TITLE 46, APPENDIX—SHIPPING

This Appendix consists of sections of former Title 46 that are not included in Title 46, Shipping, as enacted by Pub. L. 98–89, subtitle B of title V of Pub. L. 99–509, section 6 of Pub. L. 100–424, and Pub. L. 100–710, and certain laws related to shipping that were enacted after Pub. L. 98–89. Sections from former Title 46 retain the same section numbers in this Appendix. For disposition of all sections of former Title 46, see Table at beginning of Title 46, Shipping.

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CHAPTER 1—ADMINISTRATION OF SHIPPING LAWS

Sec.

3. Measurement and numbering; tonnage tax.
9. Delegation of classification functions.
(a), (b) Repealed.
(c) Report on delegation of classification functions.
(d) Repealed.

WAIVER OF COMPLIANCE WITH NAVIGATION AND INSPECTION LAWS; TERMINATION DATE

Act Dec. 27, 1950, ch. 1155, §§1, 2, 64 Stat. 1120, provided that: "The head of each department or agency responsible for the administration of the navigation and vessel-inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense. The head of such department or agency is authorized to waive compliance with such laws to such extent and in such manner and upon such terms as he may prescribe, either upon his own initiative or upon the written recommendation of the head of any other Government agency, whenever he deems that such action is necessary in the interest of national defense.

"SEC. 2. The authority granted by this Act shall terminate at such time as the Congress by concurrent resolution or the President may designate."

Similar provisions were contained in acts Mar. 31, 1947, ch. 27, 61 Stat. 33; July 31, 1947, ch. 408, 61 Stat. 685; Feb. 27, 1948, ch. 78, §2, 62 Stat. 38; Feb. 28, 1949, ch. 12, 63 Stat. 9; June 29, 1949, ch. 281, §1, 63 Stat. 349; June 30, 1950, ch. 427, §4, 64 Stat. 309.

TRANSFER OF FUNCTIONS RELATING TO SHIPPING AND NAVIGATION

Bureau of Navigation created by act July 5, 1884. Act June 30, 1932, consolidated Bureau of Navigation with Steamboat Inspection Service to form a new bureau to be known as Bureau of Navigation and Steamboat Inspection, which name was changed to Bureau of Marine Inspection and Navigation by act May 27, 1936. Director of the Bureau of Marine Inspection and Navigation was designation given to chief of bureau by Secretary of Commerce under act June 30, 1932, §502(b). Bureau and office of its Director abolished by Reorg. Plan No. 3 of 1946, §104, set out below.

Reorg. Plan No. 3 of 1946, §§101 to 104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097, provided:

"SECTION 101. FUNCTIONS TRANSFERRED TO THE UNITED STATES COAST GUARD.—(a) There are hereby transferred to the Commandant of the Coast Guard those functions of the bureau, offices, and boards specified in the first sentence of section 104 of this plan, and of the Secretary of Commerce, which pertain to approval of plans for the construction, repair, and alteration of vessels; approval of materials, equipment, and appliances; classification of vessels; inspection of vessels and their equipment and appliances; issuance of certificates of inspection, and of permits indicating the approval of vessels for operations which may be hazardous to life or property; administration of load line requirements; en-

forcement of other provisions for the safety of life and property on vessels; licensing and certificating of officers, pilots, and seamen; suspension and revocation of licenses and certificates; investigation of marine casualties; enforcement of manning requirements, citizenship requirements, and requirements for the mustering and drilling of crews, control of logbooks; shipment, discharge, protection, and welfare of merchant seamen; enforcement of duties of shipowners and officers after accidents; promulgation and enforcement of rules for lights, signals, speed, steering, sailing, passing, anchorage, movement, and towlines of vessels and lights and signals on bridges; numbering of undocumented vessels; prescription and enforcement of regulations for outfitting and operation of motorboats; licensing of motorboat operators; regulation of regattas and marine parades; all other functions of such bureau, offices, and boards which are not specified in section 102 of this plan; and all other functions of the Secretary of Commerce pertaining to those functions of the agencies abolished under section 104 of this plan which are not specified in section 102 of this plan, including the remission and mitigation of fines, penalties, and forfeitures incurred under the laws governing these functions and those incurred under the act of December 17, 1941 (55 Stat. 808), as amended.

''(b) The functions relating to the award of numbers to undocumented vessels vested by law in the collectors of customs are hereby transferred to the Commandant of the Coast Guard.

''SEC. 102. FUNCTIONS TRANSFERRED TO BUREAU OF CUSTOMS.—There are hereby transferred to the Commissioner of Customs those functions of the bureau, offices, and boards specified in the first sentence of section 104 of this plan, and of the Secretary of Commerce, which pertain to registry, enrollment, and licensing of vessels, including the issuance of commissions to yachts, the assignment of signal letters, and the preparation of all reports and publications in connection therewith; measurement of vessels, administration of tonnage duties, and collection of tolls; entry and clearance of vessels and aircraft, regulation of vessels in the coasting and fishing trades, and limitation of the use of foreign vessels in waters under the jurisdiction of the United States; recording of sales, conveyances, and mortgages of vessels; protection of steerage passengers; all other functions of such bureau, offices, and boards which were performed by the Bureau of Customs on behalf thereof immediately prior to the effective date of Executive Order No. 9083 of February 28, 1942 (7 F.R. 1609); and the power to remit and mitigate fines, penalties, and forfeitures incurred under the laws governing these functions.

''SEC. 103. POWERS OF THE SECRETARY OF THE TREASURY.—The functions transferred by sections 101 and 102 of this plan may be performed through such officers and employees of the United States Coast Guard and the Bureau of Customs, respectively, as may be designated by the Commandant of the Coast Guard and the Commissioner of Customs, respectively, and shall be performed subject to the direction and control of the Secretary of the Treasury except as otherwise required by law with respect to the United States Coast Guard whenever it operates as a part of the Navy.

''SEC. 104. ABOLITION OF AGENCIES.—The Bureau of Marine Inspection and Navigation, the office of the director thereof, the offices of supervising inspectors, principal traveling inspectors, local inspectors, assistant inspectors, shipping commissioners, deputy shipping commissioners, and the board of supervising inspectors, the boards of local inspectors, the marine casualty investigation board, and the marine boards are hereby abolished. The Secretary of the Treasury shall provide for winding up those affairs of the said abolished agencies which are not otherwise disposed of herein.''

This Reorganization Plan continued on a permanent basis the temporary transfer of functions made during World War II by Ex. Ord. No. 9083, §§1 to 4, eff. Feb. 28, 1942, 7 F.R. 1609, formerly set out under section 601 of Title 50, Appendix, War and National Defense.

By Coast Guard General Order 2–46, July 16, 1946, 11 F.R. 7775, and Treas. Dept. Reg. 51491, July 16, 1946, 11 F.R. 7766, the Commandant of the Coast Guard and The Commissioner of Customs each provided that all orders, rules, regulations, permits or other privileges made, issued or granted in respect of all functions transferred to him by Reorg. Plan No. 3 of 1946, §§101–104, and in effect at the time of such transfer should continue in effect to the same extent as if such transfer had not occurred.

On the basis of 33 C.F.R. ch. I, and 46 C.F.R. ch. I, the Commandant of the Coast Guard appears to have assigned the functions transferred to him as follows:

Functions formerly performed by:	*Now assigned to:*
Bureau of Marine Inspection and Navigation and its Director	Commandant of the Coast Guard
Board of Supervising Inspectors	Commandant of the Coast Guard
Supervising Inspector	Coast Guard District Commander
Board of Local Inspectors	Officer in Charge, Marine Inspection
Inspectors and Assistant Inspectors	Marine Inspectors (or ''inspectors'')

For investigation of Marine casualties and suspension and revocation of licenses and certificates, formerly performed by the Marine Casualty Investigation Board and Marine Boards, see note set out under section 239 of this title.

Memoranda of the Chief Counsel of the Coast Guard, July 7, 1947, Chief Counsel of the Bureau of Customs, July 14, 1947, and Chief Counsel of the Treasury, July 21, 1947, concurred in the view that the duties of collectors of customs were not affected by Reorg. Plan No. 3 of 1946, with the exception of those duties specified in section 101(b) of the Plan.

CERTAIN FUNCTIONS FORMERLY PERFORMED BY BUREAU OF CUSTOMS

The following is a statement relating to the transfer of certain functions from the Commissioner of Customs to the Commandant of the Coast Guard, appearing in 32 F.R. 7408, 7409, May 18, 1967:

On April 28, 1967, a memorandum of agreement was signed by the Commandant of the Coast Guard and the Commissioner of Customs which provided that—

1. Treasury Department Order No. 167–81 transferred from the Commissioner of Customs to the Commandant, U.S. Coast Guard, the functions pertaining to the admeasurement of vessels, the documentation of vessels, the publication of merchant vessel registers, the registration of stack insignia, and shoreside port security. Because of the transfer of the Coast Guard from the Treasury Department to the Department of Transportation and because of continuing efforts to reorganize and modernize the shipping laws of the United States now assembled in title 46, U.S. Code, with a view toward eventual codification, it is recognized that the laws and provisions of law that relate to the transferred functions should be identified.

2. It is therefore agreed that—

a. The following sections of the U.S. Code, 1964 edition, relate entirely to the transferred functions:

Title	Chapter	Sections
46	1	2 (nothing in this section is considered vital or necessary to the authority to perform the functions pertaining to entry and clearance of vessels, collection of tonnage tax, or enforcement of the coastwise laws generally).
	2	12, 14–41, 43–56, 58, 61–63, 71, 72, 74, 75, 77, 81–83k.
	3	103, 105, 109.
	6	151–157, 159, 160.
	11	227, 236–238.
	12	252–255, 258–260, 263–265, 267–272, 275, 276, 279, 334.
	13	351–353.
	15	496.
	25	921–927, 941, 981–984.
	26	1011–1014.

b. Parts of the following sections of the U.S. Code, 1964 edition, relate to the transferred functions as indicated:

Title	Chapter	Sections
46	1	3 (except as it relates to tonnage tax).
		4 (first two sentences).
	6	158 (second sentence).
	12	262 (second sentence).
	12	320 (as it relates to sections 45 and 77).
		321 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		322 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		323 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		324 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		326 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		328 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		331 (as it relates to measurement of tonnage, issuance or granting of certificates of registry, records or enrollments, recording of bills of sale, mortgages, hypothecations or conveyances, and the furnishing of certificates of title).
		333 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		335 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
		336 (as it relates to sections 252–255, 258, 259, 262–273, 275–277, 279 and 280).
	24	881 (the second proviso).
	25	911(1), (2), (3), and (5).

c. The following sections and parts of sections of the U.S. Code 1964 edition, relate to functions transferred and to functions retained by Customs:

Title	Chapter	Sections
19	3	261, 267.
	4	1451, 1524.
46	1	7, 4 (last sentence) 8.
	2	11, 13, 59, 60.
	6	158 (the second paragraph), 161, 162.
	11	221.
	12	251(a) (the first sentence), 266, 277, 278, 280, 292, 319, 325, 327, 332.
	14	404a.
	24	883 (the first and second provisos) 883a, 883b, 883–1.

d. The following sections of the U.S. Code, 1964 edition, relate to functions transferred and to functions administered under the Secretary of Commerce:

Title	Chapter	Sections
46	23	838, 840.
		911(4) (pending transfer to the Department of Transportation under the provisions of Reorganization Plan No. 1–67).
50	12	198(a).

e. The following sections of the U.S. Code, 1964 edition, relate to functions transferred, to functions retained by Customs, and to functions administered under the Secretary of Commerce.

Title	Chapter	Sections
46	23	801, 802, 803, 808.

3. The identification of statutes set forth above is for the information and guidance of the public. Nothing therein shall be deemed to have the effect of amending in any respect the provisions of Treasury Department Order No. 167–81 or the functions of any agency thereunder.

TRANSFER OF FUNCTIONS TO SECRETARY OF THE TREASURY

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard and Commandant of Coast Guard excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

On July 31, 1950, Secretary of the Treasury issued Treasury Department Order No. 120 directing that officers, employees, and agencies of Department of the Treasury continue to perform functions they were authorized to perform prior to effective date of Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, and stipulating that authorized regulations and procedures in effect immediately prior to effective date of Plan continue in effect until changed by appropriate authority.

§3. Measurement and numbering; tonnage tax

The Commissioner of Customs shall be charged with the supervision of the laws relating to the admeasurement of vessels, and the assigning of signal letters thereto, and of designating their official number; and on all questions of interpretation growing out of the execution of the laws relating to these subjects, and relating to the collection of tonnage tax, and to the refund of such tax when collected erroneously or illegally, his decision shall be final.

(July 5, 1884, ch. 221, §3, 23 Stat. 119; June 30, 1932, ch. 314, §§501, 502(b), 47 Stat. 415; May 27, 1936, ch. 463, §1, 49 Stat. 1380; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Director of the Bureau of Marine Inspection and Navigation'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

Previously, ''Commissioner of Navigation'' changed to ''Director, Bureau of Navigation and Steamboat Inspection'', and then to ''Director of the Bureau of Marine Inspection and Navigation'' by acts June 30, 1932, and May 27, 1936. See note set out preceding section 3 of this Appendix.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

§ 9. Delegation of classification functions

(a), (b) Repealed. Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 600

(c) Report on delegation of classification functions

The Secretary of the department in which the Coast Guard is operating shall report to the Congress on the implementation of subsections (a) and (b) of this section within 6 months of December 29, 1981, and annually thereafter for 3 years. Such report shall include the views of the affected industry on the implementation of those subsections.

(d) Repealed. Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 600

(July 5, 1884, ch. 221, § 8, as added Pub. L. 97–136, § 9, Dec. 29, 1981, 95 Stat. 1706; amended Pub. L. 97–322, title I, § 109, Oct. 15, 1982, 96 Stat. 1584; Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 600.)

AMENDMENTS

1983—Subsecs. (a), (b), (d). Pub. L. 98–89 struck out subsecs. (a), (b), and (d). See section 3316 of Title 46, Shipping.

1982—Subsec. (d). Pub. L. 97–322 added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 2—DOCUMENTATION, RECORDING, AND MEASUREMENT

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
14. Wrecked vessels.
42. Oath on entry as to ownership.
57. Production of certificate on entry.
59. Penalty for neglect by officers.

SUBCHAPTER I—GENERAL PROVISIONS

§ 14. Wrecked vessels

The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the Secretary of Transportation, if he deems it necessary, through a board of three appraisers appointed by him, that the said repairs put upon such vessels[1] are equal to three times the appraised salved value of the vessel: *Provided*, That the expense of the appraisal provided for shall be borne by the owner of the vessel: *Provided further*, That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackle, apparel, and furniture thereof.

(R.S. § 4136; Feb. 24, 1915, ch. 57, 38 Stat. 812; Pub. L. 103–182, title VI, § 686(a)(4), Dec. 8, 1993, 107 Stat. 2220.)

CODIFICATION

R.S. § 4136 derived from acts Dec. 23, 1852, ch. 4, 10 Stat. 149; July 23, 1866, ch. 213, 14 Stat. 212.

R.S. § 4136 was repealed by act Feb. 22, 1906, ch. 500, 34 Stat. 17, and was reenacted and revised by act Feb. 24, 1915.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement'' for ''The Secretary of Commerce may issue a register or enrollment'' and ''Secretary of Transportation,'' for ''Secretary of Commerce,''.

§ 42. Oath on entry as to ownership

Upon the entry of every vessel of the United States from any foreign port, if the same shall be at the port at which the owner or any of the part owners reside, such owner or part owner shall make oath that the register of such vessel contains the name or names of all the persons who are then owners of the vessel; or if any part of such vessel has been sold or transferred since the granting of such register, that such is the case, and that no foreign subject or citizen has, to the best of his knowledge and belief, any share, by way of trust, confidence, or otherwise, in such vessel. If the owner or any part owner does not reside at the port at which such vessel enters, the master shall make oath to the like effect. If the owner, or part owner, where there is one, or the master, where there is no owner, refuses so to swear, such vessel shall not be entitled to the privileges of a vessel of the United States.

(R.S. § 4173.)

CODIFICATION

R.S. § 4173 derived from act Dec. 31, 1792, ch. 1, § 17, 1 Stat. 295.

§ 57. Production of certificate on entry

The master or other person having the command or charge of any vessel, recorded in pursuance of title 48 of the Revised Statutes, shall, on entry of such vessel, produce the certificate of such record to the collector of the district where she is so entered; and in default thereof the vessel shall not be entitled to the privileges of a recorded vessel.

(R.S. § 4184.)

REFERENCES IN TEXT

Title 48 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 48 of the Revised Statutes, consisting of R.S. §§ 4131 to 4305. For complete classification of R.S. §§ 4131 to 4305 to the Code, see Tables.

CODIFICATION

R.S. § 4184 derived from act Dec. 31, 1792, ch. 1, § 24, 1 Stat. 297.

[1] So in original. Probably should be ''vessel''.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§59. Penalty for neglect by officers

If any person authorized and required by title 48 of the Revised Statutes to perform, as an officer, any act or thing, willfully neglects to do or perform the same according to the true intent and meaning of title 48 of the Revised Statutes, he shall, if not subject to the penalty and disqualification prescribed in section 4187 of the Revised Statutes, be punishable by a fine of $500 for the first offense, and by a like fine for the second offense, and shall thenceforth be rendered incapable of holding any office of trust or profit under the United States.

(R.S. §4188.)

REFERENCES IN TEXT

Title 48 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 48 of the Revised Statutes, consisting of R.S. §§4131 to 4305. For complete classification of R.S. §§4131 to 4305 to the Code, see Tables.

Section 4187 of the Revised Statutes, referred to in text, was classified to section 58 of former Title 46, Shipping, and was repealed by Pub. L. 96–594, title I, §127, Dec. 24, 1980, 94 Stat. 3459.

CODIFICATION

R.S. §4188 derived from act Dec. 31, 1792, ch. 1, §26, 1 Stat. 298.

CHAPTER 3—CLEARANCE AND ENTRY

Sec.
91. Clearance; vessels.
(a) When required; vessels of United States.
(b) When required; other vessels.
(c) Regulations.
97. State inspection laws.
98. Conveyance of bullion, coin, notes, or bonds for United States.
100. Payment of fees on vessels outward bound.
104. Reciprocal exemption of foreign yachts from charges and tonnage taxes; licenses.
111. Documented vessels with registry endorsement in trade with Canada.

§91. Clearance; vessels

(a) When required; vessels of United States

Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States if the vessel has on board foreign merchandise for which entry has not been made; or

(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

(b) When required; other vessels

Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—

(1) for a foreign port or place;

(2) for another port or place in the United States; or

(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

(c) Regulations

The Secretary of the Treasury may by regulation—

(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

(2) permit the Customs Service to grant clearance for a vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.

(R.S. §4197; Aug. 5, 1935, ch. 438, title II, §209, 49 Stat. 526; June 16, 1938, ch. 476, §1, 52 Stat. 758; Sept. 1, 1954, ch. 1213, title V, §501(a), 68 Stat. 1140; Pub. L. 103–182, title VI, §686(b), Dec. 8, 1993, 107 Stat. 2221; Pub. L. 106–476, title I, §1452(a)(3), Nov. 9, 2000, 114 Stat. 2167.)

CODIFICATION

R.S. §4197 derived from act Mar. 2, 1799, ch. 22, §93, 1 Stat. 698.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–476 struck out ''bonded merchandise or'' before ''foreign merchandise''.

1993—Pub. L. 103–182 amended section generally, substituting present provisions for provisions which directed master of any vessel bound to a foreign port to deliver to district collector a manifest of all cargo on board, subject to financial penalties for delivery of false manifest and detainment of vessel until penalty is paid, but authorizing Secretary of Commerce, in interest of expediting commerce, to make regulations permitting master to file incomplete manifest and grant vessel clearance upon filing a bond and making assurance that a completed manifest will be filed not later than the fourth business day after clearance of the vessel, with financial penalties and possible suit resulting from failure to file completed manifest when due.

1954—Act Sept. 1, 1954, exempted undocumented pleasure vessels of the United States from clearance requirements.

1938—Act June 16, 1938, inserted proviso and all that follows.

1935—Act Aug. 5, 1935, substituted second sentence for ''If any vessel bound to a foreign port departs on her voyage to such foreign port without delivering such

manifest and obtaining a clearance, as required, the master or other person having the charge or command of such vessel shall be liable to a penalty of $500 for every such offense.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–476, except as otherwise provided, applicable with respect to goods entered or withdrawn from warehouse for consumption on or after the 15th day after Nov. 9, 2000, see section 1471 of Pub. L. 106–476, set out as a note under section 58c of Title 19, Customs Duties.

