

mined in accordance with a running mate system, in which event the same date of rank shall be assigned as that assigned to the officer's running mate. A Reserve officer so promoted shall be allowed the pay and allowances of the higher grade for duty performed from the date of the officer's appointment thereto.

(b) Notwithstanding any other provision of law and subject to subsection (c), if promotion of an inactive duty promotion list officer to the grade of rear admiral or rear admiral (lower half) is determined in accordance with a running mate system, a reserve officer, if acceptable to the President and the Senate, shall be promoted to the next higher grade no later than the date the officer's running mate is promoted.

(c) For the purposes of this section, the date of appointment shall be that date when promotion authority is exercised by the Secretary. However, the Secretary may adjust the date of appointment—

(1) if a delay in the finding required under section 734(a) of this title is beyond the control of the officer and the officer is otherwise qualified for promotion; or

(2) for any other reason that equity requires.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1012; amended Pub. L. 97-417, §2(14), Jan. 4, 1983, 96 Stat. 2086; Pub. L. 99-145, title V, §514(c)(1), Nov. 8, 1985, 99 Stat. 629; Pub. L. 101-225, title II, §203(4), Dec. 12, 1989, 103 Stat. 1911; Pub. L. 107-295, title IV, §411(c), Nov. 25, 2002, 116 Stat. 2118; Pub. L. 108-293, title II, §220(b), (c), Aug. 9, 2004, 118 Stat. 1039.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 784 of this title prior to the complete revision of this chapter by Pub. L. 96-322.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-293, §220(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "Notwithstanding any other law, when the running mate of a reserve officer serving in the grade of rear admiral (lower half) is promoted to the grade of rear admiral, the reserve officer shall also be promoted to that grade."

Subsec. (c). Pub. L. 108-293, §220(c), struck out "of subsection (a)" after "For the purposes".

2002—Subsec. (a). Pub. L. 107-295 inserted "the date of rank shall be the date of appointment in that grade, unless the promotion was determined in accordance with a running mate system, in which event" after "subchapter".

1989—Subsec. (c). Pub. L. 101-225 inserted provision authorizing Secretary to adjust date of appointment.

1985—Subsec. (b). Pub. L. 99-145 substituted "rear admiral (lower half)" for "commodore".

1983—Subsec. (b). Pub. L. 97-417 substituted provision that, notwithstanding any other law, when the running mate of a reserve officer serving in the grade of commodore is promoted to the grade of rear admiral, the reserve officer shall also be promoted to that grade, for provision that, notwithstanding any other law and when a Reserve officer's running mate was so entitled, a Reserve officer in the grade of rear admiral was entitled to the pay and allowances of the upper half for duty performed.

§ 737. Type of promotion; temporary

Notwithstanding any other law, if a Reserve officer is promoted when the officer's running mate is promoted and the promotion of the run-

ning mate is on a temporary basis, the promotion of the Reserve officer is also on a temporary basis. If subsequently the running mate is reverted to a lower grade, other than for reasons of discipline, incompetence, or at the running mate's request, the Reserve officer shall likewise revert to the same lower grade with corresponding precedence.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1012.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 790 of this title prior to the complete revision of this chapter by Pub. L. 96-322.

§ 738. Effect of removal by the President or failure of consent of the Senate

(a) The President may, for cause, remove the name of any officer from a list of selectees established under section 729 of this title.

(b) If the Senate, where required, does not consent to the appointment of an officer whose name is on a list of selectees established under section 729 of this title, that officer's name shall be removed from the list.

(c) An officer whose name is removed from a list of selectees under subsection (a) or (b) continues to be eligible for consideration for promotion. If selected for promotion by the next selection board and promoted, that officer shall be assigned the date of rank and precedence that would have been assigned if the officer's name had not been previously removed. However, if the officer is not selected by the next selection board, or if the officer's name is again removed from the list of selectees, the officer shall be considered for all purposes as having twice failed of selection for promotion.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 788 of this title prior to the complete revision of this chapter by Pub. L. 96-322.

DELEGATION OF FUNCTIONS

For assignment of functions of President under subsec. (a) of this section, see section 2(d) of Ex. Ord. No. 13358, Sept. 28, 2004, 69 F.R. 58797, set out as a note under section 301 of Title 3, The President.

§ 739. Failure of selection for promotion

(a) A Reserve officer, other than one serving in the grade of captain, who is, or is senior to, the junior officer in the promotion zone established for the officer's grade, fails of selection if not selected for promotion by the selection board that considered the officer, or if having been selected for promotion by the board, the officer's name is thereafter removed from the report of the board by the President.

