

Service credit with-  
out deposit.

Annuity in event no  
deposit is made.

following: "Provided, That failure to make such deposit shall not deprive the employee of credit for any past service rendered prior to August 1, 1920, to which he or she would otherwise be entitled: *And provided further*, That, notwithstanding the failure of an employee to make such deposit, credit shall be allowed for the service rendered, but the annuity of such employee shall be reduced by the amount such deposit would purchase if made, unless the employee shall elect to eliminate such service entirely from credit under this Act".

Approved, June 23, 1938.

[CHAPTER 597]

AN ACT

Limiting the hours of labor of certain officers and seamen on certain vessels navigating the Great Lakes and adjacent waters.

June 23, 1938  
[S. 4132]  
[Public, No. 702]

Great Lakes, etc.  
Hours of labor  
on certain vessels  
limited.  
49 Stat. 1933.  
46 U. S. C., Supp.  
III, § 673.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 2 of the Act of March 4, 1915, as amended (U. S. C., 1934 edition, Supp. III, title 46, sec. 673), is amended by adding after the first sentence thereof the following: "No licensed officer or seaman in the deck or engine department of any tug documented under the laws of the United States (except boats or vessels used exclusively for fishing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters between Gary, Indiana; Duluth, Minnesota; Niagara Falls, New York; and Ogdensburg, New York, shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and/or life or property.

Approved, June 23, 1938.

[CHAPTER 598]

AN ACT

To regulate the distribution, promotion, and retirement of officers of the line of the Navy, and for other purposes.

June 23, 1938  
[H. R. 9997]  
[Public, No. 703]

Navy.  
Merit system for  
promotion by selec-  
tion.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there is hereby established a merit system for promotion by selection in the line of the Navy.

AUTHORIZED NUMBER OF OFFICERS OF THE LINE

Authorized number  
of officers of the line.

SEC. 2. The total authorized number of commissioned officers of the active list of the line of the Navy, exclusive of commissioned warrant officers, shall be equal to 5½ per centum of the total authorized enlisted strength of the active list, exclusive of the Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps.

DISTRIBUTION OF OFFICERS OF THE LINE

Distribution in  
grades.

SEC. 3. (a) The total number of commissioned line officers on the active list at any one time, exclusive of commissioned warrant officers, shall be distributed in the proportion of one in the grade of rear admiral to four in the grade of captain, to eight in the grade of commander, to fifteen in the grade of lieutenant commander, to thirty in the grade of lieutenant, to forty-two in the grades of lieutenant (junior grade) and ensign, inclusive: *Provided*, That except in time of war there shall be not more than seventy rear admirals on the active list of the line of the Navy, exclusive of additional numbers in grade.

Proviso.  
Limitation.

(b) To determine the authorized number of officers in the various grades of the line as provided in subsection (a) of this section, computations shall be made by the Secretary of the Navy at least once each year, and at such times as he may direct, and the resulting numbers in the various grades, as so computed, shall be held and considered for all purposes as the authorized number of officers in such various grades and shall not be varied between such computations: *Provided*, That no officer shall be reduced in rank or pay or separated from the active list of the Navy as a result of any computation made to determine the authorized number of officers in the various grades of the line: *Provided further*, That the number of officers allowed in any grade as a result of any such computation may be temporarily increased to include any such officers as may be promoted to that grade by reason of being recommended by a selection board as fitted for promotion as hereinafter provided or as may be retained in that grade by section 12 (j) of this Act; and the total number so carried in excess in the several grades shall be applied as a reduction to the numbers allowed to the grades of lieutenant and lieutenant (junior grade) and ensign, in the proportions of one-third of such total excess number in the grade of lieutenant and two-thirds in the combined grades of lieutenant (junior grade) and ensign: *And provided further*, That lieutenants (junior grade) on the promotion list who would under existing law be promoted to the grade of lieutenant prior to June 1, 1939, may be so promoted, without regard to the number of officers allowed in that grade by the computation prescribed in this subsection, on the dates on which under existing law they would be entitled to such promotion.

