

the assignment or education, or a qualifying personal or professional circumstance, as determined by the Director;

(B) the Director determines the exclusion from consideration is in the best interest of the Administration; and

(C) the officer has not previously failed selection for promotion to the grade for which the officer requests the exclusion from consideration.

(Pub. L. 107-372, title II, §222, Dec. 19, 2002, 116 Stat. 3085; Pub. L. 116-259, title III, §302, Dec. 23, 2020, 134 Stat. 1171.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2), was in the original “this title”, meaning title II of Pub. L. 107-372, Dec. 19, 2002, 116 Stat. 3082, which is classified principally to this chapter. For complete classification of this title to the Code, see Short Title note set out under section 3001 of this title and Tables.

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853r of this title prior to repeal by Pub. L. 107-372.

##### AMENDMENTS

2020—Pub. L. 116-259 amended section generally. Prior to amendment, section related to convening, duties and recommendations of personnel boards.

### § 3023. Separation of ensigns found not fully qualified

If an officer in the permanent grade of ensign is at any time found not fully qualified, the officer’s commission shall be revoked and the officer shall be separated from the commissioned service.

(Pub. L. 107-372, title II, §223, Dec. 19, 2002, 116 Stat. 3085; Pub. L. 117-263, div. K, title CXVII, §11703(a), Dec. 23, 2022, 136 Stat. 4156.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853e of this title prior to repeal by Pub. L. 107-372.

##### AMENDMENTS

2022—Pub. L. 117-263 amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) relating, respectively, to promotion of ensigns to grade of lieutenant (junior grade) and separation of ensigns found not fully qualified.

#### Executive Documents

##### DELEGATION OF FUNCTIONS

As amended by Pub. L. 117-263, text of section is identical to that of former subsec. (b) of this section. For delegation of functions of President under former subsec. (b) of this section to Secretary of Commerce, see section 1(a) of Ex. Ord. No. 11023, May 28, 1962, 27 F.R. 5131, as amended, set out as a note under section 301 of Title 3, The President.

### § 3024. Promotion by selection to permanent grades above lieutenant (junior grade)

Promotion to fill vacancies in each permanent grade above the grade of lieutenant (junior

grade) shall be made by selection from the next lower grade upon recommendation of the personnel board.

(Pub. L. 107-372, title II, §224, Dec. 19, 2002, 116 Stat. 3085.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853b of this title prior to repeal by Pub. L. 107-372.

### § 3025. Length of service for promotion purposes

#### (a) General rule

Each officer shall be assumed to have, for promotion purposes, at least the same length of service as any other officer below that officer on the lineal list.

#### (b) Exception

Notwithstanding subsection (a), an officer who has lost numbers shall be assumed to have, for promotion purposes, no greater service than the officer next above such officer in such officer’s new position on the lineal list.

(Pub. L. 107-372, title II, §225, Dec. 19, 2002, 116 Stat. 3085.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853f of this title prior to repeal by Pub. L. 107-372.

### § 3026. Appointments and promotions to permanent grades

Appointments in and promotions to all permanent grades shall be made by the President.

(Pub. L. 107-372, title II, §226, Dec. 19, 2002, 116 Stat. 3085; Pub. L. 112-166, §2(gg)(1), Aug. 10, 2012, 126 Stat. 1290.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 853i(a) of this title prior to repeal by Pub. L. 107-372.

##### AMENDMENTS

2012—Pub. L. 112-166 struck out “, by and with the advice and consent of the Senate” before period at end.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112-166, set out as a note under section 113 of Title 6, Domestic Security.

### § 3027. General qualification of officers for promotion to higher permanent grade

No officer may be promoted to a higher permanent grade on the active list until the officer has passed a satisfactory mental and physical examination in accordance with regulations prescribed by the Secretary.