(b) A Reserve officer is not considered to have failed of selection if the officer was not considered by a selection board because of administrative error. If that officer is selected by the next appropriate selection board after the error is discovered, and is promoted, the same date of rank and precedence shall be assigned that would have been assigned if the officer had been

recommended for promotion by the selection board that originally would have considered the officer but for the error.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 796 of this title prior to the complete revision of this chapter by Pub. L. 96-322.

§ 740. Failure of selection and removal from an active status

(a) The Secretary—

(1) may remove from an active status a Reserve officer who has twice failed of selection to the next higher grade; and

(2) shall remove from an active status a Reserve officer serving in the grade of captain who has completed thirty years of total commissioned service and whose name is not carried on an approved list of selectees for promotion to the grade of rear admiral (lower half).

(b) A Reserve officer who has twice failed of selection to the next higher grade and who is not removed from an active status under subsection (a)(1) of this section shall be retained for the period prescribed by the Secretary.

(c) Subject to section 12646 of title 10, a Reserve officer who is removed from an active status under subsection (a) of this section shall be given an opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary, be transferred to the inactive status list or discharged as follows:

(1) if removed from an active status under subsection (a)(1) of this section, on June 30 next following the approval date of the board report by virtue of which the officer's second failure of selection occurs; or

(2) if removed from an active status under subsection (a)(2) of this section, on June 30 next following the date on which the officer completes thirty years of total commissioned service as computed under this section.

(d) For the purpose of this section, the total commissioned service of an officer who has served continuously in the Reserve following appointment in the grade of ensign shall be computed from the date on which that appointment was accepted. A Reserve officer initially appointed in a grade above ensign is considered to have the actual total commissioned service performed in a grade above commissioned warrant officer or the same total commissioned service as an officer of the Regular Coast Guard who has served continuously from an original appointment as ensign, who has not lost numbers or precedence, and who is, or was, junior to the Reserve officer, whichever is greater.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1013; amended Pub. L. 97-417, §2(15), Jan. 4, 1983, 96 Stat. 2086; Pub. L. 99-145, title V, §514(c)(1), Nov. 8, 1985, 99 Stat. 629; Pub. L. 103-337, div. A, title XVI, §1677(b)(5), Oct. 5, 1994, 108 Stat. 3020.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 787 of this title prior to the complete revision of this chapter by Pub. L. 96-322.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337 substituted “section 12646 of title 10” for “section 1006 of title 10”.

1985—Subsec. (a)(2). Pub. L. 99-145 substituted “rear admiral (lower half)” for “commodore”.

1983—Subsec. (a)(2). Pub. L. 97-417 substituted “commodore” for “rear admiral”.

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.

§ 741. Retention boards; removal from an active status to provide a flow of promotion

(a) Notwithstanding any other provision of this title, whenever the Secretary determines that it is necessary to reduce the number of Reserve officers in an active status in any grade to provide a steady flow of promotion, or that there is an excessive number of Reserve officers in an active status in any grade, the Secretary may appoint and convene a retention board to consider all of the Reserve officers in that grade in an active status who have 18 years or more of service for retirement, except those officers who—

(1) are on extended active duty;

(2) are on a list of selectees for promotion;

(3) will complete 30 years total commissioned service by June 30th following the date that the retention board is convened; or

(4) have reached age 59 by the date on which the retention board is convened.

The retention board shall select and recommend a specified number of the officers under consideration for retention in an active status.

(b) This board shall—

(1) to the extent practicable, consist of at least 50 per centum Reserve officers;

(2) consist only of officers who are senior in rank to any officers being considered by that board; and

(3) to the extent practicable, consist of officers who have not served on the last previous retention board which considered officers of the same grade.

(c) Subject to section 12646 of title 10, a Reserve officer who is not recommended for retention in an active status under this section shall be given an opportunity to transfer to the Retired Reserve, if qualified, but unless so transferred shall, in the discretion of the Secretary, be transferred to the inactive status list or discharged on June 30 next following the date on which the report of the retention board is approved.

(d) The provisions of section 260 of this title shall, to the extent that they are not inconsistent with this subchapter, apply to boards convened under this section.

(Added Pub. L. 96-322, §1, Aug. 4, 1980, 94 Stat. 1014; amended Pub. L. 101-225, title II, §203(5), Dec. 12, 1989, 103 Stat. 1911; Pub. L. 103-206, title