(c) For the purpose of determining the authorized number of officers in any grade or rank of the line, there shall be excluded from consideration those officers carried by law as additional numbers: *Provided*, That officers who, on the date of approval of this Act, are additional numbers in grade by reason of the operation of section 3 of the Act of March 3, 1931 (46 Stat. 1483), as amended, are hereby changed to regular numbers on the Navy list; and no further such additional numbers shall be created.

(d) Whenever a final fraction occurs in computing the authorized number of officers of any grade, the nearest whole number shall be regarded as the authorized number.

PROMOTION BY SELECTION

SEC. 4. Subject to the provisions of section 1508 of the Revised Statutes, all promotions to grades above that of lieutenant (junior grade) of the line of the Navy, including the promotion of those officers who are, or may be, carried on the Navy list as additional numbers in grade, shall be only upon the recommendation of a board of naval officers as herein prescribed: *Provided*, That nothing herein contained shall be construed to interfere with the promotion of officers on promotion lists at the date of approval of this Act except as hereinafter provided in section 11 (b).

SELECTION BOARDS

SEC. 5. (a) The board for the recommendation of line officers for promotion to the grades of rear admiral, captain, and commander shall consist of nine rear admirals on the active list of the line of the Navy, not restricted by law to the performance of shore duty only, and shall be appointed by the Secretary of the Navy and convened at least once each year and at such times as the Secretary of the Navy may direct.

Computations for determining number.

*Proviso.* Restriction on reductions in rank, pay, etc.

Temporary increases.

Application of number carried in excess in grades.

Lieutenants (junior grade) on promotion list.

Exclusion of officers carried as additional numbers in computations.

*Proviso.* Officers now carried as additional numbers changed to regular numbers.

Restriction on further additional numbers.

Fractions.

Promotion by selection. R. S. § 1508. 34 U. S. C. § 345.

*Proviso.* Officers now on promotion lists.

Post, p. 948.

Selection boards. Appointment, meetings, composition, etc.

(b) The board for the recommendation of line officers for promotion to the grades of lieutenant commander and lieutenant shall consist of nine officers on the active list of the line of the Navy above the rank of commander, not restricted by law to the performance of shore duty only, and shall be appointed by the Secretary of the Navy and convened at least once each year and at such times as the Secretary of the Navy may direct.

(c) No officer may be a member of two successive selection boards for the consideration of officers for promotion to the same grades.

#### OATH FOR MEMBERS OF SELECTION BOARDS

Oath for members of selection boards.

SEC. 6. Each member of a board provided for in section 5 of this Act 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 naval service, perform the duties imposed upon him as herein provided.

#### ELIGIBILITY OF OFFICERS FOR CONSIDERATION BY SELECTION BOARDS

Eligibility of officers for consideration by selection boards.

SEC. 7. (a) No captain, commander, lieutenant commander, or lieutenant who shall have had less than four years' service in the grade in which he is serving and on the promotion list for that grade, on June 30 of the fiscal year of the convening of a board provided for by this Act, or who is not physically qualified, shall be eligible for consideration by that board.

(b) No lieutenant (junior grade) who shall have had less than three years' service in the grade of lieutenant (junior grade) on June 30 of the fiscal year of the convening of a board provided for by this Act, or who is not physically qualified, shall be eligible for consideration by that board.

#### INFORMATION TO BE FURNISHED SELECTION BOARDS

Information to be furnished selection boards.

SEC. 8. (a) The Secretary of the Navy shall furnish the appropriate selection board with (1) an estimate of the number of vacancies which will occur before the end of the next succeeding fiscal year, in each grade or grades for which the board will recommend officers for promotion, in excess of the number of officers then on the promotion list; (2) the names of all officers eligible for consideration for promotion to each grade or grades to which the board will recommend officers for promotion; and (3) the records other than medical of all such officers; (4) a statement, as directed by the President, as to the percentage of the officers adjudged fitted for promotion as hereinafter provided, which should be continued on the active list to meet the immediate requirements of the Navy: *Provided*, That, after one year from the date of approval of this Act, a list of names furnished by the Secretary of the Navy of officers eligible for consideration for promotion to the grade of lieutenant commander or to the grade of lieutenant, exclusive of those previously considered, shall in no case contain a number of names greater than double the number of estimated vacancies certified for the grade concerned.