CONSTRUCTION WITH OTHER LAWS

Section 3 of act June 16, 1938, provided that the amendments to this section by section 1 of the act, should not affect any other existing law.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 97. State inspection laws

The collectors and other officers of the customs shall pay due regard to the inspection laws of the States in which they may respectively act, in such manner that no vessel having on board goods liable to inspection shall be cleared until the master, or other proper person, shall have produced such certificate that all such goods have been duly inspected, as the laws of the respective States may require to be produced to collectors or other officers of the customs.

(R.S. § 4202.)

CODIFICATION

R.S. § 4202 derived from act Mar. 2, 1799, ch. 22, § 93, 1 Stat. 699.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 98. Conveyance of bullion, coin, notes, or bonds for United States

All vessels belonging to citizens of the United States, and bound from any port in the United States to any other port therein, or to any foreign port, or from any foreign port to any port in the United States, shall, before clearance, receive on board all such bullion, coin, United States notes and bonds and other securities, as the Government of the United States or any department thereof, or any minister, consul, vice consul, or other agent of the United States abroad, shall offer, and shall securely convey and promptly deliver the same to the proper authorities or consignees, on arriving at the port of destination; and shall receive for such service such reasonable compensation as may be allowed to other carriers in the ordinary transactions of business.

(R.S. § 4204; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 4204 derived from act July 4, 1864, ch. 249, § 10, 13 Stat. 392.

Reference to ''or commercial'' before ''or other agent'' was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

§ 100. Payment of fees on vessels outward bound

Previous to a clearance being granted to any vessel, outward bound, the legal fees which shall have accrued on such vessel shall be paid at the offices where such fees are respectively payable; and receipts for the same shall be produced to the collector or other officer whose duty it may be to grant clearances, before a clearance is granted.

(R.S. § 4206.)

CODIFICATION

R.S. § 4206 derived from acts Mar. 3, 1797, ch. 9, § 5, 1 Stat. 503; Mar. 2, 1799, ch. 22, § 93, 1 Stat. 699.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 104. Reciprocal exemption of foreign yachts from charges and tonnage taxes; licenses

Whenever it shall be made to appear to the satisfaction of the President of the United States that yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States are allowed to arrive at and depart from any foreign port and to cruise in the waters of such port without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes or charges for cruising licenses, the Commissioner of Customs may authorize and direct the customs authorities at the various ports of entry of the United States to allow yachts from such foreign port used and employed exclusively as pleasure vessels to arrive at and depart from any port of the United States and to cruise in waters of the United States without the pay-

ment of any charges for entering or clearing, dues, duty per ton, or tonnage taxes, but the Commissioner of Customs may, in his discretion, direct that such foreign yachts shall be required to obtain licenses to cruise, in a form prescribed by him, before they shall be allowed under the provisions of this section to cruise in waters of the United States. Such licenses shall be issued without cost to such yachts and shall prescribe such limitations as to length of time, direction, and place of cruising and action, and such other particulars as the Commissioner of Customs may deem proper.

(May 28, 1908, ch. 212, §5, 35 Stat. 425; Aug. 5, 1909, ch. 6, §37, 36 Stat. 112; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 26, 1948, ch. 673, 62 Stat. 1051.)

CODIFICATION

This section was not amended or repealed by section 36 of the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, 36 Stat. 111, relating to tonnage duties, but so much of it as related to yachts built outside the United States and owned by citizens of the United States was repealed by section 37 of that act, which was itself repealed by the Underwood Tariff Act of Oct. 13, 1913, ch. 16, §IV, S, 38 Stat. 201.

In text, the words ''and subports'' and ''or subport'' following ''various ports'' and ''arrive at and depart from any port'' respectively, were omitted.

By subdivision II of the President's plan of reorganization of the Custom Service under the grant of authority contained in act Aug. 24, 1912, ch. 355, §1, 37 Stat. 434, subports of entry not therein designated ports of entry were abolished and the use of the term ''subport of entry'' was discontinued.

AMENDMENTS

1948—Act June 26, 1948, removed the discrimination against yachts which do not belong to ''regularly organized yacht clubs''.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

Upon incorporation into the Code, ''Secretary of Commerce'' substituted for ''Secretary of Commerce and Labor'' to conform to act Mar. 4, 1913.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

§111. Documented vessels with registry endorsement in trade with Canada

Documented vessels with a registry endorsement, engaged in foreign trade on the Great Lakes or their tributary or connecting waters in trade with Canada, shall not thereby become liable to the payment of entry and clearance fees.

(R.S. §2793; Sept. 25, 1941, ch. 423, 55 Stat. 733; Pub. L. 103–182, title VI, §686(a)(1), Dec. 8, 1993, 107 Stat. 2220; Pub. L. 104–324, title XI, §1115(b)(4), Oct. 19, 1996, 110 Stat. 3972.)

CODIFICATION

R.S. §2793 derived from J. Res. Feb. 10, 1871, No. 27, §2, 16 Stat. 595.

Provisions of this section are also classified to section 288 of Title 19, Customs Duties.

Provision of R.S. §2793 respecting tonnage duties is classified to section 123 of this Appendix.

AMENDMENTS

1996—Pub. L. 104–324 substituted ''registry endorsement, engaged in foreign trade on the Great Lakes or their tributary or connecting waters in trade with Canada,'' for ''coastwise, Great Lakes endorsement, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports,'' and struck out '', as if from or to foreign ports'' after ''clearance fees''.

1993—Pub. L. 103–182 substituted ''Documented vessels with a coastwise, Great Lakes endorsement,'' for ''Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States,'' and a period for ''; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel.''

1941—Act Sept. 25, 1941, inserted exception and proviso at end of section.

CHAPTER 4—TONNAGE DUTIES

Sec.
121. Amount of tonnage duties.
122. Coasting and fishing vessels.
123. Documented vessels with registry endorsement in trade with Canada.
124. Passenger vessels trading between ports of United States and foreign ports.
125. Vessels making daily trips on interior waters.
128. Light money.
129. Exemption of unregistered vessels owned by citizens.
132. Vessels not entering by sea.
133. Hospital ships in time of war.
134. Designation by President of hospital ships exempted.
135. Rights under treaties preserved.

§ 121. Amount of tonnage duties

Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton.

A tonnage duty of 9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 through 2002, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place; and a duty of 27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991 through 2002, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. However, neither duty shall be imposed on vessels in distress or not engaged in trade.

Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States. On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of $2 per ton; and none of the duties on tonnage above mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of 50 cents per ton.

(R.S. § 4219; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 250; June 26, 1884, ch. 121, § 14, 23 Stat. 57; Apr. 4, 1888, ch. 61, § 1, 25 Stat. 80; Aug. 5, 1909, ch. 6, § 36, 36 Stat. 111; Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193; Pub. L. 101–508, title X, § 10402(a), Nov. 5, 1990, 104 Stat. 1388–398; Pub. L. 103–66, title IX, § 9001(a), (c)(1), Aug. 10, 1993, 107 Stat. 402; Pub. L. 105–33, title IX, § 9201(a), Aug. 5, 1997, 111 Stat. 671.)

CODIFICATION

R.S. § 4219 derived from acts July 20, 1790, ch. 30, § 1, 1 Stat. 135; Apr. 27, 1816, ch. 107, § 6, 3 Stat. 314; Jan. 14, 1817, ch. 3, § 1, 3 Stat. 344; Mar. 1, 1817, ch. 31, § 6, 3 Stat. 352; Mar. 3, 1817, ch. 50, 3 Stat. 369; May 31, 1830, ch. 219, § 1, 4 Stat. 425; July 14, 1862, ch. 163, § 15, 12 Stat. 558; June 28, 1864, ch. 170, 13 Stat. 201; Mar. 3, 1865, ch. 80, § 4, 13 Stat. 493.

The first and third paragraphs of this section, with the exception of the proviso in the third paragraph, are from R.S. § 4219.

A portion of that section omitted here provided that, in addition to the tonnage duty thereby imposed there should be paid a tax, at the rate of thirty cents per ton, on vessels entered at any custom house from any foreign port or place.

It was probably omitted as superseded and repealed by act June 26, 1884, as amended by acts June 19, 1886, ch. 421, § 11, 24 Stat. 81; Apr. 4, 1888, and Aug. 5, 1909.

Another portion of the original text, concerning the impairment of rights and privileges of foreign nations under laws and treaties was probably omitted as sufficiently covered by the similar provision near the end of the section.

The second paragraph of this section is from act Aug. 5, 1909, § 36. Portions of that paragraph omitted here, fixed the time of its taking effect, repealed R.S. § 4232, act June 19, 1886, ch. 421, §§ 11 and 12, 24 Stat. 81, and so much of R.S. § 4219 as conflicted therewith, and provided that it should not be construed to amend or repeal R.S. § 2792, as amended, act May 28, 1908, ch. 212, § 5, 35 Stat. 425, or R.S. § 2793. That paragraph was expressly excepted from repeal by Underwood Tariff Act Oct. 13, 1913, ch. 16, § IV, S, 38 Stat. 201.

The proviso in the third paragraph of this section is based on act Mar. 4, 1915. Other provisions of that act are classified to section 128 of this Appendix, and sections 128 and 131 of Title 19, Customs Duties.

So much of act June 19, 1886, ch. 421, § 11, 24 Stat. 81, as exempted any yacht built outside the United States, and owned, chartered or used by a citizen of the United States, from the payment of tonnage taxes, was repealed by act Feb. 5, 1897, ch. 167, § 2, 29 Stat. 511. Act June 19, 1886, having been repealed as above stated section 2 of act Feb. 5, 1897, ch. 167, is no longer operative.

Section 12 of act June 19, 1886, which was repealed by the Payne-Aldrich Tariff Act of Aug. 5, 1909, § 36, directed the President to cause the Governments of foreign countries, which, at any of their ports, imposed on American vessels a tonnage tax or light house dues, etc., to be informed of the provisions of section 11, and invited to co-operate with the Government of the United States in abolishing light house dues, etc.

R.S. § 4223, provided that the tonnage duty imposed on all vessels engaged in foreign commerce should be levied but once within a year, and that when paid no further tonnage tax should be collected within one year from the date of such payment, not being applicable, however, to foreign vessels entered in the United States from any foreign port, to and with which vessels of the United States were not ordinarily permitted to enter and trade.

R.S. § 4224, provided that vessels paying tonnage duties once a year should pay them at their first clearance from or entry at, according to priority, a custom house in the United States in each calendar year, but that it should not prevent customs officers from collecting such tonnage duty at the entry of vessels at their respective custom houses during the calendar year if the same had not previously been paid for such year.

Both these sections were repealed by act June 26, 1884, as amended by act June 19, 1886, ch. 421, § 11, 24 Stat. 81.

Act June 19, 1878, ch. 318, 20 Stat. 171, amended R.S. § 2931, by providing that it should not apply to cases of the payment of tonnage tax on vessels where the Secretary of the Treasury and the Attorney General were satisfied that the exaction of the tax was in contravention of treaty provisions. R.S. § 2931, which provided for an appeal to the Secretary of the Treasury from the decision of the collector of customs as to the rate and amount of tonnage duties, etc., was repealed by act June 10, 1890, ch. 407, § 29, 26 Stat. 141. Act June 19, 1878, further provided that the Secretary of the Treasury might draw his warrant for the refund of taxes so illegally exacted, as provided for by R.S. § 3012½. R.S. § 3012½, was also repealed by act June 10, 1890, § 29. By the repeal of R.S. §§ 2931, 3012½, act June 19, 1878, ch. 318, became inoperative.

Act Feb. 10, 1900, ch. 15, § 2, 31 Stat. 27, authorized the Secretary of the Treasury to refund tonnage taxes and light dues imposed on vessels owned by citizens of Cuba entering ports of the United States since Apr. 11, 1899, which had been in excess of the taxes prescribed by act June 19, 1886, ch. 421, § 11, 24 Stat. 81. It was doubtless omitted from the code as executed.

R.S. § 4232, repealed by the same section, provided that mail steamships employed in the mail-service between the United States and Brazil, should be exempt from all port charges and customs dues at the port of departure and arrival in the United States, if and so long as a similar immunity from port charges and custom-house charges was granted by the government of Brazil.

Section 37 of act Aug. 5, 1909, which provided for a tonnage tax on foreign built yachts, pleasure boats or vessels, not used or intended to be used for trade, owned, or chartered for more than six months by citizens of the United States, or, in lieu thereof, an ad valorem duty, and entitled such yachts, etc., upon payment thereof to all the privileges, subjected them to all the requirements prescribed by R.S. §§ 4214, 4215, 4217, 4218, and acts amendatory thereof, in the same manner as if they had been built in the United States, subjected such yachts, etc., to tonnage duty and light money only in the same manner as if they had been built in the United States, repealed so much of act May 28, 1908, ch. 212, § 5, 35 Stat. 425, as related to yachts built outside the United States and owned by citizens of the United States, and provided that the section should not apply to foreign built vessels admitted to American registry, was repealed by the Underwood Tariff Act of Oct. 13, 1913, ch. 16, § IV, S, 38 Stat. 201.

Act June 5, 1920, ch. 250, § 34, 41 Stat. 1007, directed the President to give notice to terminate provisions of treaties or conventions restricting the right of the United States to impose discriminating customs duties and tonnage dues. It was doubtless omitted as temporary and executed.

AMENDMENTS

1997—Second par. Pub. L. 105–33 substituted ''for fiscal years 1991 through 2002,'' for ''for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998,'' in two places.

1993—Second par. Pub. L. 103–66, § 9001(c)(1), made technical correction to directory language of Pub. L. 101–508. See 1990 Amendment note below.

Pub. L. 103–66, § 9001(a), substituted ''1995, 1996, 1997, 1998,'' for ''and 1995,'' in two places, ''port or place; and a duty'' for ''port or place, and a duty'', and ''port. However, neither duty shall be imposed on vessels in distress or not engaged in trade'' for ''port, not, however, to include vessels in distress or not engaged in trade''.

1990—Second par. Pub. L. 101–508, as amended by Pub. L. 103–66, § 9001(c)(1), substituted ''9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter'' for ''two cents per ton, not to exceed in the aggregate ten cents per ton in any one year,'', inserted ''and on all vessels (except vessels of the United States, recreational vessels, and barges, as those terms are defined in section 2101 of title 46) that depart a United States port or place and return to the same port or place without being entered in the United States from another port or place,'' after ''Newfoundland,'', and substituted ''27 cents per ton, not to exceed $1.35 per ton per annum, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 6 cents per ton, not to exceed 30 cents per ton per annum, for each fiscal year thereafter'' for ''six cents per ton, not to exceed thirty cents per ton per annum,''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 9001(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on and after November 5, 1990.''

OFFSETTING RECEIPTS

Section 10402(c) of Pub. L. 101–508 provided that: ''Increased tonnage charges collected as a result of the amendments made by subsection (a) [amending this section] shall be deposited in the general fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

NONLIABILITY OF CUSTOMS COLLECTORS AND VESSELS BEFORE OCTOBER 1, 1940

Act May 16, 1947, ch. 71, 61 Stat. 97, made collectors of customs and vessels themselves not liable for failure to collect special tonnage duties or light money under this section or section 128 of this Appendix in connection with the entry prior to Oct. 1, 1940, of any foreign vessel from a foreign port.

§ 122. Coasting and fishing vessels

No vessel belonging to any citizen of the United States, trading from one port within the United States to another port within the United States, or employed in the bank, whale, or other fisheries, shall be subject to tonnage tax or duty, if such vessel be licensed, registered, or enrolled.

(R.S. § 4220.)

CODIFICATION

R.S. § 4220 derived from acts July 14, 1870, ch. 255, § 25, 16 Stat. 269; Apr. 18, 1874, ch. 110, 18 Stat. 31.

§ 123. Documented vessels with registry endorsement in trade with Canada

Documented vessels with a registry endorsement, engaged in foreign trade on the Great Lakes or their tributary or connecting waters in trade with Canada, shall not thereby become liable to the payment of tonnage tax.

(R.S. § 2793; Sept. 25, 1941, ch. 423, 55 Stat. 733; Pub. L. 103–182, title VI, § 686(a)(1), Dec. 8, 1993, 107 Stat. 2220; Pub. L. 104–324, title XI, § 1115(b)(4), Oct. 19, 1996, 110 Stat. 3972.)

CODIFICATION

R.S. § 2793 derived from J. Res. Feb. 10, 1871, No. 27, § 2, 16 Stat. 595.

Provision of R.S. § 2793 respecting payment of entry and clearance fee is classified to section 111 of this Appendix, and section 288 of Title 19, Customs Duties.

AMENDMENTS

1996—Pub. L. 104–324 substituted ''registry endorsement, engaged in foreign trade on the Great Lakes or their tributary or connecting waters in trade with Canada,'' for ''coastwise, Great Lakes endorsement, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports,'' and struck out '', as if from or to foreign ports'' after ''tonnage tax''.

1993—Pub. L. 103–182 substituted ''Documented vessels with a coastwise, Great Lakes endorsement,'' for ''Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States,'' and a period for ''; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel.''

1941—Act Sept. 25, 1941, inserted exception and proviso at end of section.

§ 124. Passenger vessels trading between ports of United States and foreign ports

Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from tonnage taxes while such service triweekly or oftener is maintained.

(R.S. § 2792; May 28, 1908, ch. 212, § 1, 35 Stat. 424.)

CODIFICATION

R.S. § 2792 derived from act June 4, 1872, ch. 280, 17 Stat. 214.

Provisions of R.S. § 2792 as originally enacted were classified to section 110 of former Title 46, Shipping, and, in part, to section 289 of Title 19, Customs Duties.

The provision of this section which was added to R.S. § 2792 by act May 28, 1908, was also classified, in part, to section 112 of former Title 46 and section 289 of Title 19.

§ 125. Vessels making daily trips on interior waters

In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage fees shall be charged against such vessel by the officers of the United States, except upon the first clearing of such vessel in each year.

(R.S. § 4221.)

CODIFICATION

R.S. § 4221 derived from act Mar. 3, 1869, ch. 125, § 3, 15 Stat. 322.

Provision of R.S. § 4221 respecting clearance fees was classified to section 113 of former Title 46, Shipping.

§ 128. Light money

A duty of 50 cents per ton, to be denominated ''light money'', shall be levied and collected on all vessels not of the United States which may enter the ports of the United States. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States.

(R.S. § 4225; Mar. 4, 1915, ch. 171, § 1, 38 Stat. 1193.)

CODIFICATION

R.S. § 4225 derived from act Mar. 27, 1804, ch. 57, § 6, 2 Stat. 300.

The proviso of this section is from act Mar. 4, 1915. Other provisions of the act are classified to section 121 of this Appendix and sections 128 and 131 of Title 19, Customs Duties.

§ 129. Exemption of unregistered vessels owned by citizens

Section 128 of this Appendix shall not be deemed to operate upon unregistered vessels, owned by citizens of the United States, and carrying regular documents, issued from a customhouse of the United States, proving the vessel to be American property. Upon the entry of every such vessel from any foreign port, if the same shall be at the port at which the owner or any of the part owners reside, such owner or part owners shall make oath that the document possessed by such vessel contains the name or names of all the persons who are then the owners of the vessel; or if any part of such vessel has been sold or transferred since the date of such document, that such is the case, and that no foreign subject or citizen has, to the best of his knowledge and belief, any share, by way of trust, confidence, or otherwise, in such vessel. If the owner or any part owner does not reside at the port or place at which such vessel shall enter, then the master shall make oath to the like effect. If the owner or part owner, where there is one, or the master, where there is no owner, shall refuse to so swear, such vessel shall not be entitled to the privileges granted by this section.

(R.S. § 4226.)

CODIFICATION

R.S. § 4226 derived from act Mar. 3, 1805, ch. 40, 2 Stat. 339.

As originally enacted, this section contained a reference to vessels carrying sea letters. The use of such documents was discontinued by Presidential proclamation on Apr. 10, 1815.

§ 132. Vessels not entering by sea

Vessels entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991 through 2002, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter, prescribed by section 121 of this Appendix.

(Mar. 8, 1910, ch. 86, 36 Stat. 234; Pub. L. 101–508, title X, § 10402(b), Nov. 5, 1990, 104 Stat. 1388–399;

Pub. L. 103–66, title IX, § 9001(b), Aug. 10, 1993, 107 Stat. 402; Pub. L. 105–33, title IX, § 9201(b), Aug. 5, 1997, 111 Stat. 671.)

