration of the special selection board.

(2) EFFECT.—An officer or former officer who is promoted to the next higher grade as a result of the recommendation of a special selection board convened under this section shall have, upon such promotion, the same date of