*Proviso.*  
List for grades of lieutenant commander or lieutenant.

(b) Any officer eligible for consideration for selection shall have the right to forward through official channels at any time not later than ten days after the convening of said board a written communication inviting attention to any matter of record in the Navy Department concerning himself which he deems important in the consideration of his case: *Provided*, That such communication shall not contain any reflection upon the character, conduct, or motives of or criticism of any officer.

Addressing communications with reference to matters of record.

*Proviso.*  
Reflection upon character, etc., prohibited.

## DUTIES OF SELECTION BOARDS

SEC. 9. (a) From among those officers who are eligible for consideration for promotion and whose names are furnished the board by the Secretary of the Navy, each board shall recommend for promotion those officers whom it considers best fitted for promotion, in number not exceeding the number of estimated vacancies certified to the board by the Secretary of the Navy as provided in section 8 of this Act: *Provided*, That in each grade all officers not selected as best fitted for promotion but senior in lineal rank to the junior officer selected as best fitted by each board shall be considered as having failed of selection as best fitted: *Provided further*, That such status of having failed of selection as best fitted shall not be considered as prejudicial to an officer with respect to his qualifications, his fitness for the naval service, or his eligibility for selection by the next succeeding selection board.

(b) In addition to the selection of officers best fitted for promotion as hitherto provided in this section, each selection board shall, from among those officers who are eligible and who have once failed of selection as best fitted by a preceding board, except officers in the grades of captain and lieutenant (junior grade), designate those officers whom the board adjudges fitted for promotion, and from among such officers shall recommend for retention on the active list a number equal to the percentage thereof furnished to the board by the Secretary of the Navy as provided in section 8 of this Act.

(c) The selection board shall also report the names of any officers among those eligible for consideration and of less than twenty-one years' service whose reports and records in its opinion indicate their unsatisfactory performance of duty in their present grades and in its opinion indicate that they would not satisfactorily perform the duties of a higher grade.

(d) The recommendation of the board in the case of officers who are now or may hereafter be assigned to aeronautical-engineering duty only shall be based upon their comparative fitness among themselves for the technical duties prescribed for them by law: *Provided*, That they shall not succeed to command on shore.

(e) The recommendation of the board in the case of officers who are now or may hereafter be assigned to engineering duty only shall be based upon their comparative fitness for the duties prescribed for them by law. Upon promotion they shall be carried as additional numbers in grade.

(f) No officer shall be selected as best fitted for promotion or adjudged fitted for promotion unless he shall have received the recommendation of not less than six members of the board.

## REPORTS OF SELECTION BOARDS

SEC. 10. (a) The report of the board shall be in writing, signed by all of the members thereof, and shall certify that the board has carefully considered the case of every officer whose name was furnished to the board by the Secretary of the Navy, as provided in section 8 of this Act, and that, in the opinion of at least six of the members, the officers therein recommended are either selected as the best fitted or are adjudged fitted, as the case may be, to assume the duties of the next higher grade, except that the recommendation of the board in the case of officers who are now or may hereafter be assigned to engineering duty only, or to aeronautical-engineering duty only, shall be based upon their comparative fitness as prescribed in section 9 of this Act.

Duties of selection boards.

Recommendations for promotion.

Number; restriction.

*Proviso.*  
Failure of selection as best fitted.

Not deemed prejudicial with respect to qualifications, etc.

Officers adjudged fitted for promotion, who once failed of selection.

Officers adjudged unfitted for promotion.

Aeronautical-engineering duty only.