AMENDMENTS

1997—Pub. L. 105–33 which directed substitution of ''for fiscal years 1991 through 2002,'' for ''for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998,'', was executed by making the substitution for ''for fiscal years 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998,'' to reflect the probable intent of Congress.

1993—Pub. L. 103–66 substituted ''1995, 1996, 1997, and 1998,'' for ''and 1995,''.

1990—Pub. L. 101–508 substituted ''9 cents per ton, not to exceed in the aggregate 45 cents per ton in any one year, for fiscal years 1991, 1992, 1993, 1994, and 1995, and 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, for each fiscal year thereafter'' for ''two cents per ton, not to exceed in the aggregate ten cents per ton in any one year''.

§ 133. Hospital ships in time of war

Hospital ships, concerning which the conditions set forth in articles 1, 2, and 3 of the convention concluded at The Hague on July 29, 1899, for the adaptation to maritime warfare of the principles of the Geneva convention of August 22, 1864, are fulfilled, shall, in the ports of the United States and the possessions thereof, be exempted, in time of war, from all dues and taxes imposed on vessels by the laws of the United States, and from all pilotage charges.

(Mar. 24, 1908, ch. 96, § 1, 35 Stat. 46.)

§ 134. Designation by President of hospital ships exempted

The President of the United States shall by proclamation name the hospital ships to which section 133 of this Appendix shall apply, and shall indicate the time when the exemptions provided for shall begin and end.

(Mar. 24, 1908, ch. 96, § 2, 35 Stat. 46.)

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see section 1(e) of Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

§ 135. Rights under treaties preserved

Nothing contained in title 48 of the Revised Statutes shall be deemed in anywise to impair any rights and privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States relative to the duty on tonnage of vessels, or any other duty on vessels.

(R.S. § 4227.)

REFERENCES IN TEXT

Title 48 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 48 of the Revised Statutes, consisting of R.S. §§ 4131 to 4305. For complete classification of R.S. §§ 4131 to 4305 to the Code, see Tables.

CODIFICATION

R.S. § 4227 derived from acts Apr. 27, 1816, ch. 107, § 6, 3 Stat. 314; Jan. 14, 1817, ch. 3, § 1, 3 Stat. 344; July 14, 1862, ch. 163, § 15, 12 Stat. 558.

CHAPTER 5—DISCRIMINATING DUTIES AND RECIPROCAL PRIVILEGES

Sec.
141. Suspension by President.
142. Retaliatory suspension of commercial privileges to foreign vessels.
143. Retaliation on denial of rights to United States vessels in British North America.
144. Suspension of free passage through Saint Marys Falls Canal; tolls.
145. Collection of tolls.
146. Discriminating duty on merchandise imported in foreign vessels; exception.

§ 141. Suspension by President

Upon satisfactory proof being given to the President, by the government of any foreign nation, that no discriminating duties of tonnage or imposts are imposed or levied in the ports of such nation upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country, the President may issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, so far as respects the vessels of such foreign nation, and the produce, manufactures, or merchandise imported into the United States from such foreign nation, or from any other foreign country; the suspension to take effect from the time of such notification being given to the President, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and their cargoes, shall be continued, and no longer: *Provided*, That the President is authorized to suspend in part the operation of section 121 of this Appendix and section 2502 of the Revised Statutes so that foreign vessels from a country imposing partial discriminating tonnage duties upon American vessels, or partial discriminating import duties upon American merchandise, may enjoy in our ports the identical privileges which the same class of American vessels and merchandise may enjoy in said foreign country.

(R.S. § 4228; July 24, 1897, ch. 13, 30 Stat. 214.)

REFERENCES IN TEXT

Section 2502 of the Revised Statutes, referred to in text, which imposed a discriminating duty upon merchandise imported in foreign vessels, was not classified to the Code and was repealed by act Mar. 3, 1933, ch. 202, § 1, 47 Stat. 1430. See section 146 of this Appendix.

CODIFICATION

R.S. § 4228 derived from acts May 24, 1828, ch. 111, § 1, 4 Stat. 308; May 31, 1830, ch. 219, § 2, 4 Stat. 425; July 13, 1832, ch. 207, § 3, 4 Stat. 579.

Act July 24, 1897, added proviso.

DELEGATION OF FUNCTIONS

For delegation to Secretary of the Treasury of authority vested in President by this section, see section 1(f) of Ex. Ord. No. 10289, eff. Sept. 17, 1951, 16 F.R. 9499, set out as a note under section 301 of Title 3, The President.

NATIONS WHOSE VESSELS ARE EXEMPTED

Nations whose vessels are exempted by treaties or Presidential proclamations from the payment of any higher tonnage duties than are applicable to vessels of

the United States, and are exempted from the payment of light money, see 19 C.F.R. § 4.22.

PROC. NO. 2992. KOREA

Proc. No. 2992, Oct. 13, 1952, 17 F.R. 9150, 67 Stat. c15, provided:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, by virtue of the authority vested in me by the above-quoted statutory provisions [this section] do hereby declare and proclaim that the foreign discriminating duties of tonnage and imposts within the United States are suspended and discontinued so far as respects the vessels of Korea and the produce, manufactures, or merchandise imported in said vessels into the United States from Korea or from any other foreign country; the suspension to take effect from October 1, 1952, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued, and no longer.

§ 142. Retaliatory suspension of commercial privileges to foreign vessels

Whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is authorized to issue his proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this section, or aiding and abetting any other person in such opposition, shall forfeit $800, and shall be guilty of a misdemeanor, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

(June 19, 1886, ch. 421, § 17, 24 Stat. 82.)

§ 143. Retaliation on denial of rights to United States vessels in British North America

Whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have been unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed, in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters, or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters, or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessel shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this section. Every violation of any such proclamation, or any part thereof, is declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law may be enforced and proceeded upon. Every person who shall violate any of the provisions of this section, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceed-

ing $1,000, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

(Mar. 3, 1887, ch. 339, 24 Stat. 475.)

§144. Suspension of free passage through Saint Marys Falls Canal; tolls

With a view of securing reciprocal advantages for the citizens, ports, and vessels of the United States, whenever and so often as the President shall be satisfied that the passage through any canal or lock connected with the navigation of the Saint Lawrence River, the Great Lakes, or the water ways connecting the same, of any vessels of the United States, or of cargoes or passengers in transit to any port of the United States, is prohibited or is made difficult or burdensome by the imposition of tolls or otherwise which, in view of the free passage through the Saint Marys Falls Canal, permitted to vessels of all nations, he shall deem to be reciprocally unjust and unreasonable, he shall have the power, and it shall be his duty, to suspend by proclamation to that effect, for such time and to such extent (including absolute prohibition) as he shall deem just, the right of free passage through the Saint Marys Falls Canal, so far as it relates to vessels owned by the subjects of the Government so discriminating against the citizens, ports, or vessels of the United States, or to any cargoes, portions of cargoes, or passengers in transit to the ports of the Government making such discrimination, whether carried in vessels of the United States or of other nations.

In such case and during such suspension tolls shall be levied, collected, and paid as follows, to wit: Upon freight of whatever kind or description, not to exceed $2 per ton; upon passengers, not to exceed $5 each, as shall be from time to time determined by the President: *Provided*, That no tolls shall be charged or collected upon freight or passengers carried to and landed at Ogdensburg, or any port west of Ogdensburg, and south of a line drawn from the northern boundary of the State of New York through the Saint Lawrence River, the Great Lakes, and their connecting channels to the northern boundary of the State of Minnesota.

(July 26, 1892, ch. 248, §1, 27 Stat. 267.)

§145. Collection of tolls

All tolls charged under the provisions of section 144 of this Appendix shall be collected under such regulations as shall be prescribed by the Commissioner of Customs, who may require the master of each vessel to furnish a sworn statement of the amount and kind of cargo and the number of passengers carried and the destination of the same, and such proof of the actual delivery of such cargo or passengers at some port or place within the limits above named as he shall deem satisfactory; and until such proof is furnished such freight and passengers may be considered to have been landed at some port or place outside of those limits, and the amount of tolls which would have accrued if they had been so delivered shall constitute a lien which may be enforced against the vessel in default wherever and whenever found in the waters of the United States.

(July 26, 1892, ch. 248, §2, 27 Stat. 268; Feb. 14, 1903, ch. 552, §10, 32 Stat. 829; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

Upon incorporation into the Code, ''Secretary of Commerce'' substituted for ''Secretary of the Treasury'' to conform to act Feb. 14, 1903, which transferred certain powers and duties of Secretary of the Treasury relating to merchant vessels and yachts to Secretary of Commerce and Labor and act Mar. 4, 1913, which changed designation of Secretary of Commerce and Labor to Secretary of Commerce.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

§146. Discriminating duty on merchandise imported in foreign vessels; exception

A discriminating duty of 10 per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, or merchandise which shall be imported in vessels not of the United States; but this discriminating duty shall not apply to goods, wares, or merchandise which shall be imported in vessels not of the United States entitled at the time of such importation by treaty or any act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be payable on goods, wares, and merchandise imported in vessels of the United States, nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be documented under chapter 121 of title 46.

(Oct. 3, 1913, ch. 16, §IV, J, subsec. 1, 38 Stat. 195; Mar. 4, 1915, ch. 171, §1, 38 Stat. 1193; June 17, 1930, ch. 497, title IV, §651(d)(1), 46 Stat. 763; Pub. L. 103–182, title VI, §689(a)(1), Dec. 8, 1993, 107 Stat. 2222.)

CODIFICATION

The provisions incorporated in this section, with portions of the original text omitted here, are classified to section 128 of Title 19, Customs Duties.

Section is a composite of acts Oct. 3, 1913, ch. 16, and Mar. 4, 1915, ch. 171, as amended. The words ''nor to goods, wares, and merchandise imported in a vessel owned by citizens of the United States but not a vessel of the United States if such vessel after entering an American port shall, before leaving the same, be documented under chapter 121 of title 46'' are based on the nonspecific amendment of act Oct. 3, 1913, by act Mar. 4, 1915, as amended.

Subsec. 1 of act Oct. 3, 1913, § IV, par. J, provided also for a discriminating duty on goods, wares and merchandise produced or manufactured in a foreign country not contiguous to the United States but coming into the United States from such contiguous country. That provision is classified to section 128 of Title 19.

R.S. § 2502 imposed a discriminating duty upon merchandise imported in foreign vessels. It was superseded by subsequent similar provisions in successive tariff acts, the latest of which is classified to this section.

Act June 5, 1920, ch. 250, § 34, 41 Stat. 1007, declaring it to be the judgment of Congress that provisions of treaties restricting the right of the United States to impose discriminating customs duties on imports entering the United States in foreign vessels and vessels of the United States, and discriminatory tonnage dues on foreign vessels, and on vessels of the United States, should be terminated, and directing the President to give notice to terminate them, was omitted.

AMENDMENTS

1993—Pub. L. 103–182, which directed the amendment of act Oct. 3, 1913, by substituting ''documented under chapter 121 of title 46,'' for ''registered as a vessel of the United States,'', was executed by making the substitution in that part of this section comprised of provisions of act Mar. 4, 1915. See Codification note above.

AMENDMENT OR REPEAL; EXCEPTION

Section is expressly excepted from repeal or amendment by the Tariff Act of 1930 (act June 17, 1930, ch. 497, title IV, 46 Stat. 763) by section 651(d) of that act which is classified to section 1651(d) of Title 19, Customs Duties.

CHAPTER 6—REGULATION AS TO VESSELS CARRYING STEERAGE PASSENGERS

Sec.
163. Regulations as to boarding arriving vessels before inspection.

§ 163. Regulations as to boarding arriving vessels before inspection

The Commissioner of Customs is authorized and directed to prescribe from time to time and enforce regulations governing the boarding of vessels arriving at the seaports of the United States, before such vessels have been properly inspected and placed in security, and for that purpose to employ any of the officers of the United States Customs Service. Each person violating such regulations shall be subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both, in the discretion of the court. This section shall be construed as supplementary to section 9 of act August 2, 1882 (22 Stat. 189), and section 2279 of title 18.

(Mar. 31, 1900, ch. 120, §§ 1–3, 31 Stat. 58; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, § 101, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

REFERENCES IN TEXT

Section 9 of act August 2, 1882, referred to in text, was classified to section 158 of former Title 46, Shipping, and was repealed by Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 600.

CODIFICATION

''Section 2279 of title 18'' substituted in text for ''section 4606 of the Revised Statutes'' on authority of act June 25, 1948, ch. 645, 62 Stat. 683, which enacted Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE

Section 4 of act Mar. 31, 1900, provided: ''That this Act [enacting this section] shall take effect thirty days after its passage.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''United States Customs Service'' substituted in text for ''Bureau of Customs'' pursuant to Treasury Department Order 165–23, Apr. 4, 1973, eff. Aug. 1, 1973, 38 F.R. 13037. See, also, section 308 of Title 31, Money and Finance.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' and ''the Bureau of Customs'' for ''that department'' on authority of sections 101 to 104 of Reorg. Plan No. 3 of 1946, set out as a note preceding section 3 of this Appendix.

Upon incorporation into the Code, ''Secretary of Commerce'' substituted for ''Secretary of the Treasury,'' to conform to act Feb. 14, 1903, which transferred certain powers and duties of Secretary of the Treasury relating to merchant vessels and yachts to Secretary of Commerce and Labor and act Mar. 4, 1913, which changed designation of Secretary of Commerce and Labor to Secretary of Commerce.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

CHAPTER 8—LIMITATION OF VESSEL OWNER'S LIABILITY

Sec.
181. Liability of masters as carriers.
182. Loss by fire.
183. Amount of liability.
(a) Privity or knowledge of owner; limitation.
(b) Seagoing vessels; losses not covered in full.
(c) Tonnage of seagoing vessels.
(d) Loss of life or bodily injury arising on distinct occasions.
(e) Privity imputed to owner.
(f) ''Seagoing vessel'' defined.
(g) Vicarious liability for medical malpractice at shoreside facilities; statutory limitations.
183b. Stipulations limiting time for filing claims and commencing suit.
(a) Time periods.
(b) Claims not barred for failure to give notice.

Sec.
(c) Mental incompetents; minors; wrongful death actions.
183c. Stipulations limiting liability for negligence invalid; contract limitations allowed.
184. Apportionment of compensation.
185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee.
186. Charterer may be deemed owner.
187. Remedies reserved.
188. Limitation of liability of owners applied to all vessels.
189. Limitation of liability of owners of vessels for debts.
190. Stipulations relieving from liability for negligence.
191. Stipulations relieving from exercise of due diligence in equipping vessels.
192. Limitation of liability for errors of navigation, dangers of sea and acts of God.
193. Bills of lading to be issued; contents.
194. Penalties; liens; recovery.
195. Certain provisions inapplicable to transportation of live animals.
196. Certain laws unaffected.

§ 181. Liability of masters as carriers

If any shipper of platina, gold, gold dust, silver, bullion, or other precious metals, coins, jewelry, bills of any bank or public body, diamonds, or other precious stones, or any gold or silver in a manufactured or unmanufactured state, watches, clocks, or timepieces of any description, trinkets, orders, notes, or securities for payment of money, stamps, maps, writings, title deeds, printings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material, furs, or lace, or any of them, contained in any parcel, or package, or trunk, shall lade the same as freight or baggage, on any vessel, without at the time of such lading giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on the bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered.

(R.S. § 4281.)

CODIFICATION

R.S. § 4281 derived from act Feb. 28, 1871, ch. 100, § 69, 16 Stat. 458.

SHORT TITLE

Sections 190 to 196 of this Appendix are popularly known as the ''Harter Act''.

§ 182. Loss by fire

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage, which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

(R.S. § 4282.)

CODIFICATION

R.S. § 4282 derived from act Mar. 3, 1851, ch. 43, § 1, 9 Stat. 635.

§ 183. Amount of liability

(a) Privity or knowledge of owner; limitation

The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) Seagoing vessels; losses not covered in full

In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) Tonnage of seagoing vessels

For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided*, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) Loss of life or bodily injury arising on distinct occasions

The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) Privity imputed to owner

In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) "Seagoing vessel" defined

As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this Appendix, the term ''seagoing vessel'' shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-pro-

pelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this Appendix, as amended.

(g) Vicarious liability for medical malpractice at shoreside facilities; statutory limitations

In a suit by any person in which the operator or owner of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, such operator, owner, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

(R.S. § 4283; Aug. 29, 1935, ch. 804, § 1, 49 Stat. 960; June 5, 1936, ch. 521, § 1, 49 Stat. 1479; Pub. L. 98–498, title II, § 213(a), Oct. 19, 1984, 98 Stat. 2306; Pub. L. 104–324, title XI, § 1129(a), Oct. 19, 1996, 110 Stat. 3984.)

CODIFICATION

R.S. § 4283 derived from act Mar. 3, 1851, ch. 43, § 3, 9 Stat. 635.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–324 added subsec. (g).

1984—Subsec. (b). Pub. L. 98–498 substituted ''$420'' for ''$60'' in two places.

1936—Act June 5, 1936, amended section generally, provided, that when owner's limited liability is insufficient to pay losses in full and the portion applicable to payment for loss of life or injury is less than $60 per ton, such portion be increased to $60 per ton, and if increased portion is insufficient, proportionate payments be made, inserted provision imputing privity or knowledge of master, superintendent, or managing agent to owner, construed ''seagoing vessel'' for purposes of section 183b of this Appendix as well as this section, and designated the amended provisions of section as subsecs. (a) to (f).

1935—Act Aug. 29, 1935, inserted provisions fixing total liability of owner of sea-going vessel, whether American or foreign, other than tugs, barges, or fishing vessels, for entire loss of life or injuries caused without his fault or privity at not less than $60 for each ton of such vessel or the amount of value of his interest in such vessel and her freight then pending, if the latter be a greater amount; fixed tonnage of steam or motor vessel as her gross tonnage, without deduction for engine room, and tonnage of a sailing vessel as her registered tonnage, not including space for seamen; and imposed on owners, liability for losses of life or injury on distinct occasions to the same extent as if no other loss or injury had arisen.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 213(b) of Pub. L. 98–498 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to incidents occurring after the date of enactment of this Act [Oct. 19, 1984].''

§ 183b. Stipulations limiting time for filing claims and commencing suit

(a) Time periods

It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) Claims not barred for failure to give notice

Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) Mental incompetents; minors; wrongful death actions

If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: *Provided, however*, That such appointment be made within three years after the date of such death or injury.

(R.S. § 4283A, as added Aug. 29, 1935, ch. 804, § 3, 49 Stat. 960.)

§ 183c. Stipulations limiting liability for negligence invalid; contract limitations allowed

(a) It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are declared to be against public policy and shall be null and void and of no effect.

(b)(1) Subsection (a) of this section shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a crewmember, manager, agent, master, owner, or operator of a

vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit such liability if the emotional distress, mental suffering, or psychological injury was—

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and such risk was caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator; or

(C) intentionally inflicted by a crewmember or the manager, agent, master, owner, or operator.

(2) Nothing in this subsection is intended to limit the liability of a crewmember or the manager, agent, master, owner, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

(R.S. § 4283B, as added June 5, 1936, ch. 521, § 2, 49 Stat. 1480; amended Pub. L. 102–587, title III, § 3006, Nov. 4, 1992, 106 Stat. 5068; Pub. L. 103–206, title III, § 309, Dec. 20, 1993, 107 Stat. 2425; Pub. L. 104–324, title XI, § 1129(b), Oct. 19, 1996, 110 Stat. 3984.)

AMENDMENTS

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsec. (b).

1993—Cl. (2). Pub. L. 103–206 substituted ''court'' for ''any court''.

1992—Cl. (2). Pub. L. 102–587 inserted ''any'' before ''court''.

§ 184. Apportionment of compensation

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

(R.S. § 4284; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 251.)

CODIFICATION

R.S. § 4284 derived from act Mar. 3, 1851, ch. 43, § 4, 9 Stat. 635.

Act Feb. 27, 1877, amended R.S. § 4284 by substituting the word ''owners'' for ''owner'' in the expression ''freighters and owners of the property''.

§ 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of chapter 6 of title 48 of the Revised Statutes and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this Appendix, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this Appendix. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

(R.S. § 4285; June 5, 1936, ch. 521, § 3, 49 Stat. 1480.)

REFERENCES IN TEXT

Chapter 6 of title 48 of the Revised Statutes, referred to in text, was in the original ''this chapter, as amended'', meaning chapter 6 of title 48 of the Revised Statutes, consisting of R.S. §§ 4252 to 4289. For complete classification of R.S. §§ 4252 to 4289 to the Code, see Tables.