*Proviso.*  
Not to command on shore.

Engineering duty only.

Selection as best fitted or fitted for promotion, number of recommendations.

Reports of selection boards.

Final action by the President.  
*Provido.*  
 Filling of vacancies caused by disapproval.

(b) The report of the board shall be submitted to the President for approval or disapproval: *Provided*, That in case any officer or officers recommended by the board as best fitted for promotion are not acceptable to the President, the board shall be informed of the name of such officer or officers and shall recommend a number of officers as best fitted for promotion equal to the number of those found not acceptable to the President and, if necessary, the board shall be reconvened for this purpose.

Promotion of officers.

PROMOTION OF OFFICERS

Promotion list.

SEC. 11. (a) The names of officers designated by a board as best fitted for promotion, and the names of officers adjudged by a board as fitted for promotion, and approved by the President, shall be placed upon a promotion list and promotions to fill vacancies shall be made from officers of the next lower grade whose names appear on the promotion list as having been designated as best fitted for promotion: *Provided*, That officers whose names appear on the promotion list as having been adjudged fitted for promotion shall be promoted at the same time that the officers next senior to them on the list of those designated as best fitted for promotion are promoted to the next higher grade: *Provided further*, That officers so promoted pursuant to the recommendations of the same report shall take rank with one another in accordance with their seniority in the grade from which promoted, and officers recommended in an earlier report shall, when promoted, have precedence of officers recommended in a later report: *And provided further*, That priority in assignment to duty in any grade shall be accorded, irrespective of seniority in grade, to those officers who have been selected as best fitted for promotion to that grade.

*Providos.*  
 Promotion of those adjudged fitted and those next senior designated as best fitted.

Rank of officers so promoted.

(b) The Secretary of the Navy may, in his discretion, with the approval of the President, remove the name of any officer from the promotion list and submit it to the next ensuing selection board for consideration and recommendation: *Provided*, That the next ensuing selection board may select the officer concerned as best fitted for promotion or adjudge him fitted for promotion, and thereupon, with the approval of the President, the name of such officer shall be replaced on the promotion list, without prejudice by reason of its having been temporarily removed therefrom, and when promoted such officer shall take rank in accordance with his seniority on the promotion list at the same time his name was removed therefrom: *Provided further*, That if such officer is neither so selected as best fitted nor adjudged fitted by such next ensuing selection board he will be placed on the retired list on June 30 of the then current fiscal year: *And provided further*, That if the name of any officer selected as best fitted for promotion be removed from a promotion list of officers in any grade and submitted to another board as provided in this subsection, the estimate of the number of vacancies furnished said board by the Secretary of the Navy shall be increased accordingly.

Priority in assignment to duty.

Removal of name from promotion list and submission to ensuing selection board.  
*Providos.*  
 Restoration; status.

Retirement if failing selection.

Increase in estimate.

Sea service requirements.

*Providos.*  
 Exceptional cases.

(c) No officer shall be promoted unless he has had not less than two years' actual sea service in the grade in which serving and on the promotion list for that grade: *Provided*, That in exceptional cases where officers are specifically designated, during war or national emergency declared by the President, by the Secretary of the Navy as performing, or as having performed, such highly important duties on shore that their services cannot be or could not have been spared from such assignment without serious prejudice to the national interests, the qualification of sea service in the cases of those officers so specifically designated shall not apply while the United States is at war, or during a national emergency declared by the President, or

within two and one-half years subsequent to the ending of such war or national emergency: *Provided further*, That the qualification of sea service shall not apply to officers restricted by law to the performance of engineering duty only or to the performance of aeronautical-engineering duty only.

Engineering, etc.,  
duty excepted.

#### RETIREMENT OF OFFICERS

SEC. 12. (a) For the purpose of the administration of this section, all officers on the active list now in the status of having failed of selection as best fitted, as defined in section 9 (a) of this Act, one or more times shall be regarded as having failed of selection as best fitted once only.

Retirement of officers.

Officers now in status of having failed of selection as best fitted one or more times.

(b) Officers, except lieutenant commanders, lieutenants, and lieutenants (junior grade), whose names are not placed upon the promotion list, shall be placed on the retired list on June 30 of the fiscal year in which they fail of selection as best fitted the second time in successive years, with retired pay at the rate of 2½ per centum of their active-duty pay at the time of retirement multiplied by the number of years of service for which entitled to credit in the computation of their pay on the active list, not to exceed a total of 75 per centum of said active-duty pay: *Provided*, That a fractional year of six months or more shall be considered a full year in computing the number of years service by which the rate of 2½ per centum is multiplied.

Designated officers twice failing as best fitted; retirement.

Retired pay.

*Proviso.*  
Fractional year.

(c) Lieutenant commanders, lieutenants, and lieutenants (junior grade) whose names are not placed upon the promotion list shall be honorably discharged from the Navy with two years' pay if lieutenant commanders or lieutenants or with one year's pay if lieutenants (junior grade) on June 30 of the fiscal year in which they fail of selection as best fitted the second time: *Provided*, That such lieutenant commanders, lieutenants, and lieutenants (junior grade) who were appointed as ensigns in the permanent line of the Navy, in accordance with the provisions of the Act of March 3, 1901, as amended, shall have the option of reverting to such permanent warrant or permanent commissioned-warrant status in the lineal position to which their seniority would have entitled them had their service subsequent to such appointment been rendered in the status to which they revert.

Honorable discharge of lieutenant commanders, etc., twice failing as best fitted.

*Proviso.*  
Optional provision.

31 Stat. 1129.  
34 U. S. C. § 334.

(d) Captains, commanders, and lieutenant commanders promoted to those grades by reason of adjudgment as fitted for promotion, and recommended by the report of a selection board, as approved by the President, for retention on the active list, may be continued on the active list of the line of the Navy until they shall have completed thirty, twenty-eight, and twenty-six years, respectively, of commissioned service (with which commissioned service shall be included service as a commissioned warrant officer, active commissioned service in the Naval Reserve Force, service as a midshipman after graduation from the Naval Academy, and service under a temporary commission in the Navy): *Provided*, That during such continuance on the active list they may become eligible for selection, subject to the provisions of section 7 (a) of this Act, as best fitted for promotion, and may be promoted consequent to such selection, but they shall not be eligible for consideration by any selection board for adjudgment as fitted for promotion: *Provided further*, That if such officers are not so selected as best fitted and if they twice fail of selection as best fitted they shall thereafter be ineligible for promotion: *Provided further*, That, if not so selected as best fitted, upon the completion of the periods of commissioned service stated in this subsection, they shall be placed upon the retired list on June 30 of the fiscal year in which they completed such commissioned service with retired pay computed as prescribed in subsection (b) of this section.

Certain officers promoted by adjudgment as fitted for promotion, continuance on active list.

Service included.

*Provisos.*  
Eligibility of, for further promotion.

Ineligibility if twice failing as best fitted.

If not selected as best fitted.

Voluntary retirement of line officers after 20 years' service.

*Proviso.*  
Existing provision repealed.  
46 Stat. 1440.  
34 U. S. C. § 388a.

Retirement of certain officers promoted as fitted but not recommended for retention on active list.

*Proviso.*  
Date of retirement.

Officers reported as unfitted for promotion; date of discharge.

*Proviso.*  
Pay on discharge.

Retirement pay, officers on promotion list, with physical disability contracted in line of duty.

Failing professional examination, pay on discharge.

Retirement of present officers on active list.

*Proviso.*  
Failing twice of selection as best fitted.

Designated officers now additional numbers.

46 Stat. 1483.  
34 U. S. C. § 286a.

*Proviso.*  
Advancement of lieutenants with specified service.