CODIFICATION

R.S. § 4285 derived from act Mar. 3, 1851, ch. 43, § 4, 9 Stat. 635.

AMENDMENTS

1936—Act June 5, 1936, substituted provisions of this section for former provisions which provided that it should be deemed a sufficient compliance on the part of an owner with the requirements of title 48 of the Revised Statutes relating to his liability for embezzlement, loss, or destruction of any property, goods, or merchandise, if he transferred his interest in such vessel and freight, for the benefit of claimants, to a trustee appointed by court, after which all claims against the owner should cease.

§ 186. Charterer may be deemed owner

The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of title 48 of the Revised Statutes relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof.

(R.S. § 4286.)

REFERENCES IN TEXT

Title 48 of the Revised Statutes, referred to in text, was in the original ''this Title'' meaning title 48 of the Revised Statutes, consisting of R.S. §§ 4131 to 4305. For complete classification of R.S. §§ 4131 to 4305 to the Code, see Tables.

CODIFICATION

R.S. § 4286 derived from act Mar. 3, 1851, ch. 43, § 5, 9 Stat. 636.

§ 187. Remedies reserved

Nothing in sections 182, 183, and 184 to 186 of this Appendix shall be construed to take away

or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel.

(R.S. § 4287.)

CODIFICATION

R.S. § 4287 derived from act Mar. 3, 1851, ch. 43, § 6, 9 Stat. 636.

§ 188. Limitation of liability of owners applied to all vessels

Except as otherwise specifically provided therein, the provisions of sections 175,[1] 182, 183, 183b to 187, and 189 of this Appendix shall apply to all seagoing vessels, and also to all vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

(R.S. § 4289; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 320; June 19, 1886, ch. 421, § 4, 24 Stat. 80; June 5, 1936, ch. 521, § 4, 49 Stat. 1481.)

REFERENCES IN TEXT

Sections 175, 182, 183, 183b to 187, and 189, referred to in text, was in the original "the nine preceding sections", meaning R.S. §§ 4282–4283B and 4284–4288.

Section 175 of this Appendix, referred to in text, was repealed by act Oct. 9, 1940, ch. 777, § 7, 54 Stat. 1028.

CODIFICATION

R.S. § 4289 derived from act Mar. 3, 1851, ch. 43, § 7, 9 Stat. 636.

Section, as enacted in the Revised Statutes, was as follows: "The provisions of this Title relating to the limitation of the liability of the owners of vessels, shall not apply to the owners of any canal-boat, barge, or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation."

It was amended, by striking out the words "this Title," and inserting the words "the seven preceding sections," by act Feb. 18, 1875.

It was further amended, to read in substance as set forth here, after the enactment of act June 26, 1884, ch. 121, § 18, 23 Stat. 57, classified to section 189 of this Appendix, by act June 19, 1886.

AMENDMENTS

1936—Act June 5, 1936, substituted "Except as otherwise specifically provided therein, the provisions of the nine preceding sections" for "The provisions of the seven preceding sections".

§ 189. Limitation of liability of owners of vessels for debts

The individual liability of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessels and freight pending: *Provided*, That this provision shall not prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners.

(June 26, 1884, ch. 121, § 18, 23 Stat. 57.)

CODIFICATION

This section was enacted as part of the Shipping Act of 1884.

The original text of the proviso read as follows: "*Provided*, That this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action; nor shall the same apply to wages due to persons employed by said shipowners."

The provision concerning liabilities previously incurred was omitted.

§ 190. Stipulations relieving from liability for negligence

It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

(Feb. 13, 1893, ch. 105, § 1, 27 Stat. 445.)

SHORT TITLE

Act Feb. 13, 1893, enacting this section and sections 191 to 196 of this Appendix, is popularly known as the "Harter Act".

EFFECTIVE DATE

Section 8 of act Feb. 13, 1893, provided: "That this act [enacting this section and sections 191 to 196 of this Appendix] shall take effect from and after the first day of July, eighteen hundred and ninety-three."

§ 191. Stipulations relieving from exercise of due diligence in equipping vessels

It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence[1] properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

(Feb. 13, 1893, ch. 105, § 2, 27 Stat. 445.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

[1] See References in Text note below.

[1] So in original. Probably should be followed by "to".

§ 192. Limitation of liability for errors of navigation, dangers of sea and acts of God

If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

(Feb. 13, 1893, ch. 105, § 3, 27 Stat. 445.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

§ 193. Bills of lading to be issued; contents

It shall be the duty of the owner or owners, masters, or agents of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

(Feb. 13, 1893, ch. 105, § 4, 27 Stat. 445.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

§ 194. Penalties; liens; recovery

For a violation of any of the provisions of sections 190 to 196 of this Appendix the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding $2,000. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

(Feb. 13, 1893, ch. 105, § 5, 27 Stat. 446.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

§ 195. Certain provisions inapplicable to transportation of live animals

Sections 190 and 193 of this Appendix shall not apply to the transportation of live animals.

(Feb. 13, 1893, ch. 105, § 7, 27 Stat. 446.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

§ 196. Certain laws unaffected

Sections 190 to 196 of this Appendix shall not be held to modify or repeal sections 181 to 183 of this Appendix, or any other statute defining the liability of vessels, their owners, or representatives.

(Feb. 13, 1893, ch. 105, § 6, 27 Stat. 446.)

EFFECTIVE DATE

Section effective July 1, 1893, see section 8 of act Feb. 13, 1893, set out as a note under section 190 of this Appendix.

CHAPTER 12—REGULATION OF VESSELS IN DOMESTIC COMMERCE

Sec.
251. Vessels employed in coasting trade or fisheries.
(a) Landing of catch of fish by foreign-flag vessels.
(b) Sale or transfer for immediate consumption.
(c) Forfeitures and penalties.
251a. Remission or mitigation of fines, penalties or forfeitures.
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262. Trade of documented vessel not to defraud revenue laws.
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289a. Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay.
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(a) Authorization of transportation.
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291. Transshipment of imported merchandise intended for immediate exportation.
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316. Use of foreign vessels in United States ports.
(a) Towing vessels.
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(d) Salvaging operations by foreign vessels.
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319. Civil penalties for trading without required certificate of documentation.
320. Remission or mitigation of fines.
321. Penalty for illegal enrollment or license.
322. Penalty for malfeasance.
323. Penalty for forgery and alteration.
324. Penalty for obstructing officers.
326. Exemption from forfeiture.
327. Notice of seizure.
328. Recovery of forfeitures and penalties.
336. Canal boats exempt from enrollment, license, and customs fees.

§ 251. Vessels employed in coasting trade or fisheries

(a) Landing of catch of fish by foreign-flag vessels

Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. The Secretary of Commerce may issue any regulations that the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States.

(b) Sale or transfer for immediate consumption

Subsection (a) of this section shall not be deemed to prohibit the landing by a foreign-flag vessel of not more than fifty feet overall length in a port of the Virgin Islands of the United States for immediate consumption in such islands of its catch of fresh fish, whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced. No fish landed under this authorization shall be sold or transferred except for immediate consumption. Sale or transfer to an agent, representative, or employee of a freezer or cannery shall be deemed to be prohibited in the absence of satisfactory evidence that such sale or transfer is for immediate consumption. For the purposes of this subsection, the term ''immediate consumption'' shall not preclude the freezing, smoking, or other processing of such fresh fish by the ultimate consumer thereof.

(c) Forfeitures and penalties

Any fish landed in the Virgin Islands of the United States which are retained, sold, or transferred other than as authorized in subsection (b) of this section shall be liable to forfeiture and any person or persons retaining, selling, transferring, purchasing, or receiving such fish shall severally be liable to a penalty of $1,000 for each offense, in addition to any other penalty provided in law.

(R.S. § 4311; Sept. 2, 1950, ch. 842, 64 Stat. 577; Pub. L. 87–220, § 1, Sept. 13, 1961, 75 Stat. 493; Pub. L. 96–61, § 2, Aug. 15, 1979, 93 Stat. 407; Pub. L. 96–594, title I, § 126(b), Dec. 24, 1980, 94 Stat. 3459; Pub. L. 100–239, § 8(a), Jan. 11, 1988, 101 Stat. 1783.)

CODIFICATION

R.S. § 4311 derived from acts Feb. 18, 1793, ch. 8, § 1, 1 Stat. 305; Apr. 18, 1874, ch. 110, 18 Stat. 31.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–239 inserted at end ''The Secretary of Commerce may issue any regulations that the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States.''

1980—Subsec. (a). Pub. L. 96–594 struck out provisions relating to vessels entitled to privileges of vessels employed in coasting trade or fisheries, and provisions defining ''fisheries''.

1979—Subsec. (a). Pub. L. 96–61 inserted provision defining ''fisheries''.

1961—Pub. L. 87–220 designated existing provisions as subsec. (a), and added subsecs. (b) and (c).

1950—Act Sept. 2, 1950, inserted second sentence to increase protection to American fishermen.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 128 of Pub. L. 96–594 provided in part that the amendment made by Pub. L. 96–594 is effective on first day of eighteenth month following December 1980.

LANDING OF CATCH OF FISH BY FOREIGN VESSELS

Provisions of this section prohibiting the landing of fish in United States ports by foreign-flag vessels direct from fishing grounds unaffected by Pub. L. 87–814, see section 6 of Pub. L. 87–814, set out as a note under section 951 of Title 16, Conservation.

§ 251a. Remission or mitigation of fines, penalties or forfeitures

Any fine, penalty, or forfeiture incurred under the provisions of this Act shall be subject to remission or mitigation in accordance with section 2107(b) of title 46.

(Pub. L. 87–220, § 2, Sept. 13, 1961, 75 Stat. 493.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 87–220, Sept. 13, 1961, 75 Stat. 493, which enacted this section and section 251b of this Appendix, and amended section 251 of this Appendix. For complete classification of this Act to the Code, see Tables.

''Section 2107(b) of title 46'' substituted in text for ''section 5294 of the Revised Statutes, as amended (46 U.S.C. 7)'' on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 251b. Regulations

The Secretary of the Treasury may issue such regulations as he deems necessary for the enforcement of the provisions of this Act.

(Pub. L. 87–220, § 3, Sept. 13, 1961, 75 Stat. 493.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 87–220, Sept. 13, 1961, 75 Stat. 493, which enacted this section and section 251a of this Appendix, and amended section 251 of

this Appendix. For complete classification of this Act to the Code, see Tables.

§ 262. Trade of documented vessel not to defraud revenue laws

No documented vessel shall be employed in any trade whereby the revenue laws of the United States shall be defrauded.

(R.S. § 4320; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 251; Jan. 16, 1895, ch. 24, § 3, 28 Stat. 625; Pub. L. 96–594, title I, § 126(c), Dec. 24, 1980, 94 Stat. 3459.)

CODIFICATION

R.S. § 4320 derived from act Feb. 18, 1793, ch. 8, § 4, 1 Stat. 306.

R.S. § 4320, as originally enacted, was as follows: ''In order to the licensing of any vessel for carrying on the coasting-trade or fisheries, the husband, or managing owner, together with the master thereof, with one or more sureties to the satisfaction of the collector granting the same, shall become bound to pay to the United States, if such vessel be of the burden of five tons and less than twenty tons, the sum of one hundred dollars; and if twenty tons and not exceeding thirty tons, the sum of two hundred dollars; and if above thirty tons and not exceeding sixty tons, the sum of five hundred dollars; and if above sixty tons, the sum of one thousand dollars, in case it shall appear, within two years from the date of the bond, that such vessel has been employed in any trade whereby the revenue of the United States has been defrauded, during the time the license granted to such vessel remained in force. The master of such vessel shall also swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it is specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessel be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong, the duty of six cents per ton being first paid, to grant a license.''

It was amended by act Feb. 27, 1877, by striking out ''the duty of six cents per ton being first paid.''

It was amended generally by act Jan. 16, 1895.

AMENDMENTS

1980—Pub. L. 96–594 substituted ''documented'' for ''licensed'', and struck out provisions respecting oaths required of master, etc.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 128 of Pub. L. 96–594 provided in part that the amendment made by Pub. L. 96–594 is effective on first day of eighteenth month following December 1980.

§ 277. Inspection of documents

Any officer concerned in the collection of the revenue may at all times inspect the certificate of documentation of any documented vessel or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the Secretary of Transportation is not required to have its certificate of documentation or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of $100, unless the failure to do so is willful, in which case he shall be liable to a penalty of $1,000 and to a fine of not more than $1,000 or imprisonment for not more than one year, or both.

(R.S. § 4336; Aug. 5, 1935, ch. 438, title III, § 312, 49 Stat. 528; Pub. L. 85–237, § 2, Aug. 30, 1957, 71 Stat. 518; Pub. L. 103–182, title VI, § 686(a)(5), Dec. 8, 1993, 107 Stat. 2220.)

CODIFICATION

R.S. § 4336 derived from act Feb. 18, 1793, ch. 8, § 13, 1 Stat. 309.

AMENDMENTS

1993—Pub. L. 103–182 substituted ''certificate of documentation of any documented vessel'' for ''register or enrollment or license of any vessel'' and ''Secretary of Transportation is not required to have its certificate of documentation'' for ''Secretary of the Treasury is not required to have its register or enrollment or license''.

1957—Pub. L. 85–237 provided for penalties against other officer in charge or command of vessel and by excepting vessels which are not required by regulation of the Secretary of the Treasury to exhibit their documents on board.

1935—Act Aug. 5, 1935, provided for inspection of register or any document and punishment for willful failure to exhibit document.

§ 289. Transportation of passengers in foreign vessels

No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 for each passenger so transported and landed.

(June 19, 1886, ch. 421, § 8, 24 Stat. 81; Feb. 17, 1898, ch. 26, § 2, 30 Stat. 248.)

AMENDMENTS

1898—Act Feb. 17, 1898, amended section generally, increasing from $2 to $200 the penalty for transporting passengers in foreign vessels.

§ 289a. Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay

Until such time as passenger service shall be established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Commissioner of Customs is authorized in his discretion to issue annually permits to Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 289 of this Appendix.

(Apr. 26, 1938, ch. 174, 52 Stat. 223; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out

in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

§ 289b. Transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States

Notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation until the Secretary of Transportation determines that United States-flag service is available to provide such transportation.

(Pub. L. 87–77, June 30, 1961, 75 Stat. 196; Pub. L. 97–31, § 12(22), Aug. 6, 1981, 95 Stat. 155.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

PRIOR PROVISIONS

Temporary provisions which authorized transportation of passengers and merchandise in Canadian vessels between points in Alaska and United States, were contained in the following acts:

Apr. 5, 1960, Pub. L. 86–410, 74 Stat. 16.
July 31, 1959, Pub. L. 86–126, 73 Stat. 272.
June 30, 1958, Pub. L. 85–473, 72 Stat. 244.
July 11, 1957, Pub. L. 85–103, 71 Stat. 294.
Apr. 18, 1956, ch. 207, 70 Stat. 114.
May 7, 1955, ch. 35, 69 Stat. 47.
June 29, 1954, ch. 413, 68 Stat. 321.
July 16, 1953, ch. 201, 67 Stat. 175.
June 11, 1952, ch. 391, 66 Stat. 133.
June 27, 1951, ch. 153, 65 Stat. 90.
June 29, 1950, ch. 409, 64 Stat. 301.
Aug. 22, 1949, ch. 493, 63 Stat. 622.

§ 289c. Transportation of passengers between Puerto Rico and other United States ports; foreign-flag vessels; unavailability of United States flag service

(a) Authorization of transportation

Notwithstanding any other provision of law, passengers may be transported on passenger vessels not qualified to engage in the coastwise trade between ports in Puerto Rico and other ports in the United States, directly or by way of a foreign port, except as otherwise provided in this section.

(b) Notification by Secretary; termination of services

(1) Upon a showing to the Secretary of Transportation, by the vessel owner or charterer, that service aboard a United States passenger vessel qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each vessel transporting passengers under authority of this section that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator under this section shall expire on the 270th day following the Secretary's notification.

(2) Upon a showing to the Secretary, by the vessel owner or charterer, that service aboard a United States passenger vessel not qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each foreign-flag vessel transporting passengers under authority of this section that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator of a foreign-flag vessel transporting passengers under authority of this section shall expire on the 270th day following the Secretary's notification.

(c) Extension of termination period

If, at the expiration of the 270-day period specified in subsections (b)(1) and (b)(2) of this section, the vessel that has been offering or advertising service pursuant to a certificate described in either of those subsections has not entered the coastwise passenger trade between ports in Puerto Rico and other ports in the United States, then the termination of service required by either of those subsections shall not be required until 90 days following the entry into that trade by the United States vessel.

(d) Reinstatement of coastwise privileges

Any coastwise privileges granted in this section that expire under subsection (b)(1) or (b)(2) of this section shall be reinstated upon a determination by the Secretary that the service on which the expiration of the privileges was based is no longer available.

(e) "Passenger vessel" defined

For the purposes of subsections (b)(1) and (b)(2) of this section, the term ''passenger vessel'' means any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this section.

(Pub. L. 98–563, Oct. 30, 1984, 98 Stat. 2916.)

§ 290. Omitted

CODIFICATION

Section, act Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248, related to transportation of merchandise in foreign vessels. See section 883 of this Appendix.

§ 291. Transshipment of imported merchandise intended for immediate exportation

Whenever merchandise is imported into the United States by sea for immediate exportation to a foreign port by sea, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power, the Secretary of the Treasury is authorized to prescribe regulations for the transshipment and transportation of such merchandise.

(Feb. 17, 1898, ch. 26, § 3, 30 Stat. 248.)

§ 292. Vessels that may engage in dredging

(a) In general

Except as provided in subsection (b) of this section, a vessel may engage in dredging in the navigable waters of the United States only if—

(1) the vessel meets the requirements of section 883 of this Appendix and sections 802 and 803 of this Appendix for engaging in the coastwise trade;

(2) when chartered, the charterer of the vessel is a citizen of the United States under sections 802 and 803 of this Appendix for engaging in the coastwise trade; and

(3) for a vessel that is at least 5 net tons, the vessel is documented under chapter 121 of title 46 with a coastwise endorsement.

(b) Exception

A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

(c) Penalty

When a vessel is operated in knowing violation of this section, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

(May 28, 1906, ch. 2566, § 1, 34 Stat. 204; Pub. L. 102–587, title V, § 5501(a)(1), Nov. 4, 1992, 106 Stat. 5084.)

AMENDMENTS

1992—Pub. L. 102–587 amended section generally. Prior to amendment, section read as follows: ''A foreign-built dredge shall not, under penalty of forfeiture, engage in dredging in the United States unless documented as a vessel of the United States.''

NONAPPLICABILITY TO CERTAIN VESSELS

Section 5501(a)(2) of Pub. L. 102–587 provided that: ''The amendment made by paragraph (1) [amending this section] does not apply to—

''(A)(i) the vessel STUYVESANT, official number 648540;

''(ii) any other hopper dredging vessel documented under chapter 121 of title 46, United States Code before the effective date of this Act [Nov. 4, 1992] and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest; however, this exception expires on December 3, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs; and

''(iii) any other non-hopper dredging vessel documented under chapter 121 and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest, as is necessary (a) to fulfill dredging obligations under a specific contract, including any extension periods; or (b) as temporary replacement capacity for a vessel which has become disabled but only for so long as the disability shall last and until the vessel is in a position to fully resume dredging operations; however, this exception expires on December 8, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs;

''(B) the vessel COLUMBUS, official number 590658, except that the vessel's certificate of documentation shall be endorsed to prohibit the vessel from engaging in the transportation of merchandise (except valueless material), including dredge material of value, between places within the navigable waters of the United States;

''(C) a vessel that is engaged in dredged material excavation if that excavation is not more than a minority of the total cost of the construction contract in which the excavation is a single, integral part, and the vessel is—

''(i) built in the United States;

''(ii) a non-self-propelled mechanical clamshell dredging vessel; and

''(iii) owned or chartered by a corporation that had on file with the Secretary of Transportation, on August 1, 1989, the certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1); or

''(D) any other documented vessel engaged in dredging and time chartered to an entity that, on August 1, 1989, was, and has continuously remained, the parent of a corporation that had on file with the Secretary of Transportation on August 1, 1989, a certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1) if the vessel is—

''(i) not engaged in a federally funded navigation dredging project; and

''(ii) engaged only in dredging associated with, and integral to, accomplishment of that parent's regular business requirements.''