(e) When officers of the line of the Navy, other than commissioned warrant officers, have completed twenty years' commissioned service, they may at any time thereafter, upon their own application, in the discretion of the President, be retired from active service and placed upon the retired list with retired pay computed as provided in subsection (b) of this section: *Provided*, That the Act of February 28, 1931 (46 Stat. 1431), insofar as the provisions thereof are embodied in section 388 (a) of title 34 of the United States code, is hereby repealed.

(f) Captains, commanders, and lieutenant commanders promoted to those grades by reason of adjudgment as fitted for promotion but not recommended by the report of a selection board, as approved by the President, for retention on the active list shall be retired on the date they are so promoted with the retired pay of the grade from which so promoted: *Provided*, That such officers shall not be retired earlier than six months after the date of approval by the President of the report of the selection board in which they were adjudged fitted for promotion.

(g) Officers named in a report of a selection board, as approved by the President, in accordance with the provisions of section 9 (c), shall be honorably discharged on June 30 of the fiscal year in which so named: *Provided*, That such officers shall receive on discharge not more than one year's pay if lieutenants (junior grade), or two years' pay if of a higher grade.

(h) Officers on a promotion list who fail to pass the required physical examination for promotion and who are found incapacitated for service by reason of physical disability contracted in the line of duty shall be retired in the rank for which they were selected, or adjudged fitted, with retired pay at the rate of 75 per centum of the active-duty pay of the grade to which selected or adjudged fitted.

(i) Officers who fail on the professional examination for promotion shall be honorably discharged with one year's pay if of less than twenty years' service; if of over twenty years' service they shall be retired on June 30 of the fiscal year in which they so fail with retired pay computed as in section 12 (b) of this Act.

(j) No officer on the active list of the Navy on the date of approval of this Act shall be retired in his present grade by reason of the provisions of subsection (b) of this section or in the next higher grade by reason of the provisions of subsection (f) of this section sooner than he would have been retired by reason of service ineligibility for consideration for selection under provisions of law in effect on the date of approval of this Act: *Provided*, That when any such officer shall have twice failed of selection as best fitted he shall become ineligible for consideration by subsequent selection boards.

(k) Officers now in the grades of lieutenant commander and lieutenant, and lieutenants (junior grade) now additional numbers on the active list of the Navy by reason of the operation of the Act of March 3, 1931 (46 Stat. 1483), as amended, shall, at their own request, in lieu of the honorable discharge provided in subsection (c) of this section, be continued on the active list of the Navy until the completion of the period of service designated in the said Act, as amended, and shall then be retired as provided therein, but when they have twice failed of selection as best fitted they shall become ineligible for consideration by subsequent selection boards for promotion to lieutenant: *Provided*, That lieutenants who served in the Navy or Naval Reserve Force prior to November 12, 1918, and who shall have completed not less than twenty-one years of service shall on retirement as provided in this subsection be advanced to the grade of lieutenant commander on the retired list with the retired pay of that grade.

(1) All line officers of the Navy who have been specially commended for their performance of duty in actual combat by the head of the executive department under whose jurisdiction such duty was performed, when retired, except as provided in section 12 (h) of this Act, shall, upon retirement, be placed upon the retired list with the rank of the next higher grade and with three-fourths of the active-duty pay of the grade in which serving at the time of retirement.

Officers specially commended for combat duty.

SEC. 13. (a) Should it be found in time of peace at the end of any fiscal year that the average number of vacancies in the grade of rear admiral for the fiscal years subsequent to the passage of this Act has been less than eight, the Secretary of the Navy shall convene a board consisting of the Chief of Naval Operations, the Commander in Chief, United States Fleet, and the Commander, Battle Force, to recommend for retirement a sufficient number of rear admirals to cause the aforesaid average number of vacancies.

Rear admirals. Maintenance of average annual number of vacancies.

(b) The report of the board shall be submitted to the President for approval or disapproval; if the President shall disapprove the recommendations of the board in whole or in part, the board shall then recommend additional officers for retirement equal in number to those disapproved by the President.

Report to President.