§ 316. Use of foreign vessels in United States ports

(a) Towing vessels

It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of documentation issued under section 12106 of title 46 to tow any vessel other than a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places, or to tow any vessel transporting valueless material or any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been

paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

(b) "Person" defined

The term ''person'' as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

(c) Foreign railroad companies using ferries, tugboats, or towboats

Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: *Provided*, That except as authorized by section 883 of this Appendix, such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same.

(d) Salvaging operations by foreign vessels

No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this Appendix: *Provided, however*, That if, on investigation, the Commissioner of Customs is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to the Act of June 7, 1918, as amended (46 U.S.C. 288), is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.

(e) Operations permitted by treaty

Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the United States and Great Britain ''concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage'' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico ''to facilitate assistance to and salvage of vessels in territorial waters'', signed at Mexico City, June 13, 1935 (49 Stat. 3359).

(R.S. §4370; June 11, 1940, ch. 324, 54 Stat. 304; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 99–307, §10, May 19, 1986, 100 Stat. 447; Pub. L. 100–329, §2, June 7, 1988, 102 Stat. 589; Pub. L. 104–324, title XI, §1115(b)(3), Oct. 19, 1996, 110 Stat. 3972.)

REFERENCES IN TEXT

The Presidential Proclamation of March 10, 1983, referred to in subsec. (a), is Proc. No. 5030, Mar. 10, 1983, 48 F.R. 10605, which is set out as a note under section 1453 of Title 16, Conservation.

Act of June 7, 1918, referred to in subsec. (d), was classified to section 288 of former Title 46, Shipping, and was repealed by Pub. L. 85–911, §12, Sept. 2, 1958, 72 Stat. 1758, eff. Apr. 1, 1960. Provisions relating to numbering of vessels are contained in section 12301 et seq. of Title 46, Shipping.

CODIFICATION

R.S. §4370 derived from acts July 18, 1866, ch. 201, §21, 14 Stat. 183; Feb. 25, 1867, ch. 78, 14 Stat. 410.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–324 struck out ''or 12107'' after ''section 12106''.

1988—Subsec. (a). Pub. L. 100–329 inserted provision at end of first sentence relating to transportation of valueless material or any dredged material, regardless of commercial value.

1986—Subsec. (a). Pub. L. 99–307 substituted ''a certificate of documentation issued under section 12106 or 12107 of title 46'' for ''a certificate of registry, a certificate of enrollment, or a license, issued pursuant to title 48 or title 50 of the Revised Statutes or a certificate of award of number issued pursuant to the Act of June 7, 1918, as amended (46 U.S.C. 288),'' and ''a vessel in distress'' for ''a vessel of foreign registry, or a vessel in distress''.

1940—Act June 11, 1940, designated existing provisions as subsec. (a), expanded coverage to include all vessels and increased the penalties for violations, and added subsecs. (b) to (e).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted for ''Secretary of Commerce'' in subsec. (d) on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

NONAPPLICABILITY OF PUB. L. 100–329 TO CERTAIN VESSEL

Amendment by Pub. L. 100–329 not applicable to a vessel engaged in the transportation of valueless material or valueless dredged material and owned or chartered by a corporation that had on file with Secretary of Transportation on Aug. 1, 1989, the certificate specified in section 883–1 of this Appendix, see section 5501(c) of Pub. L. 102–587, set out as a note under section 883 of this Appendix.

§ 316a. Vessel escort operations and towing assistance

(a) In general

Except in the case of a vessel in distress, only a vessel of the United States (as that term is defined in section 2101 of title 46) may perform the following escort vessel operations within the navigable waters of the United States:

(1) Operations that commence or terminate at a port or place in the United States.

(2) Operations required by United States law or regulation.

(3) Operations provided in whole or in part within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to those facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) Addition to towing vessel

In the case of a vessel being towed under section 316(a) of this Appendix, an escort vessel is any vessel assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

(c) Relationship to other law

Nothing in this section shall affect or be construed or interpreted to affect or modify section 316(a) of this Appendix.

(d) Definition

In this section, the term ''escort vessel'' means any vessel that is assigned and dedicated to assist another vessel, whether or not tethered to that vessel, solely as a safety precaution to assist in controlling the speed or course of the assisted vessel in the event of a steering or propulsion equipment failure, or any other similar emergency circumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation.

(e) Penalty

A person violating this section is liable to the United States Government for a civil penalty of not more than $10,000 for each day during which the violation occurs.

(Pub. L. 107–295, title IV, § 404, Nov. 25, 2002, 116 Stat. 2114.)

§ 319. Civil penalties for trading without required certificate of documentation

Whenever a vessel, entitled to be documented and not so documented, is employed in a trade for which certificates of documentation are issued under the vessel documentation laws, other than a trade covered by a registry, the vessel is liable to a civil penalty of $500 for each port at which it arrives without the proper certificate of documentation, and if it has on board any merchandise of foreign growth or manufacture (sea stores excepted), or any taxable domestic spirits, wines, or other alcoholic liquors, on which the duties or taxes have not been paid or secured to be paid, the vessel, together with its equipment and cargo, is liable to seizure and forfeiture. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found on board such vessel, shall be prima facie evidence of the foreign origin of such merchandise.

(June 19, 1886, ch. 421, § 7, 24 Stat. 81; Aug. 5, 1935, ch. 438, title III, § 314, 49 Stat. 529; Pub. L. 96–594, title I, § 126(e), Dec. 24, 1980, 94 Stat. 3459.)

AMENDMENTS

1980—Pub. L. 96–594 substituted provisions relating to violations and penalties for employment in a trade of a vessel entitled to be documented but not so documented for provisions relating to fines and penalties for trading without a license by a vessel twenty tons or upward, and struck out provisions respecting expiration of a license while a vessel is at sea.

1935—Act Aug. 5, 1935, provided for forfeiture, to deem marks, etc., prima facie evidence of foreign origin of merchandise, and to substitute ''said fine or forfeiture'' for ''said fine of $30'' in last sentence.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 128 of Pub. L. 96–594 provided in part that the amendment made by Pub. L. 96–594 is effective on first day of eighteenth month following December 1980.

§ 320. Remission or mitigation of fines

The fines imposed by sections 5[1] and 6[1] of this act and sections 289 and 319 of this Appendix shall be subject to remission or mitigation by the Commissioner of Customs when the offense was not willfully committed, under such regulations and methods of ascertaining the facts as may seem to him advisable.

(June 19, 1886, ch. 421, § 9, 24 Stat. 81; Feb. 14, 1903, ch. 552, § 10, 32 Stat. 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; 1946 Reorg. Plan No. 3, §§ 101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097.)

REFERENCES IN TEXT

Section 5 of this act, referred to in text, is section 5 of act June 19, 1886, which was classified to section 77 of former Title 46, Shipping, and was repealed by Pub. L. 99–509, title V, § 5104(b), Oct. 21, 1986, 100 Stat. 1928, and reenacted by section 5101(3) thereof as sections 14502 and 14512 of Title 46, Shipping.

Section 6 of this act, referred to in text, is section 6 of act June 19, 1886, which was classified to section 45 of former Title 46 and was repealed by Pub. L. 96–594, title I, § 127, Dec. 24, 1980, 94 Stat. 3459.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[1] See References in Text note below.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Commissioner of Customs, referred to in text, was an officer of Department of the Treasury.

''Commissioner of Customs'' substituted in text for ''Secretary of Commerce'' on authority of Reorg. Plan No. 3 of 1946, §§101–104, set out as a note preceding section 3 of this Appendix.

Upon incorporation into the Code, ''Secretary of Commerce'' substituted for ''Secretary of the Treasury'' to conform to acts Feb. 14, 1903, and Mar. 4, 1913.

ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out preceding section 3 of this Appendix.

§ 321. Penalty for illegal enrollment or license

Every collector, who knowingly makes any record of enrollment or license of any vessel, and every other officer, or person, appointed by or under them, who makes any record, or grants any certificate or other document whatever, contrary to the true intent and meaning of title 50 of the Revised Statutes, or takes any other or greater fees than are by title 50 of the Revised Statutes allowed, or receives for any service performed pursuant to title 50 of the Revised Statutes, any reward or gratuity, and every surveyor, or other person appointed to measure vessels, who willfully delivers to any collector or such officer or employee as the Secretary of the Treasury shall designate a false description of any vessel, to be enrolled or licensed, in pursuance of title 50 of the Revised Statutes, shall be liable to a penalty of $500, and be rendered incapable of serving in any office of trust or profit under the United States.

(R.S. §4373; June 17, 1930, ch. 497, title IV, §523, 46 Stat. 740; Aug. 8, 1953, ch. 397, §2(d), 67 Stat. 508.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§4311 to 4390. For complete classification of R.S. §§4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. 4373 derived from act Feb. 18, 1793, ch. 8, §29, 1 Stat. 315.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Upon incorporation into the Code, ''comptroller of customs'' substituted for ''naval officer'' to conform to act Sept. 21, 1922, ch. 356, §523, 42 Stat. 974, which was repealed by section 651(a)(1) of act June 17, 1930. Section 523 of act June 17, 1930, classified to section 1523 of Title 19, Customs Duties, continued naval officers of customs as comptrollers of customs. Section 523 of act June 17, 1930, was amended by act Aug. 8, 1953, which omitted references to comptrollers of customs and substituted reference to Secretary of the Treasury or such officer or employee as he shall designate. The words ''such officer or employee as the Secretary of the Treasury shall designate'' were substituted for ''comptrollers of customs'' to reflect such change.

§ 322. Penalty for malfeasance

Every person, authorized and required by title 50 of the Revised Statutes to perform any act or thing as an officer, who willfully neglects or refuses to do and perform the same, according to the true intent and meaning of title 50 of the Revised Statutes, shall, if not subject to the penalty and disqualifications prescribed in section 321 of this Appendix, be liable to a penalty of $500 for the first offense, and of like sum for the second offense, and shall, after conviction for the second offense, be rendered incapable of holding any office of trust or profit under the United States.

(R.S. §4374.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§4311 to 4390. For complete classification of R.S. §§4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. §4374 derived from act Feb. 18, 1793, ch. 8, §29, 1 Stat. 315.

§ 323. Penalty for forgery and alteration

Every person who forges, counterfeits, erases, alters, or falsifies any enrollment, license, certificate, permit, or other document, mentioned or required in title 50 of the Revised Statutes, to be granted by any officer of the revenue, such person, so offending, shall be liable to a penalty of $500.

(R.S. §4375.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§4311 to 4390. For complete classification of R.S. §§4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. §4375 derived from act Feb. 18, 1793, ch. 8, §30, 1 Stat. 316.

§ 324. Penalty for obstructing officers

Every person who assaults, resists, obstructs, or hinders any officer in the execution of any Act or law relating to the enrollment, registry, or licensing of vessels, or of title 50 of the Revised Statutes, or of any of the powers or authorities vested in him by any such Act or law, shall, for every such offense, for which no other penalty is particularly provided, be liable to a penalty of $500.

(R.S. §4376.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§ 4311 to 4390. For complete classification of R.S. §§ 4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. § 4376 derived from act Feb. 18, 1793, ch. 8, § 31, 1 Stat. 316.

§ 326. Exemption from forfeiture

Any merchandise on board any vessel which belongs, in good faith, to any person other than the master, owner, or mariners of such vessel, and upon which the duties have been paid, or secured according to law, shall be exempted from any forfeiture under title 50 of the Revised Statutes.

(R.S. § 4378.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§ 4311 to 4390. For complete classification of R.S. §§ 4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. § 4378 derived from act Feb. 18, 1793, ch. 8, § 33, 1 Stat. 316.

§ 327. Notice of seizure

In every case where a forfeiture of any vessel or merchandise shall accrue, it shall be the duty of the collector or other proper officer, who shall give notice of the seizure of such vessel or of such merchandise, to insert in the same advertisement the name and the place of residence of the person to whom any such vessel and merchandise belonged or were consigned, at the time of such seizure, if the same be known to him.

(R.S. § 4379.)

CODIFICATION

R.S. § 4379 derived from act Feb. 18, 1793, ch. 8, § 28, 1 Stat. 315.

TRANSFER OF FUNCTIONS

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 328. Recovery of forfeitures and penalties

All penalties and forfeitures which shall be incurred by virtue of title 50 of the Revised Statutes may be sued for, prosecuted, and recovered as penalties and forfeitures incurred by virtue of the laws relating to the collection of duties, and shall be appropriated in like manner; except when otherwise expressly prescribed.

(R.S. § 4380.)

REFERENCES IN TEXT

Title 50 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 50 of the Revised Statutes, consisting of R.S. §§ 4311 to 4390. For complete classification of R.S. §§ 4311 to 4390 to the Code, see Tables.

CODIFICATION

R.S. § 4380 derived from act Feb. 18, 1793, ch. 8, § 35, 1 Stat. 317.

§ 336. Canal boats exempt from enrollment, license, and customs fees

The act to which this is a supplement shall not be so construed as to extend the provisions of the said act to canal boats or boats employed on the internal waters or canals of any State; and all such boats, excepting only such as are provided with sails or propelling machinery of their own adapted to lake or coastwise navigation, and excepting such as are employed in trade with the Canadas, shall be exempt from the provisions of the said act, and from the payment of all customs and other fees under any act of Congress.

(Apr. 18, 1874, ch. 110, 18 Stat. 31.)

REFERENCES IN TEXT

The act to which this is a supplement, and the said act, referred to in text, mean act Feb. 18, 1793, ch. 8, 1 Stat. 305, entitled ''An Act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same'', which was incorporated into the Revised Statutes of 1878 as R.S. §§ 919, 923, 938, 941, 4311, 4312, 4319 to 4327, 4331 to 4338, 4349 to 4356, 4359 to 4369, 4371 to 4381, 4383, and 4385. For complete classification of such sections of the Revised Statutes to the Code, see Tables.

CHAPTER 13—PASSPORTS AND PAPERS OF VESSELS ENGAGED IN FOREIGN COMMERCE

Sec.
354. Deposit of ship's papers with consul.
355. Penalty for failure.

§ 354. Deposit of ship's papers with consul

Every master of a vessel, belonging to citizens of the United States, who shall sail from any port of the United States, shall, on his arrival at a foreign port, deposit his register, with the consul or vice consul, if any there be at such port; and it shall be the duty of such consul or vice consul, on such master or commander producing to him a clearance from the proper officer of the port where his vessel may be, to deliver to the master all of his papers, if such master or commander has complied with the provisions of law relating to the discharge of seamen in a foreign country, and to the payment of the fees of consular officers.

(R.S. § 4309; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 4309 derived from act Feb. 28, 1803, ch. 9, § 2, 2 Stat. 203.

Reference to ''commercial agent, or vice-commercial agent'' was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

As originally enacted, this section also required the deposit of sea-letters and Mediterranean passports. The

use of such documents was discontinued by Presidential proclamation on Apr. 10, 1815.

§ 355. Penalty for failure

Every master of any such vessel who refuses or neglects to deposit the papers as required by section 354 of this Appendix, shall be liable to a penalty of $500, to be recovered by such consul or vice consul, in his own name, for the benefit of the United States, in any court of competent jurisdiction.

(R.S. § 4310; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100.)

CODIFICATION

R.S. § 4310 derived from act Feb. 28, 1803, ch. 9, § 2, 2 Stat. 203.

Reference to ''commercial agent, or vice-commercial agent'' was omitted in view of the abolition of the grade of commercial agent by act Apr. 5, 1906.

CHAPTER 14—INSPECTION OF STEAM VESSELS

SUBCHAPTER VII—OCEANOGRAPHIC RESEARCH VESSELS

Sec.
441. Exemption of oceanographic research vessels from inspection laws; definitions.
443. Vessel not engaged in trade or commerce.
444. Scientific personnel not considered seamen.

SUBCHAPTER VIII—SAILING SCHOOL VESSELS

446. Sailing school students and sailing school instructors without seamen status under steam-vessel and merchant seamen provisions or maritime law doctrines.
446a. Financial responsibility; minimum amount; evidence.
446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce.
446c. Definitions.

SUBCHAPTER VII—OCEANOGRAPHIC RESEARCH VESSELS

§ 441. Exemption of oceanographic research vessels from inspection laws; definitions

As used in this subchapter—

(1) the term ''oceanographic research vessel'' means a vessel which the Secretary of the department in which the Coast Guard is operating finds is being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, including, but not limited to, such studies pertaining to the sea as seismic, gravity meter and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research;

(2) the term ''scientific personnel'' means persons who are aboard a vessel solely for the purpose of engaging in scientific research, instructing, or receiving instruction, in oceanography or limnology.

(Pub. L. 89–99, § 1, July 30, 1965, 79 Stat. 424.)

RESTATEMENT

Section was restated in part in section 2101(18), (31) of Title 46, Shipping, as enacted by Pub. L. 98–89.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

§ 443. Vessel not engaged in trade or commerce

An oceanographic research vessel shall not be deemed to be engaged in trade or commerce.

(Pub. L. 89–99, § 3, July 30, 1965, 79 Stat. 424.)

§ 444. Scientific personnel not considered seamen

Scientific personnel on an oceanographic research vessel shall not be considered seamen under the provisions of title 53 of the Revised Statutes and Act[1] amendatory thereof or supplementary thereto.

(Pub. L. 89–99, § 4, July 30, 1965, 79 Stat. 424.)

RESTATEMENT

Section was restated in part in section 8701(a)(5) of Title 46, Shipping, as enacted by Pub. L. 98–89.

REFERENCES IN TEXT

Title 53 of the Revised Statutes, referred to in text, consisted of R.S. §§ 4501 to 4612, which were classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of former Title 46, Shipping. For complete classification of R.S. §§ 4501 to 4612 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

SUBCHAPTER VIII—SAILING SCHOOL VESSELS

§ 446. Sailing school students and sailing school instructors without seamen status under steam-vessel and merchant seamen provisions or maritime law doctrines

Sailing school students and sailing school instructors shall not be considered to be seamen under the provisions of titles 52 and 53 of the Revised Statutes of the United States and any Act amendatory thereof or supplementary thereto, or for the purposes of the maritime law doctrines of maintenance and cure or warranty of seaworthiness.

(Pub. L. 97–322, title II, § 204, Oct. 15, 1982, 96 Stat. 1589.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in text, consisted of R.S. §§ 4399 to 4500, which were classified to

[1] So in original. Probably should be ''Acts''.

sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

Title 53 of the Revised Statutes, referred to in text, consisted of R.S. §§ 4501 to 4612, which were classified to sections 541 to 543, 545 to 549, 561, 562, 564 to 571, 574 to 578, 591 to 597, 600, 602 to 605, 621 to 628, 641 to 643, 644, 645, 651 to 660, 661 to 669, 674 to 679, 681 to 687, 701 to 710, and 711 to 713 of former Title 46, Shipping. For complete classification of R.S. §§ 4501 to 4612 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

EFFECTIVE DATE

Section 208(b) of Pub. L. 97–322 provided that: ''Sections 202, 203, 204, 205, 206, and 207 of this title and the amendments made by such sections [enacting this subchapter and amending sections 390 to 390d and 672 of former Title 46, Shipping] shall take effect eighteen months after the date of enactment of this Act [Oct. 15, 1982] or on the date upon which the rules and regulations referred to in subsection (a) [section 446d of former Title 46] take effect, whichever is earlier.''

SHORT TITLE

Section 201 of title II of Pub. L. 97–322 provided that: ''This title [enacting this subchapter, amending sections 390 to 390d and 672 of former Title 46, Shipping, and enacting a provision set out as a note under this section] may be cited as the 'Sailing School Vessels Act of 1982'.''

§ 446a. Financial responsibility; minimum amount; evidence

Each owner or charterer of a sailing school vessel shall maintain evidence of his or her financial responsibility to meet any liability incurred for death or injury to sailing school students or sailing school instructors on voyages aboard the vessel, in an amount not less than $50,000 for each student or instructor. Such financial responsibility may be evidenced by policies of insurance or other adequate financial resources.

(Pub. L. 97–322, title II, § 205, Oct. 15, 1982, 96 Stat. 1589.)

§ 446b. Sailing school vessel without status of merchant vessel or vessel engaged in trade or commerce

For the purposes of section 291 of this Appendix, section 11101(a)–(c) of title 46, and section 883 of this Appendix, a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce.

(Pub. L. 97–322, title II, § 206, Oct. 15, 1982, 96 Stat. 1590; Pub. L. 98–557, § 34(b), Oct. 30, 1984, 98 Stat. 2876.)

AMENDMENTS

1984—Pub. L. 98–557 inserted reference to section 11101(a)–(c) of title 46.

§ 446c. Definitions

For purposes of this subchapter, the terms ''sailing school students'', ''sailing school instructor'', and ''sailing school vessel'' have the meaning given such terms in section 2101 of title 46.

(Pub. L. 97–322, title II, § 207, Oct. 15, 1982, 96 Stat. 1590.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original ''sections 203, 204, 205, 206, and 208 of this title'', meaning sections 203 to 206 and 208 of title II of Pub. L. 97–322, Oct. 15, 1982, 96 Stat. 1589, 1590. Sections 204 to 206 of Pub. L. 97–322 are classified to this subchapter. Sections 203 and 208 were classified to sections 672(b)(4) and 446d of former Title 46, Shipping, respectively, and were repealed by Pub. L. 98–89, § 4(b), Aug. 23, 1983, 97 Stat. 599, and reenacted by section 1 thereof as sections 7311 and 8101(a) of Title 46, Shipping, respectively.

CODIFICATION

''Section 2101 of title 46'' substituted in text for ''the first section of the Act entitled 'An Act to require the inspection and certification of certain vessels carrying passengers', enacted May 10, 1956 (46 U.S.C. 390) as amended by this title'' on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

CHAPTER 15—TRANSPORTATION OF PASSENGERS AND MERCHANDISE BY STEAM VESSELS

Sec.
466c. Export of horses.
(a) Restriction on export of horses.
(b) Granting of waivers.
(c) Penalties.
491. Liability of master and owners for damage to passengers.

§ 466c. Export of horses

(a) Restriction on export of horses

Notwithstanding any other provision of law, no horse may be exported by sea from the United States, or any of its territories or possessions, unless such horse is part of a consignment of horses with respect to which a waiver has been granted under subsection (b) of this section.

(b) Granting of waivers

The Secretary of Commerce, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary of Commerce, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

(c) Penalties

(1) Criminal penalty

Any person who knowingly violates this section or any regulation, order, or license issued under this section shall be fined not more than 5 times the value of the consignment of horses involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(2) Civil penalty

The Secretary of Commerce, after providing notice and an opportunity for an agency hear-

ing on the record, may impose a civil penalty of not to exceed $10,000 for each violation of this section or any regulation, order, or license issued under this section, either in addition to or in lieu of any other liability or penalty which may be imposed.

(Mar. 3, 1891, ch. 521, § 3, as added Pub. L. 99–64, title I, § 125, July 12, 1985, 99 Stat. 156.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7(j) of the Export Administration Act of 1979, section 2406(j) of Title 50, Appendix, War and National Defense, prior to the amendment of that Act by the Export Administration Amendments Act of 1985, Pub. L. 99–64, which enacted this section.

§ 491. Liability of master and owners for damage to passengers

Whenever damage is sustained by any passenger or his baggage, from explosion, fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel shall be liable to each and every person so injured, to the full amount of damage if it happens through any neglect or failure to comply with the provisions of title 52 of the Revised Statutes, or through known defects or imperfections of the steaming apparatus or of the hull; and any person sustaining loss or injury through the carelessness, negligence, or willful misconduct of any master, mate, engineer, or pilot, or his neglect or refusal to obey the laws governing the navigation of such steamers, may sue such master, mate, engineer, or pilot, and recover damages for any such injury caused by any such master, mate, engineer, or pilot.

(R.S. § 4493.)

REFERENCES IN TEXT

Title 52 of the Revised Statutes, referred to in text, was in the original ''this Title'', meaning title 52 of the Revised Statutes, consisting of R.S. §§ 4399 to 4500, which were classified to sections 170, 214, 215, 222, 224, 224a, 226, 228, 229, 230 to 234, 239, 240, 361, 362, 364, 371 to 373, 375 to 382, 384, 385, 391, 391a, 392 to 394, 399 to 404, 405 to 416, 435 to 440, 451 to 453, 460, 461 to 463, 464, 466, 467 to 482, and 489 to 498 of former Title 46, Shipping. For complete classification of R.S. §§ 4399 to 4500 to the Code, see Tables. A majority of such sections of the Revised Statutes were repealed and various provisions thereof were reenacted in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500. For disposition of sections of former Title 46 into revised Title 46, see Table at beginning of Title 46.

CODIFICATION

R.S. § 4493 derived from act Feb. 28, 1871, ch. 100, § 43, 16 Stat. 453.

CHAPTER 18—MERCHANT SEAMEN

SUBCHAPTER VII—PROTECTION AND RELIEF

Sec.
688. Recovery for injury to or death of seaman.
(a) Application of railway employee statutes; jurisdiction.
(b) Limitation for certain aliens; applicability in lieu of other remedy.

SUBCHAPTER VII—PROTECTION AND RELIEF

§ 688. Recovery for injury to or death of seaman

(a) Application of railway employee statutes; jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; applicability in lieu of other remedy

(1) No action may be maintained under subsection (a) of this section or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred—

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by (a)[1] vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term ''continental shelf'' has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

(Mar. 4, 1915, ch. 153, § 20, 38 Stat. 1185; June 5, 1920, ch. 250, § 33, 41 Stat. 1007; Pub. L. 97–389, title V, § 503(a), Dec. 29, 1982, 96 Stat. 1955.)

[1] So in original. Probably should be ''a''.

REFERENCES IN TEXT

"Statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury, to railway employees" and "statutes of the United States conferring or regulating the right of action for death in the case of railway employees", referred to in subsec. (a), probably mean acts June 11, 1906, ch. 3073, 34 Stat. 232; Apr. 22, 1908, ch. 149, 35 Stat. 65; Apr. 5, 1910, ch. 143, 36 Stat. 291; and Aug. 11, 1939, ch. 685, 53 Stat. 1404, popularly known as the Employers' Liability Acts. Act Apr. 22, 1908, ch. 149, 35 Stat. 65, is classified generally to chapter 2 (§ 51 et seq.) of Title 45, Railroads. For complete classification of acts Apr. 22, 1908, Apr. 5, 1910, and Aug. 11, 1939 to the Code, see Short Title note set out under section 51 of Title 45 and Tables.

The 1958 Convention on the Continental Shelf, referred to in subsec. (b)(1)(B), was done at Geneva, April 29, 1958, and entered into force for the United States, June 10, 1964. See 15 UST 471; TIAS 5578.

AMENDMENTS

1982—Pub. L. 97–389 designated existing provisions as subsec. (a) and added subsec. (b).

1920—Act June 5, 1920, amended section generally. Prior to amendment, section read as follows: "In any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow-servants with those under their authority."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 503(b) of Pub. L. 97–389 provided that: "The amendment made by this section [amending this section] does not apply to any action arising out of an incident that occurred before the date of enactment of this section [Dec. 29, 1982]."

CHAPTER 19—WRECKS AND SALVAGE

SUBCHAPTER I—GENERALLY

Sec.
721. Vessels stranded on foreign coasts.
722. Property wrecked on Florida coast.
723. Forfeitures for taking wrecked property to foreign ports.
724. License to wreckers on Florida coast.
725. Canadian vessels aiding vessels wrecked or disabled in United States waters.
726. International agreement as to derelicts.
727. Right to salvage not affected by ownership of vessel.
729. Salvors of life to share in remuneration.
730. Time limit for salvage suits.
731. Applicability to ships of war.

SUBCHAPTER III—ICE AND DERELICTS

738. International agreements as to ice patrol and derelict destruction; allocation of expenses.
738a. Patrol services.
(a) Maintenance of ice patrol; aid to ships in distress; destruction of derelicts.
(b) Warning to vessels.
(c) Report on ships in dangerous regions.
(d) Administration by Coast Guard.
(e) Annual report.
738c. Speed of vessel in ice region; penalty.

SUBCHAPTER I—GENERALLY

§ 721. Vessels stranded on foreign coasts

Consuls and vice consuls, in cases where vessels of the United States are stranded on the coasts of their consulates respectively, shall, as far as the laws of the country will permit, take proper measures, as well for the purpose of saving the vessels, their cargoes and appurtenances, as for storing and securing the effects and merchandise saved, and for taking inventories thereof; and the merchandise and effects saved, with the inventories thereof so taken, shall, after deducting therefrom the expenses, be delivered to the owners. No consul or vice consul shall have authority to take possession of any such merchandise, or other property, when the master, owner, or consignee thereof is present or capable of taking possession of the same.

(R.S. § 4238.)

CODIFICATION

R.S. § 4238 derived from act Apr. 14, 1792, ch. 24, § 3, 1 Stat. 255.

§ 722. Property wrecked on Florida coast

All property, of any description whatsoever, which shall be taken from any wreck, from the sea, or from any of the keys and shoals, within the jurisdiction of the United States, on the coast of Florida, shall be brought to some port of entry within the jurisdiction of the United States.

(R.S. § 4239.)

CODIFICATION

R.S. § 4239 derived from act Mar. 3, 1825, ch. 107, § 2, 4 Stat. 133.

§ 723. Forfeitures for taking wrecked property to foreign ports

Every vessel which shall be engaged or employed in carrying or transporting any property whatsoever, taken from any wreck, from the sea, or from any of the keys or shoals, within the jurisdiction of the United States, on the coast of Florida, to any foreign port, shall, together with her tackle, apparel, and furniture, be forfeited, and all forfeitures incurred by virtue of this section shall accrue, one moiety to the informer and the other to the United States.

(R.S. § 4240.)

CODIFICATION

R.S. § 4240 derived from act Mar. 3, 1825, ch. 107, § 1, 4 Stat. 132.

§ 724. License to wreckers on Florida coast

No vessel, or master thereof, shall be regularly employed in the business of wrecking on the coast of Florida without the license of the judge of the district court for the district of Florida; and, before licensing any vessel or master, the judge shall be satisfied that the vessel is seaworthy, and properly and sufficiently fitted and equipped for the business or saving property shipwrecked and in distress; and that the master thereof is trustworthy, and innocent of any fraud or misconduct in relation to any property shipwrecked or saved on the coast.

(R.S. § 4241.)

CODIFICATION

R.S. § 4241 derived from act Feb. 23, 1847, ch. 20, § 3, 9 Stat. 131.

DIVISION OF FLORIDA INTO THREE JUDICIAL DISTRICTS

Florida divided into three judicial districts, see section 89 of Title 28, Judiciary and Judicial Procedure.

§ 725. Canadian vessels aiding vessels wrecked or disabled in United States waters

Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada.

This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and canal: *And provided further*, That this section shall cease to be in force from and after the date of the proclamation of the President of the United States to the effect that said reciprocal privilege has been withdrawn, revoked, or rendered inoperative by the said Government of the Dominion of Canada.

(June 19, 1878, ch. 324, 20 Stat. 175; May 24, 1890, ch. 292, 26 Stat. 120; Mar. 3, 1893, ch. 211, § 1, 27 Stat. 683.)

CODIFICATION

Act June 19, 1878, was entitled ''An act to aid vessels wrecked or disabled in the waters coterminous to the United States and the Dominion of Canada.''

As originally enacted, it read: ''That Canadian vessels of all descriptions may render aid or assistance to Canadian or other vessels wrecked or disabled in the waters of the United States contiguous to the Dominion of Canada: *Provided*, That this act shall not take effect until proclamation by the President declaring that the privilege of aiding American or other vessels wrecked or disabled in Canadian waters contiguous to the United States has been extended by the Government of the Dominion of Canada and declaring this act to be in force: *And provided further*, That this act shall cease to be in force from and after the date of proclamation by the President to the effect that said reciprocal privilege has been withdrawn or revoked by said Government of the Dominion of Canada.''

Act May 24, 1890, amended act June 19, 1878, to read as above set forth, except that, besides making the act applicable to the canal and improvement of the waters between Lake Erie and Lake Huron, etc., it was also made applicable to the Welland Canal, and the first paragraph contained a proviso concerning the taking effect of the act.

Act Mar. 3, 1893, struck out the provision relating to the Welland Canal.

§ 726. International agreement as to derelicts

The President of the United States is authorized to make with the several Governments interested in the navigation of the North Atlantic Ocean, an international agreement providing for the reporting, marking, and removal of dangerous wrecks, derelicts, and other menaces to navigation in the North Atlantic Ocean outside the coast waters of the respective countries bordering thereon.

(Oct. 31, 1893, No. 13, 28 Stat. 13.)

§ 727. Right to salvage not affected by ownership of vessel

The right to remuneration for assistance or salvage services shall not be affected by common ownership of the vessels rendering and receiving such assistance or salvage services.

(Aug. 1, 1912, ch. 268, § 1, 37 Stat. 242.)

EFFECTIVE DATE

Section 6 of act Aug. 1, 1912, provided that the act [enacting sections 727 to 731 of this Appendix] shall take effect on and after July 1, 1912.

§ 729. Salvors of life to share in remuneration

Salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to salvage, are entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment.

(Aug. 1, 1912, ch. 268, § 3, 37 Stat. 242; Pub. L. 102–241, § 40(a), Dec. 19, 1991, 105 Stat. 2225.)

AMENDMENTS

1991—Pub. L. 102–241 substituted ''payment awarded to the salvor for salving the vessel or other property or preventing or minimizing damage to the environment'' for ''remuneration awarded to the salvors of the vessel, her cargo, and accessories''.

§ 730. Time limit for salvage suits

A suit for the recovery of remuneration for rendering assistance or salvage services shall not be maintainable if brought later than two years from the date when such assistance or salvage was rendered, unless the court in which the suit is brought shall be satisfied that during such period there had not been any reasonable opportunity of arresting the assisted or salved vessel within the jurisdiction of the court or within the territorial waters of the country in which the libelant resides or has his principal place of business.

(Aug. 1, 1912, ch. 268, § 4, 37 Stat. 242.)

§ 731. Applicability to ships of war

Nothing in sections 727, 729, and 730 of this Appendix and section 2304 of title 46 shall be construed as applying to ships of war or to Government ships appropriated exclusively to a public service.

(Aug. 1, 1912, ch. 268, § 5, 37 Stat. 242; Pub. L. 102–241, § 40(b), Dec. 19, 1991, 105 Stat. 2225.)

AMENDMENTS

1991—Pub. L. 102–241 substituted ''Nothing in sections 727, 729, and 730 of this Appendix and section 2304 of title 46'' for ''Nothing in this Act''.

SUBCHAPTER III—ICE AND DERELICTS

§ 738. International agreements as to ice patrol and derelict destruction; allocation of expenses

The President is authorized to conclude agreements with interested maritime nations (a) to maintain in the north Atlantic Ocean a service of ice patrol, of study and observation of ice and current conditions, and of assistance to vessels and their crews requiring aid within the limits of the patrol; (b) to maintain a service of study and observation of ice and current conditions in such waters as may affect the set and drift of ice in the north Atlantic Ocean; and (c) to undertake all practicable steps to insure the destruction or removal of derelicts in the northern part of the Atlantic Ocean, east of the line drawn from Cape Sable to a point in latitude thirty-four degrees north, longitude seventy degrees west, if this destruction or removal is necessary. The President is further authorized to include in

such agreements a provision for payment to the United States by the countries concerned, of their proportionate share of the expense for maintenance of the services named, or for the United States to contribute its proportionate share should it be agreed that another country was to maintain the patrol.

(June 25, 1936, ch. 807, § 1, 49 Stat. 1922.)

§ 738a. Patrol services

(a) Maintenance of ice patrol; aid to ships in distress; destruction of derelicts

Unless the agreements made in accordance with section 738 of this Appendix provide otherwise, an ice patrol shall be maintained during the whole of the ice season in guarding the southeastern, southern, and southwestern limits of the region of icebergs in the vicinity of the Grand Banks of Newfoundland, and the patrol shall inform trans-Atlantic and other passing vessels by radio and such other means as are available of the ice conditions and the extent of the dangerous region. A service of study of ice and current conditions, a service of affording assistance to vessels and crews requiring aid, and a service of removing and destroying derelicts shall be maintained during the ice season and any or all such services may be maintained during the remainder of the year as may be advisable.

(b) Warning to vessels

The ice patrol vessels shall warn vessels known to be approaching a dangerous area and recommend safe routes.

(c) Report on ships in dangerous regions

The ice patrol vessels shall record the name, together with all the facts in the case, of any ship which is observed or known to be on other than a regular recognized or advertised ship route crossing the North Atlantic Ocean, or to have crossed the fishing banks of Newfoundland north of latitude forty-three degrees north during the fishing season, or, when proceeding to and from ports of North America to have passed through regions known or believed to be endangered by ice. The name of any such ship and all pertinent information relating to the incident shall be reported to the government of the country to which the ship belongs, if the government of that country so requests.

(d) Administration by Coast Guard

The Commandant of the Coast Guard, under the direction of the Secretary of Transportation, shall administer the services provided for in this section and shall assign thereto such vessels, material, and personnel of the Coast Guard as may be necessary. Any executive department or agency may upon the request of the Secretary of Transportation detail personnel, loan or contribute material or equipment, or otherwise assist in the carrying out of the services named.

(e) Annual report

The Commandant of the Coast Guard shall publish each year a report of the activities of the services provided for in this section, a copy of which shall be furnished to each interested foreign government and to each agency assisting in the work.

(June 25, 1936, ch. 807, § 2, 49 Stat. 1922; Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''Secretary of Transportation'' substituted in subsec. (d) for ''Secretary of the Treasury'' on authority of Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938, which transferred functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury to Secretary of Transportation. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

§ 738c. Speed of vessel in ice region; penalty

(a) The master of every vessel of the United States when ice is reported on or near his course, shall proceed at a moderate speed or alter his course so as to go well clear of the danger zone.

(b) If the master of any such ship fails to comply with this section, he shall for each offense be liable to a fine not exceeding $500.

(June 25, 1936, ch. 807, § 4, 49 Stat. 1923.)

CHAPTER 19A—ADMIRALTY AND MARITIME JURISDICTION

Sec.
740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period.

§ 740. Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: *Provided*, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public

Vessels Act [46 App. U.S.C. 781 et seq.] or Suits in Admiralty Act [46 App. U.S.C. 741 et seq.], as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: *Provided further*, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

(June 19, 1948, ch. 526, 62 Stat. 496.)

REFERENCES IN TEXT

The Public Vessels Act, referred to in text, is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, as amended, which is classified generally to chapter 22 (§ 781 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 781 of this Appendix and Tables.

The Suits in Admiralty Act, referred to in text, is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this Appendix and Tables.

The Federal Tort Claims Act, referred to in text, is classified generally to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

CHAPTER 20—SUITS IN ADMIRALTY BY OR AGAINST VESSELS OR CARGOES OF UNITED STATES

Sec.
741. Exemption of United States vessels and cargoes from arrest or seizure.
742. Libel in personam.
743. Procedure in cases of libel in personam.
743a. Omitted.
744. Release of privately owned vessel after seizure.
745. Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims.
746. Exemptions and limitations of liability.
747. Seizures in foreign jurisdictions.
748. Payment of judgment, award, or settlement.
749. Arbitration, compromise, or settlement of claims.
750. Recovery for salvage services by vessel or crew.
751. Disposition of moneys recovered by United States.
752. Reports as to awards and settlements.

§ 741. Exemption of United States vessels and cargoes from arrest or seizure

No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall after March 9, 1920, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this chapter shall not apply to the Panama Canal Commission.

(Mar. 9, 1920, ch. 95, § 1, 41 Stat. 525; Sept. 26, 1950, ch. 1049, § 2(a)(2), 64 Stat. 1038; Pub. L. 96–70, § 3(b)(5), Sept. 27, 1979, 93 Stat. 455.)

CHANGE OF NAME

"Panama Canal Commission" substituted in text for "Panama Canal Company" pursuant to act Sept. 27, 1979.

"Panama Canal Company" substituted in text for "Panama Railroad Company" pursuant to act Sept. 26, 1950.

SHORT TITLE

Act Mar. 9, 1920, ch. 95, which enacted this chapter, is popularly known as the "Suits in Admiralty Act".

§ 742. Libel in personam

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

(Mar. 9, 1920, ch. 95, § 2, 41 Stat. 525; Pub. L. 86–770, § 3, Sept. 13, 1960, 74 Stat. 912; Pub. L. 104–324, title XI, § 1105, Oct. 19, 1996, 110 Stat. 3967.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1996—Pub. L. 104–324 struck out "The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation." after "liability is found."

1960—Pub. L. 86–770 amended first sentence by substituting "owned or possessed" for "owned and possessed" and ", any appropriate nonjury proceeding" for "at the time of the commencement of the action herein provided for, a libel", inserting "or if a private person or property were involved" and striking out "as the case may be, provided that such vessel is employed as a merchant vessel or is a tugboat operated by such corporation" after "such corporation".