(c) Officers so recommended for retirement and approved by the President shall be placed upon the retired list on June 30 of the fiscal year of the approval of the report of the board, with retired pay at the rate of 75 per centum of their active-duty pay.

Retirement of recommended, etc., officers.

#### PROBATIONARY APPOINTMENTS OF OFFICERS

SEC. 14. (a) The Secretary of the Navy, under such regulations as he may prescribe, may hereafter revoke the commission of any officer on the active list, initially commissioned after the date of this Act, who, at the date of said revocation has had less than seven years of continuous service as a commissioned officer of the line of the Navy or of the Marine Corps, and each officer whose commission is so revoked shall be discharged from the naval service: *Provided*, That the selection boards considering lieutenant (junior grade) shall report the name of officers of that grade whom they consider lacking in aptitude for the naval service, and the commissions of officers so reported shall be revoked: *Provided further*, That no officer discharged by reason of revocation of commission within a period of probation shall receive advanced pay or allowances upon such discharge.

Probationary appointments.

Revocation of commission; discharge.

*Proviso.* Officers lacking in aptitude to be reported.

No advanced pay, etc.

(b) If there be in any year an excess number of graduates of the Naval Academy available for commission in the line of the Navy over that number which in the opinion of the Secretary of the Navy, will satisfactorily meet the needs of the Navy for commissioned officers, such excess number of graduates shall be given a certificate of graduation and an honorable discharge with one year's pay if they are designated by the academic board of the Naval Academy as having an aptitude for the naval service: *Provided*, That only those midshipmen who are designated by the academic board of the Naval Academy as having an aptitude for the naval service shall be initially commissioned, all other graduates to be given a certificate of graduation and an honorable discharge without pay.

Naval Academy surplus graduates, certificates of graduation and an honorable discharge.

*Proviso.* Aptitude requirement for commission.

#### MARINE CORPS

Marine Corps.

SEC. 15. (a) The rank among themselves of officers of the Marine Corps appointed from sources other than the Naval Academy with the same date of commission shall be determined on promotion to first lieutenant by boards of officers under such rules as may be

Determination of rank, officers appointed from sources other than Naval Academy.

prescribed by the Secretary of the Navy, and the recommendations of such boards shall be final when approved by him.

Distribution, promotion, retirement, etc.  
48 Stat. 811.  
34 U. S. C. § 626a.

*Proviso.*  
Composition except in time of war.

Staff eligible list.  
48 Stat. 812.  
34 U. S. C. § 667f.

Consideration not to be given by any subsequent board; exception.

*Proviso.*  
Removal of name and submission to next board.

Authorized enlisted strength, active list.

General officer grade.  
Maintenance of annual average number of vacancies.

Provisions inapplicable to brigadier generals.  
Officers twice failing of selection as best fitted; status.

(b) Section 1 of the Act of Congress approved May 29, 1934 (48 Stat. 811), is hereby amended to read as follows: "That hereafter commissioned officers of the Marine Corps shall be authorized in number in the same proportion to authorized enlisted strength and shall be distributed in grades, promoted, retired, and discharged in like manner and with the same relative conditions in all respects as provided for commissioned officers of the line of the Navy, by existing law, or by laws hereafter enacted, except as may be necessary to adapt the said provisions to the Marine Corps, or as herein otherwise provided: *Provided*, That except in time of war there shall be not more than fourteen general officers on the active list of the Marine Corps, exclusive of the heads of staff departments and additional numbers in grade.

(c) Section 11 of the Act of Congress approved May 29, 1934 (48 Stat. 812), is hereby amended by striking out the words "on a promotion list" and inserting in lieu thereof the words "selected as best fitted for promotion", and by striking out the word "not" and inserting in lieu thereof the words "removed from and not replaced", so that the said section shall read as follows:

"SEC. 11. That an officer whose name is placed on an eligible list for appointment as head of a staff department shall not be again considered for that office by any subsequent selection board, except as otherwise provided in this section, and shall, in respect to involuntary retirement, be in the same status as if selected as best fitted for promotion: *Provided*, That the Secretary of the Navy may, in his discretion, with the approval of the President, remove his name from such list and submit it to the next ensuing selection board for consideration and recommendation. If recommended for appointment by said board and approved by the President, the name of such officer shall be replaced on the eligible list from which removed without prejudice by reason of its having been temporarily removed therefrom. If not recommended by said board, such officer shall be subject to involuntary retirement under the same conditions as provided for in the case of an officer whose name is removed from and not replaced on a promotion list."