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–770 provided in part that: "The amendment made by section 3 [amending this section] shall apply to any case or proceeding brought after the date of enactment of this Act [Sept. 13, 1960]."

§ 743. Procedure in cases of libel in personam

Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder.

(Mar. 9, 1920, ch. 95, § 3, 41 Stat. 526; Pub. L. 97–31, § 12(25)(A), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 struck out provisions relating to bonds or stipulations given prior to Mar. 9, 1920, in admiralty causes.

§ 743a. Omitted

CODIFICATION

Section, act June 30, 1932, ch. 315, 47 Stat. 420, related to interest on claims. See section 745 of this Appendix.

§ 744. Release of privately owned vessel after seizure

If a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this chapter.

(Mar. 9, 1920, ch. 95, § 4, 41 Stat. 526.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

§ 745. Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims

Suits as authorized by this chapter may be brought only within two years after the cause of action arises: *Provided*, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: *Provided further*, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after December 13, 1950, if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel: *And provided further*, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 742 of this Appendix unless upon a contract expressly stipulating for the payment of interest.

(Mar. 9, 1920, ch. 95, § 5, 41 Stat. 526; June 30, 1932, ch. 315, 47 Stat. 420; Dec. 13, 1950, ch. 1136, 64 Stat. 1112.)

AMENDMENTS

1950—Act Dec. 13, 1950, extended time limit within which certain suits in admiralty may be brought against United States.

1932—Act June 30, 1932, amended section generally. Prior to amendment, section read as follows: ''That suits as herein authorized may be brought only on causes of action arising since April 6, 1917, provided that suits based on causes of action arising prior to the taking effect of this Act shall be brought within one year after this Act goes into effect; and all other suits hereunder shall be brought within two years after the cause of action arises.''

SAVINGS PROVISION

Section 5 of act Mar. 9, 1920, as amended by act June 30, 1932, also contained a saving clause in connection with certain suits instituted prior to Dec. 31, 1932.

§ 746. Exemptions and limitations of liability

The United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

(Mar. 9, 1920, ch. 95, § 6, 41 Stat. 527.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

§ 747. Seizures in foreign jurisdictions

If any vessel or cargo within the purview of sections 741 and 744 of this Appendix is arrested, attached, or otherwise seized by process of any

court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the Maritime Administration, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the Maritime Administration, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the Maritime Administration, or of such corporation, for the allowance and payment of such judgments: *Provided, however*, That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

(Mar. 9, 1920, ch. 95, § 7, 41 Stat. 527; Pub. L. 97–31, § 12(25)(B), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Maritime Administration'' for ''United States Shipping Board'', wherever appearing. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Shipping Board, see Ex. Ord. No. 6166, set out under section 901 of Title 5, Government Organization and Employees, act June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016, and Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

§ 748. Payment of judgment, award, or settlement

Any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 744 and 747 of this Appendix, and any arbitration award or settlement had and agreed to under the provisions of section 749 of this Appendix, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

(Mar. 9, 1920, ch. 95, § 8, 41 Stat. 527.)

APPROPRIATIONS

Section 3 of act June 26, 1934, ch. 756, 48 Stat. 1226, which was classified to section 725b of former Title 31, Money and Finance, provided in part that, effective July 1, 1935, the permanent or continuing appropriation accounts ''Judgments in admiralty suits under Act of March 9, 1920 [46 App. U.S.C. 748], War Department (8x143)'' and ''Judgments in admiralty suits under Act of March 9, 1920 [46 App. U.S.C. 748], United States Shipping Board (0x556)'' are abolished, and any unobligated balances in such accounts are covered into the Treasury; and that any claims accruing on and after July 1, 1935, which, but for this section would have been charged to these appropriation titles, shall, upon proper audit, be certified to Congress for appropriation from the general fund of the Treasury, which is authorized.

§ 749. Arbitration, compromise, or settlement of claims

The Secretary of any department of the Government of the United States, or the board of trustees of such corporation, are, and each is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 742, 744, and 750 of this Appendix.

(Mar. 9, 1920, ch. 95, § 9, 41 Stat. 527; Pub. L. 92–417, § 3, Aug. 29, 1972, 86 Stat. 656; Pub. L. 97–31, § 12(25)(C), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 struck out reference to the United States Shipping Board.

1972—Pub. L. 92–417 struck out ''having control of the possession or operation of any merchant vessel'' before ''are, and each is''.

§ 750. Recovery for salvage services by vessel or crew

The United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of such corporation,

having control of the possession or operation of such vessel.

(Mar. 9, 1920, ch. 95, § 10, 41 Stat. 528; Pub. L. 97–31, § 12(25)(D), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 struck out reference to the United States Shipping Board.

§ 751. Disposition of moneys recovered by United States

All moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

(Mar. 9, 1920, ch. 95, § 11, 41 Stat. 528; Pub. L. 97–31, § 12(25)(D), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such aforesaid corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 struck out reference to the United States Shipping Board.

§ 752. Reports as to awards and settlements

The Secretary of any department of the Government of the United States, and the board of trustees of any such aforesaid corporation, shall report to the Congress at each session thereof the arbitration awards or settlements of claims which shall have been agreed to under this chapter since the previous session, and in which the time to appeal shall have expired or have been waived.

(Mar. 9, 1920, ch. 95, § 12, 41 Stat. 528; Aug. 30, 1954, ch. 1076, § 1(26), 68 Stat. 968; Pub. L. 97–31, § 12(25)(E), Aug. 6, 1981, 95 Stat. 155.)

REFERENCES IN TEXT

Such aforesaid corporation, referred to in text, probably means a corporation mentioned in section 741 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 struck out reference to the United States Shipping Board.

1954—Act Aug. 30, 1954, repealed provisions requiring the Attorney General to make an annual report to Congress of all suits under this chapter in which final judgment was rendered for or against the United States and the corporations mentioned in section 741 of this Appendix.

CHAPTER 21—DEATH ON HIGH SEAS BY WRONGFUL ACT

Sec.
761. Right of action; where and by whom brought.
762. Amount and apportionment of recovery.
763a. Limitations.
764. Rights of action given by laws of foreign countries.
765. Death of plaintiff pending action.
766. Contributory negligence.
767. Exceptions from operation of chapter.
768. Omitted.

§ 761. Right of action; where and by whom brought

(a) Subject to subsection (b) of this section, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

(b) In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas 12 nautical miles or closer to the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, this chapter shall not apply and the rules applicable under Federal, State, and other appropriate law shall apply.

(Mar. 30, 1920, ch. 111, § 1, 41 Stat. 537; Pub. L. 106–181, title IV, § 404(a), Apr. 5, 2000, 114 Stat. 131.)

AMENDMENTS

2000—Pub. L. 106–181 designated existing text as subsec. (a), inserted ''Subject to subsection (b) of this section,'' before ''whenever'', and added subsec. (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–181, title IV, § 404(c), Apr. 5, 2000, 114 Stat. 131, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 762 of this Appendix] shall apply to any death occurring after July 16, 1996.''

SHORT TITLE

Act Mar. 30, 1920, ch. 111, which enacted this chapter, is popularly know as the ''Death on the High Seas Act''.

§ 762. Amount and apportionment of recovery

(a) The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

(b)(1) If the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of any State, or the District of Columbia, or the Terri-

tories or dependencies of the United States, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable. Punitive damages are not recoverable.

(2) In this subsection, the term ''nonpecuniary damages'' means damages for loss of care, comfort, and companionship.

(Mar. 30, 1920, ch. 111, § 2, 41 Stat. 537; Pub. L. 106–181, title IV, § 404(b), Apr. 5, 2000, 114 Stat. 131.)

AMENDMENTS

2000—Pub. L. 106–181 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable to any death occurring after July 16, 1996, see section 404(c) of Pub. L. 106–181, set out as a note under section 761 of this Appendix.

§ 763a. Limitations

Unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued.

(Pub. L. 96–382, § 1, Oct. 6, 1980, 94 Stat. 1525.)

CODIFICATION

Section was not enacted as part of act Mar. 30, 1920, known as the Death on the High Seas Act, which comprises this chapter.

§ 764. Rights of action given by laws of foreign countries

Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding.

(Mar. 30, 1920, ch. 111, § 4, 41 Stat. 537.)

§ 765. Death of plaintiff pending action

If a person die[1] as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this Appendix during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted as a party and the suit may proceed as a suit under this chapter for the recovery of the compensation provided in section 762 of this Appendix.

(Mar. 30, 1920, ch. 111, § 5, 41 Stat. 537.)

§ 766. Contributory negligence

In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly.

(Mar. 30, 1920, ch. 111, § 6, 41 Stat. 537.)

§ 767. Exceptions from operation of chapter

The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone.

(Mar. 30, 1920, ch. 111, § 7, 41 Stat. 538.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

§ 768. Omitted

CODIFICATION

Section, act Mar. 30, 1920, ch. 111, § 8, 41 Stat. 538, provided that this chapter should not affect suits pending on Mar. 30, 1920.

CHAPTER 22—SUITS IN ADMIRALTY AGAINST UNITED STATES FOR DAMAGES CAUSED BY PUBLIC VESSELS OR FOR TOWAGE OR SALVAGE SERVICES

Sec.
781. Libel in admiralty against or impleader of United States.
782. Venue of suit; application of provisions of chapter 20.
783. Cross libel, set-off, or counterclaim.
784. Subpoenas to officers or members of crews.
785. Suits by nationals of foreign governments.
786. Arbitration, compromise, or settlement.
787. Payment of judgments or settlements.
788. Lien not created against public vessels.
789. Exemptions and limitations of liability.
790. Reports by Attorney General.

§ 781. Libel in admiralty against or impleader of United States

A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920.

(Mar. 3, 1925, ch. 428, § 1, 43 Stat. 1112.)

SHORT TITLE

Act Mar. 3, 1925, ch. 428, which enacted this chapter, is popularly known as the ''Public Vessels Act''.

§ 782. Venue of suit; application of provisions of chapter 20

Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have

[1] So in original. Probably should be ''dies''.

an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of chapter 20 of this Appendix or any amendment thereof, insofar as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

(Mar. 3, 1925, ch. 428, § 2, 43 Stat. 1112.)

§ 783. Cross libel, set-off, or counterclaim

In the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: *Provided*, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this chapter, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

(Mar. 3, 1925, ch. 428, § 3, 43 Stat. 1112.)

§ 784. Subpoenas to officers or members of crews

No officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this chapter without the consent of the Secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

(Mar. 3, 1925, ch. 428, § 4, 43 Stat. 1112.)

§ 785. Suits by nationals of foreign governments

No suit may be brought under this chapter by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

(Mar. 3, 1925, ch. 428, § 5, 43 Stat. 1113.)

§ 786. Arbitration, compromise, or settlement

The Attorney General of the United States is authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this chapter, and for which a libel or cross libel has actually been filed.

(Mar. 3, 1925, ch. 428, § 6, 43 Stat. 1113.)

§ 787. Payment of judgments or settlements

Any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 786 of this Appendix, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

(Mar. 3, 1925, ch. 428, § 7, 43 Stat. 1113.)

§ 788. Lien not created against public vessels

Nothing contained in this chapter shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

(Mar. 3, 1925, ch. 428, § 8, 43 Stat. 1113.)

§ 789. Exemptions and limitations of liability

The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators or agents of vessels.

(Mar. 3, 1925, ch. 428, § 9, 43 Stat. 1113.)

§ 790. Reports by Attorney General

The Attorney General of the United States shall report to the Congress at each session thereof all claims which shall have been settled under this chapter.

(Mar. 3, 1925, ch. 428, § 10, 43 Stat. 1113; Aug. 30, 1954, ch. 1076, § 1(26), 68 Stat. 968.)

AMENDMENTS

1954—Act Aug. 30, 1954, repealed provisions requiring the Attorney General also to make annual reports to Congress of all suits in which final judgment was rendered under this chapter.

CHAPTER 23—SHIPPING ACT

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REPEALS

Subtitle IV (§ 10101 et seq.) of Title 49, Transportation (containing the codification of part III of the Interstate Commerce Act, as added by Act Sept. 18, 1940, ch. 722, title II, § 201, 54 Stat. 929, which was classified to sections 901 to 923 of former Title 49), provides for the regulation of rates and services of water carriers by the Interstate Commerce Commission, thereby substantially superseding certain sections of this and the following chapters. In this connection section 920(a)–(d) of former Title 49 provided:

''(a) The Shipping Act of 1916, as amended [section 801 et seq. of this Appendix], and the Intercoastal Shipping Act, 1933, as amended [section 843 et seq. of this Appendix], are repealed insofar as they are inconsistent with any provision of this chapter [section 901 et seq. of former Title 49, Transportation] and insofar as they provide for the regulation of, or the making of agreements relating to, transportation of persons or property by water in commerce which is within the jurisdiction of the Commission under the provisions of this chapter; and any other provisions of law are hereby repealed insofar as they are inconsistent with any provision of this chapter.

''(b) Nothing in subsection (a) of this section shall be construed to repeal—

''(1) section 1115 of Title 46 [46 App. U.S.C. 1115], or any provision of law providing penalties for violations of said section;

''(2) the third sentence of section 844 of Title 46 [46 App. U.S.C. 844], as extended by section 845b of Title 46 [46 App. U.S.C. 845b], or any provision of law providing penalties for violations of section 844 of Title 46;

''(3) the provisions of the Shipping Act of 1916, as amended [section 801 et seq. of this Appendix], insofar as such Act provides for the regulation of persons included within the term 'other person subject to this Act', as defined in such Act;

''(4) sections 883 and 884 of Title 46 [46 App. U.S.C. 883, 884].

''(c) Nothing in subsection (a) of this section shall be construed to affect the provisions of section 814 of Title 46 [46 App. U.S.C. 814] so as to prevent any water carrier subject to the provisions of this chapter from entering into any agreement under the provisions of said section with respect to transportation not subject to the provisions of this chapter in which such carrier may be engaged.

''(d) Nothing in this chapter shall be construed to affect any law of navigation, the admiralty jurisdiction of the courts of the United States, liabilities of vessels and their owners for loss or damage, or laws respecting seamen, or any other maritime law, regulation, or custom not in conflict with the provisions of this chapter.''

§ 801. Definitions

When used in this chapter:

The term ''common carrier by water in interstate commerce'' means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term ''other person subject to this chapter'' means any person not included in the term ''common carrier by water in interstate commerce,'' carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water in interstate commerce.

The term ''person'' includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term ''vessel'' includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term ''documented under the laws of the United States,'' means ''registered, enrolled, or licensed under the laws of the United States.''

The term ''carrying on the business of forwarding'' means the dispatching of shipments by any person on behalf of others, by ocean-going common carriers in commerce between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

The term ''maritime labor agreement'' means any collective bargaining agreement between an employer subject to this chapter, or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or any agreement preparatory to such a collective bargaining agreement among members of a multiemployer bargaining group, or any agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group.

(Sept. 7, 1916, ch. 451, § 1, 39 Stat. 728; July 15, 1918, ch. 152, § 1, 40 Stat. 900; Pub. L. 87–254, § 1, Sept. 19, 1961, 75 Stat. 522; Pub. L. 95–483, § 2, Oct. 18, 1978, 92 Stat. 1607; Pub. L. 96–325, § 2, Aug. 8, 1980, 94 Stat. 1021; Pub. L. 97–35, title XVI,

§ 1608(a), (c), Aug. 13, 1981, 95 Stat. 752, as amended Pub. L. 98–210, § 6, Dec. 6, 1983, 97 Stat. 1410; Pub. L. 98–237, § 20(a), (b)(1), Mar. 20, 1984, 98 Stat. 89; Pub. L. 98–595, § 3(a)(1), Oct. 30, 1984, 98 Stat. 3132.)

AMENDMENTS

1984—Pub. L. 98–595, § 3(a)(1)(C), struck out ''from the United States, its Territories, or possessions to foreign countries, or'' before ''between the United States and'' in definition of ''carrying on the business or forwarding''.

Pub. L. 98–595, § 3(a)(1)(B), substituted ''common carrier by water in interstate commerce'' for ''common carrier by water'' in two places in definition of ''other person subject to this chapter''.

Pub. L. 98–595, § 3(a)(1)(A), struck out definitions of ''common carrier by water in foreign commerce'' and ''common carrier by water''.

Pub. L. 98–237 struck out definitions of ''controlled carrier'' and ''independent ocean freight forwarder''.

1981—Pub. L. 97–35, § 1608(a), amended generally definition of ''independent ocean freight forwarder'' striking out provision that the person not have any beneficial interest therein nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.

Pub. L. 97–35, § 1608(c), which amended generally definition of ''independent ocean freight forwarder'' restoring provisions relating to persons having beneficial interests, effective after Dec. 31, 1983, was repealed by Pub. L. 98–210.

1980—Pub. L. 96–325 inserted definition of ''maritime labor agreement''.

1978—Pub. L. 95–483 inserted definition of ''controlled carrier''.

1961—Pub. L. 87–254 inserted definitions of ''carrying on the business of forwarding'' and ''independent ocean freight forwarder''.

1918—Act July 15, 1918, inserted definitions of ''vessel'' and ''documented under the laws of the United States''.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 1608(c) of Pub. L. 97–35 which provided in part that section 1608 [amending this section and section 841b of this Appendix and enacting provisions set out as a note under this section] shall remain in effect until Dec. 31, 1983, was repealed by Pub. L. 98–210, § 6, Dec. 6, 1983, 97 Stat. 1410, and Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 89.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4 of Pub. L. 95–483 provided that: ''The provisions of this Act, including the amendments made by this Act [amending this section and section 817 of this Appendix and enacting a provision set out as a note under section 842 of this Appendix], shall become effective thirty days after its date of enactment [Oct. 18, 1978].''

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

Section 1608 of Pub. L. 97–35, cited as a credit to this section, was repealed by section 20(a) of Pub. L. 98–237.

SAVINGS PROVISION

Amendment by Pub. L. 98–237 not to affect suits filed before Mar. 20, 1984, or claims arising out of conduct engaged in before Mar. 20, 1984, and filed within 1 year after that date; and agreements, contracts, modifications, and exemptions approved or licenses issued by the Federal Maritime Commission prior to Mar. 20, 1984, to continue as if approved or issued under chapter 36 (§ 1701 et seq.) of this Appendix, but new agreements, contracts, and modifications to existing, pending, or new contracts or agreements to be considered under chapter 36 of this Appendix, see section 1719 of this Appendix.

REPORT TO CONGRESS ON ENFORCEABILITY AND NEED

Section 1608(c) of Pub. L. 97–35 in part directed Federal Maritime Commission, by June 1, 1983, to submit a report to Congress evaluating enforceability of this section [amending sections 801 and 841b of this Appendix] and describing any reasons why this section should not be made permanent law, prior to repeal by Pub. L. 98–210, § 6, Dec. 6, 1983, 97 Stat. 1410, and Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 89.

§ 802. Corporation, partnership, or association as citizen

(a) Ownership of controlling interest

Within the meaning of this chapter no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) Determination of controlling interest

The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) Determination of seventy-five per centum of interest

Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any in-

terest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(Sept. 7, 1916, ch. 451, § 2(a)–(c), 39 Stat. 729; July 15, 1918, ch. 152, § 2, 40 Stat. 900; June 5, 1920, ch. 250, § 38, 41 Stat. 1008; Pub. L. 86–327, § 3, Sept. 21, 1959, 73 Stat. 597; Pub. L. 105–383, title IV, § 421, Nov. 13, 1998, 112 Stat. 3439.)

CODIFICATION

Section comprises subsecs. (a) to (c) of section 2 of act Sept. 7, 1916, as amended. Subsec. (d) of section 2 of the act is classified to section 803 of this Appendix.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–383 struck out ''president or other'' after ''corporation, unless its'' and inserted '', by whatever title,'' after ''chief executive officer''.

1959—Subsec. (a). Pub. L. 86–327 redefined citizenship qualification for corporations by substituting requirement that the president or other chief executive officer and the chairman of the board of directors be United States citizens and that no more of the directors than a minority of the number necessary to constitute a quorum be noncitizens for requirement that the president and managing directors be United States citizens.

1920—Act June 5, 1920, added par. relating to percentage of corporate interest required to be owned by United States citizens and provisions of first par. concerning vessels in coastwise trade, and designated existing paragraphs as subsecs. (a) to (d).

1918—Act July 15, 1918, added par. relating to requirements for determining controlling interest.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

§ 803. Applicability of chapter to receivers and trustees

The provisions of this chapter shall apply to receivers and trustees of all persons to whom the chapter applies, and to the successors or assignees of such persons.