(d) Hereafter the authorized enlisted strength of the active list of the Marine Corps shall be at all times 20 per centum of the total authorized enlisted strength of the active list of the Navy, exclusive of the Hospital Corps, prisoners undergoing sentence of discharge, enlisted men detailed for duty with the Naval Militia, and the Flying Corps.

(e) Should it be found in time of peace at the end of any fiscal year that the average number of vacancies in the grade of general officer of the line of the Marine Corps for the fiscal years subsequent to the passage of this Act has been less than two, the Secretary of the Navy shall direct the board provided for in section 13 of this Act to recommend for retirement a sufficient number of general officers of the line to cause the aforesaid average number of vacancies, the approval by the President of the recommendations and the retirement of the general officers to be effected under the same conditions as provided for in that section for rear admirals of the Navy.

(f) The provisions of this Act relating to selection boards designating officers whom they adjudge fitted for promotion shall not apply to brigadier generals of the Marine Corps and when such officers twice fail of selection as best fitted, as defined in section 9 (a) of this Act, they shall be placed on the retired list on June 30 of the fiscal year in which they fail of selection as best fitted the second

time, with retired pay at the rate of 75 per centum of their active-duty pay.

(g) Whenever there are insufficient general officers available to comprise a selection board for the recommendation of officers for promotion to the grades of brigadier general and colonel without placing thereon general officers who served as members of the same corresponding board the preceding year, except the Commanding General, Fleet Marine Force, line officers of the Navy of the grade of rear admiral of the line may be substituted for general officers of the Marine Corps in order to comply with the provisions of section 5 (c) of this Act.

Marine Corps selection boards; substitution of naval officers in certain cases.

#### MISCELLANEOUS PROVISIONS

SEC. 16. (a) The provisions of this Act shall not apply to officers of the Staff Corps of the Navy.

Miscellaneous provisions.

(b) The Secretary of the Navy shall prescribe regulations whereby a uniform system of establishing a record of the efficiency of officers may be employed throughout the Navy.

#### REPEAL PROVISIONS

SEC. 17. All laws or parts of laws inconsistent with the provisions of this Act are hereby repealed, and the provisions of this Act shall be in effect in lieu thereof.

Repeal provisions.

Approved, June 23, 1938.

[CHAPTER 599]

#### AN ACT

To amend the Perishable Agricultural Commodities Act, 1930, as amended.

June 23, 1938

[H. R. 10785]

[Public, No. 704]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 7 (a) of the Perishable Agricultural Commodities Act, 1930, as amended, is further amended by changing the semicolon at the end thereof to a period and adding the following language: "If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum;"

Perishable Agricultural Commodities Act, 1930, amendment.

50 Stat. 728.

7 U. S. C., Supp. III, § 499g.

Reparation order directing immediate payment of undisputed amount to complainant.

Determination of remaining disputed amount.

Approved, June 23, 1938.

[CHAPTER 600]

#### AN ACT

To amend the Merchant Marine Act, 1936, to further promote the merchant marine policy therein declared, and for other purposes.

June 23, 1938

[H. R. 10315]

[Public, No. 705]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 202 of the Merchant Marine Act, 1936, is amended by adding at the end thereof a new sentence to read as follows: "The Commission may, upon such terms and conditions as it may prescribe in accordance

Merchant Marine Act, 1936, amendments.

49 Stat. 1986; 50 Stat. 839.

46 U. S. C., Supp. III, § 1112.