(Sept. 7, 1916, ch. 451, § 2(d), 39 Stat. 729; July 15, 1918, ch. 152, § 2, 40 Stat. 900; June 5, 1920, ch. 250, § 38, 41 Stat. 1008.)

CODIFICATION

Section comprises subsec. (d) of section 2 of act Sept. 7, 1916, as amended. Subsecs. (a) to (c) of section 2 of the act are classified to section 802 of this Appendix.

Acts July 15, 1918, and June 5, 1920, made no change in this provision of the act Sept. 7, 1916, except that it was designated subsec. (d) by section 38 of act June 5, 1920. See Codification note set out under section 802 of this Appendix.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

§ 804a. Omitted

CODIFICATION

Section, act June 30, 1932, ch. 314, § 306, 47 Stat. 408, which reorganized the United States Shipping Board, was omitted in view of abolishment of Board by Ex. Ord. No. 6166, § 12, eff. June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

Section was not enacted as part of the Shipping Act, 1916 which comprises this chapter.

§ 808. Registration, enrollment, and licensing of vessels purchased, chartered, or leased; unlawful transactions; penalties

(a) Repealed. Pub. L. 101–225, title III, § 307(3), Dec. 12, 1989, 103 Stat. 1925

(b) Necessity of registration, etc., for operation; laws, regulations, and liabilities applicable

Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

(c) Sale, lease, etc., to foreign persons; foreign registry or operation

Except as provided in section 1181 of this Appendix and in section 12106(e) of title 46, a person may not, without the approval of the Secretary of Transportation—

(1) sell, lease, charter, deliver, or in any manner transfer, or agree to sell, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d) Validity of unlawful charter, sale, etc.; penalties

(1) Any charter, sale, or transfer of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, or transfers a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

(B) a person knowingly charters, sells, or transfers a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(e) Placement in foreign registry without approval of Secretary

Notwithstanding subsection (c)(2) of this section, the Merchant Marine Act, 1936 [46 App.

U.S.C. 1101 et seq.], or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary, in conjunction with the Secretary of Defense, determines that at least one replacement vessel of equal or greater military capability and of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46 by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation; or

(2) an operating agreement covering the vessel under chapter 531 of title 46 has expired.

(f) Approval of certain vessel transactions before documentation of vessel

To promote financing with respect to a vessel to be documented under chapter 121 of title 46, the Secretary may grant approval under subsection (c) of this section before the date the vessel is documented.

(Sept. 7, 1916, ch. 451, §9, 39 Stat. 730; July 15, 1918, ch. 152, §3, 40 Stat. 900; June 5, 1920, ch. 250, §18, 41 Stat. 994; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; June 23, 1938, ch. 600, §42, 52 Stat. 964; Pub. L. 89–346, §1, Nov. 8, 1965, 79 Stat. 1305; Pub. L. 97–31, §12(26), Aug. 6, 1981, 95 Stat. 155; Pub. L. 100–710, title I, §104(b), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 101–225, title III, §§304(a), 307(3), Dec. 12, 1989, 103 Stat. 1924, 1925; Pub. L. 104–239, §6, Oct. 8, 1996, 110 Stat. 3132; Pub. L. 104–324, title XI, §§1113(c), (e), 1136(b), Oct. 19, 1996, 110 Stat. 3970, 3971, 3987; Pub. L. 107–295, title II, §205(d), Nov. 25, 2002, 116 Stat. 2096; Pub. L. 108–136, div. C, title XXXV, §3532(a), Nov. 24, 2003, 117 Stat. 1817.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (e), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§1101 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–136, §3532(a)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) specified requirements to be met for placement of a vessel under foreign registry without approval of the Secretary.

Pub. L. 108–136, §3532(a)(1), redesignated subsec. (e), relating to approval of certain vessel transactions before documentation of vessel, as (f).

Subsec. (f). Pub. L. 108–136, §3532(a)(1), redesignated subsec. (e), relating to approval of certain vessel transactions before documentation of vessel, as (f).

2002—Subsec. (c). Pub. L. 107–295, in introductory provisions, substituted ''Except as provided in section 1181 of this Appendix and in section 12106(e) of title 46,'' for ''Except as provided in section 1181 of this Appendix and sections 12106(e), 31322(a)(1)(D), and 12106(e) of title 46,''.

1996—Subsec. (c). Pub. L. 104–324, §1113(e), substituted ''sections 12106(e), 31322(a)(1)(D),'' for ''sections 31322(a)(1)(D)'' in introductory provisions.

Pub. L. 104–324, §1113(c)(1)(A), substituted ''and 12106(e)'' for ''and 31328'' in introductory provisions.

Subsec. (c)(1). Pub. L. 104–324, §1113(c)(1)(B), struck out ''mortgage,'' after ''sell,'' in two places.

Subsec. (d). Pub. L. 104–324, §1113(c)(2), substituted ''or transfer'' for ''transfer, or mortgage'' in par. (1) and ''or transfers'' for ''transfers, or mortgages'' in pars. (2), (3)(B), and (4).

Subsec. (e). Pub. L. 104–324, §1136(b), added subsec. (e) relating to approval of certain vessel transactions before documentation of vessel.

Pub. L. 104–239 added subsec. (e) relating to conditions for placing vessel under foreign registry without approval of Secretary.

1989—Subsec. (a). Pub. L. 101–225, §307(3), struck out subsec. (a) which related to registration, enrollment, and licensing of vessels purchased, chartered, or leased as United States vessels and authorization of vessels to engage in the coastwise trade of the United States.

Subsec. (c)(1). Pub. L. 101–225, §304(a), inserted ''or the last documentation of which was under the laws of the United States'' before semicolon at end.

Subsec. (c)(2). Pub. L. 101–225, §304(a)(2), inserted '', or a vessel the last documentation of which was under the laws of the United States,'' after ''a documented vessel''.

Subsec. (d)(1), (2). Pub. L. 101–225, §304(a)(3), substituted ''in or control of'' for ''or control in''.

Subsec. (d)(4). Pub. L. 101–225, §304(a)(4), added par. (4).

1988—Subsecs. (a), (b). Pub. L. 100–710, §104(b)(1), (2), designated first and second undesignated pars. as subsecs. (a) and (b), respectively.

Subsecs. (c), (d). Pub. L. 100–710, §104(b)(3), substituted subsecs. (c) and (d) for third, fourth, and fifth undesignated pars. which prohibited, without approval, sale, mortgage, lease, etc., to a person not a citizen of the United States, or transfer under foreign registry or flag, of vessel owned or documented under laws of United States and issuance, transfer, or assignment of bond or note secured by vessel without approval and which set forth qualifications for approval and penalties for violations of this section. Fourth undesignated par. restated in section 31328 of Title 46, Shipping.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''United States Maritime Commission'', ''Commission'', and ''Secretary of Commerce'' wherever appearing. For prior transfers of functions, see Transfer of Functions note below.

1965—Pub. L. 89–346 made it unlawful to issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, to a person not a citizen of the United States, without the approval of the Secretary of Commerce, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary of Commerce, required the Secretary to grant his approval if such trustee or substitute trustee is a bank or trust company which meets certain specified qualifications and to disapprove such trustee or substitute trustee if at any time he ceases to meet such qualifications, made it unlawful to transfer or assign such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary, after such disapproval, prohibited the trustee or substitute trustee approved by the Secretary to operate the vessel under the mortgage or assignment without approval of the Secretary, and voided the issuance, transfer, or assignments of bonds, notes, or other evidences of indebtedness if issued, transferred, or assigned to a person not a citizen of United States in violation of this section.

1938—Act June 23, 1938, amended last two pars. generally.

1920—Act June 5, 1920, amended section generally.

1918—Act July 15, 1918, amended section generally.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2004, see section 3537(a) of Pub. L. 108–136, set out in an Effective Date note under section 53101 of Title 46, Shipping.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107–295, set out as a note under section 12111 of Title 46, Shipping.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, and not applicable to any change in control resulting from, or which may at any time result from, any proposed plan of reorganization filed under United States bankruptcy laws prior to Nov. 23, 1988, except that transactions undertaken as a result of such plan shall continue to be governed by this section as it existed prior to Nov. 23, 1988, to the extent that this section would have governed such transactions, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

RETROACTIVE PROVISIONS

Section 4 of Pub. L. 89–346 provided that: ''Bonds, notes, and other evidence of indebtedness which are secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction which have heretofore been issued, transferred, or assigned, or are issued, transferred, or assigned within one year after the enactment of this Act [Nov. 8, 1965], to a person not a citizen of the United States without the approval of the Secretary of Commerce are valid in the hands of such person and the validity and preferred status of such mortgage and the validity and lawfulness of such issuance, transfer, or assignment shall not be affected by such issuance, transfer, or assignment if the trustee or a substitute trustee is approved by the Secretary of Commerce within one year after enactment of this Act [Nov. 8, 1965], under the standards for trustees specified in the amendments made by this Act to sections 9 and 37 of the Shipping Act, 1916 [sections 808 and 835 of this Appendix], and to subsection O of the Ship Mortgage Act, 1920 [section 961 of this Appendix].

''Nothing in this section shall be construed to alter retroactively any rights which were the subject matter of litigation pending on the date of enactment of this Act [Nov. 8, 1965].''

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

''United States Maritime Commission'' substituted in text for ''United States Shipping Board''. For dissolution of Board and transfer of its functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

§ 808a. Sale, chartering, leasing, mortgaging or transferring of documented vessels without approval of Secretary

A vessel that is or was last documented under chapter 121 of title 46 may be sold, chartered, leased, mortgaged, or transferred by any other means to a citizen of the United States (as defined in section 2101 of that title) without the approval of the Secretary of Transportation under section 808 of this Appendix.

(Pub. L. 98–454, title III, § 302, Oct. 5, 1984, 98 Stat. 1734.)

CODIFICATION

Section was not enacted as part of the Shipping Act, 1916, which comprises this chapter.

§ 811. Investigations as to cost of merchant vessels

The Secretary of Transportation shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. The Secretary shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and the Secretary shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. The Secretary shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as the Secretary deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

The Secretary shall, on or before the 1st day of December in each year, make a report to the Congress, which shall include his recommendations and the results of his investigations, a summary of his transactions, and a statement of all expenditures and receipts under this chapter, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the Secretary of Transportation.

(Sept. 7, 1916, ch. 451, § 12, 39 Stat. 732; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(27), Aug. 6, 1981, 95 Stat. 155.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'', ''The Secretary'' for ''It'', ''the Secretary'' for ''it'', and ''his'' for ''its'' wherever appearing. For prior transfers of functions, see Transfer of Functions note below.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166, and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§817d. Financial responsibility of owners and charterers for death or injury to passengers or other persons

(a) Amount; method of establishment

Each owner or charterer of an American or foreign vessel having berth or stateroom accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the Federal Maritime Commission, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports, in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

$20,000 for each passenger accommodation up to and including five hundred; plus

$15,000 for each additional passenger accommodation between five hundred and one and one thousand; plus

$10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus

$5,000 for each passenger accommodation in excess of one thousand five hundred:

Provided, however, That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations. This amount shall be available to pay any judgment for damages, whether in amount less than or more than $20,000 for death or injury occurring on such voyages to any passenger or other person. Such financial responsibility may be established by any one of, or a combination of, the following methods which is acceptable to the Commission: (1) policies of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility.

(b) Issuance of bond when filed with Commission

If a bond is filed with the Commission, then such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States.

(c) Civil penalties for violations; remission or mitigation of penalties

Any person who shall violate this section shall be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its discretion shall deem proper.

(d) Rules and regulations

The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984 [46 App. U.S.C. 1701 et seq.] shall apply with respect to proceedings conducted by the Commission under this section.

(e) Refusal of departure clearance

At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 91 of this Appendix to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

(Pub. L. 89–777, §2, Nov. 6, 1966, 80 Stat. 1356; Pub. L. 103–182, title VI, §689(c), Dec. 8, 1993, 107 Stat. 2222; Pub. L. 104–324, title VII, §746(c)(1), Oct. 19, 1996, 110 Stat. 3943; Pub. L. 105–258, title III, §302(a), Oct. 14, 1998, 112 Stat. 1916.)

REFERENCES IN TEXT

The Shipping Act of 1984, referred to in subsec. (d), is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to chapter 36 (§1701 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

CODIFICATION

Section was not enacted as part of the Shipping Act, 1916, which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–258 substituted ''it in its discretion'' for ''they in their discretion''.

1996—Subsec. (d). Pub. L. 104–324 substituted reference to Shipping Act of 1984 for reference to this chapter.

1993—Subsec. (e). Pub. L. 103–182 substituted ''At the port'' for ''The collector of customs at the port'' and inserted '', the Customs Service'' after ''subsection (a) of this section''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 746(c) of Pub. L. 104–324 provided that the amendment made by that section is effective Sept. 30, 1996.

EFFECTIVE DATE

Section 5 of Pub. L. 89–777 provided in part that this section is effective 9 months after Nov. 6, 1966.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 817e. Financial responsibility for indemnification of passengers for nonperformance of transportation

(a) Filing of information or bond with Commission

No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

(b) Issuance of bond when filed with Commission; amount of bond

If a bond is filed with the Commission, such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(c) Civil penalties for violations; remission or mitigation of penalties

Any person who shall violate this section shall be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its discretion shall deem proper.

(d) Rules and regulations

The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984 [46 App. U.S.C. 1701 et seq.] shall apply with respect to proceedings conducted by the Commission under this section.

(e) Refusal of departure clearance

At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 91 of this Appendix to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

(Pub. L. 89–777, § 3, Nov. 6, 1966, 80 Stat. 1357; Pub. L. 103–182, title VI, § 689(c), Dec. 8, 1993, 107 Stat. 2222; Pub. L. 103–206, title III, § 320, Dec. 20, 1993, 107 Stat. 2427; Pub. L. 104–324, title VII, § 746(c)(2), Oct. 19, 1996, 110 Stat. 3943; Pub. L. 105–258, title III, § 302(a), Oct. 14, 1998, 112 Stat. 1916.)

REFERENCES IN TEXT

The Shipping Act of 1984, referred to in subsec. (d), is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to chapter 36 (§ 1701 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

CODIFICATION

Section was not enacted as part of the Shipping Act, 1916, which comprises this chapter.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–258 substituted ''it in its discretion'' for ''they in their discretion''.

1996—Subsec. (d). Pub. L. 104–324 substituted reference to Shipping Act of 1984 for reference to this chapter.

1993—Subsec. (b). Pub. L. 103–206 struck out before period at end ''and such bond or other security shall be in an amount paid equal to the estimated total revenue for the particular transportation''.

Subsec. (e). Pub. L. 103–182 substituted ''At the port'' for ''The collector of customs at the port'' and inserted '', the Customs Service'' after ''subsection (a) of this section''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 746(c) of Pub. L. 104–324 provided that the amendment made by that section is effective Sept. 30, 1996.

EFFECTIVE DATE

Section 5 of Pub. L. 89–777 provided in part that this section is effective 180 days after Nov. 6, 1966.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 833. Partial invalidity of chapter as not affecting remainder

If any provision of this chapter, or the application of such provision to certain circumstance, is held unconstitutional, the remainder of the chapter, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

(Sept. 7, 1916, ch. 451, § 34, 39 Stat. 738.)

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

§ 834. Refusal of clearance to vessel refusing to accept freight

The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.

(Sept. 7, 1916, ch. 451, § 36, 39 Stat. 738.)

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

§ 835. Restrictions on transfer of shipping facilities during war or national emergency

When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the Secretary of Transportation:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, shipbuilding or ship-repairing plant or facilities, or any interest therein; or

(c) To issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock, or shipbuilding or ship-repairing plant or facilities, to a person not a citizen of the United States, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary of Transportation: *Provided, however*, That the Secretary of Transportation shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000; or for the trustee or substitute trustee approved by the Secretary of Transportation to operate said vessel under the mortgage or assignment: *Provided further*, That if such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary of Transportation, shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary of Transportation, shall be unlawful; or

(d) To enter into any contract agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(e) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, drydock, or shipbuilding, or ship-repairing plant or facilities; or

(f) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than $5,000 or by imprisonment for not more than five years, or both.

If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship-building or ship-repairing plant or facilities, is issued, transferred, or assigned to a person not a citizen of the United States in violation of subsection (c) of this section, the issuance, transfer or assignment shall be void.

Any vessel, shipyard, drydock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subsection (e)[1] of this section, shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement

[1] See References in Text note below.

therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successors or assigns, after the tender of such vessel, shipyard, drydock, shipbuilding or ship-repairing plant or facilities, or interest therein, or of such stocks, bonds, or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States.

(Sept. 7, 1916, ch. 451, § 37, as added July 15, 1918, ch. 152, § 4, 40 Stat. 901; amended Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 89–346, § 2, Nov. 8, 1965, 79 Stat. 1306; Pub. L. 97–31, § 12(30), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

Subsection (e) of this section, referred to in penultimate par., was redesignated subsection (f) of this section by Pub. L. 89–346 without amendment to said paragraph to reflect such redesignation.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in introductory par., and for ''Secretary of Commerce'' in five places in subsec. (c). For prior transfers of functions, see Transfer of Functions note below.

1965—Subsecs. (c) to (f). Pub. L. 89–346, § 2(a), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

Pub. L. 89–346, § 2(b), inserted provisions voiding the issuance, transfer or assignment of bonds, notes, or other evidences of indebtedness which are secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship-building or ship-repairing plant or facilities, if such issuance, transfer or assignment is made in violation of subsec. (c) of this section.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

In introductory par., ''Commission'', meaning United States Maritime Commission, substituted for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

NATIONAL EMERGENCY, 1950

For Presidential Proclamation of the existence of a national emergency, see Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. 454, set out as a note preceding section 1 of Title 50, Appendix, War and National Defense.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 836. Forfeitures

All forfeitures incurred under the provisions of this chapter may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to the collection of duties, except that forfeitures may be remitted without seizure of the vessel.

(Sept. 7, 1916, ch. 451, § 38, as added July 15, 1918, ch. 152, § 4, 40 Stat. 902; amended Pub. L. 101–225, title III, § 304(b), Dec. 12, 1989, 103 Stat. 1924.)

AMENDMENTS

1989—Pub. L. 101–225 substituted ''duties, except that forfeitures may be remitted without seizure of the vessel'' for ''duties''.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

NATIONAL EMERGENCY, 1950

For Presidential Proclamation of the existence of a national emergency, see Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. 454, set out as a note preceding section 1 of Title 50, Appendix, War and National Defense.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 837. Prima facie evidence

In any action or proceeding under the provisions of this chapter to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted.

(Sept. 7, 1916, ch. 451, § 39, as added July 15, 1918, ch. 152, § 4, 40 Stat. 902.)

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

NATIONAL EMERGENCY, 1950

For Presidential Proclamation of the existence of a national emergency, see Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. 454, set out as a note preceding section 1 of Title 50, Appendix, War and National Defense.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 839. Approvals by Secretary

Whenever by section 808 or 835 of this Appendix the approval of the Secretary of Transpor-

tation is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Secretary of Transportation prescribes. Whenever the approval of the Secretary of Transportation is accorded upon any condition a statement of such condition shall be entered upon his records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the Secretary of Transportation, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this chapter the approval of the Secretary of Transportation is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the Secretary of Transportation, or to any officer, attorney, or agent of the Department of Transportation, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both.

(Sept. 7, 1916, ch. 451, §41, as added July 15, 1918, ch. 152, §4, 40 Stat. 902; amended Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(32), Aug. 6, 1981, 95 Stat. 156.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' and ''his'' for ''its'' and, in view of this amendment, ''or to any officer, attorney, or agent of the Department of Transportation'' were editorially substituted in second paragraph for ''or to any member thereof, or to any officer, attorney, or agent thereof''. For prior transfers of functions, see Transfer of Functions note below.

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

NATIONAL EMERGENCY, 1950

For Presidential Proclamation of the existence of a national emergency, see Proc. No. 2914, eff. Dec. 16, 1950, 15 F.R. 9029, 64 Stat. 454, set out as a note preceding section 1 of Title 50, Appendix, War and National Defense.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§842. Short title

This chapter may be cited as ''Shipping Act, 1916.''

(Sept. 7, 1916, ch. 451, §46, formerly §44, as added July 15, 1918, ch. 152, §4, 40 Stat. 903, renumbered §45, Pub. L. 87–254, §2, Sept. 19, 1961, 75 Stat. 522, and renumbered §46, Pub. L. 96–325, §5, Aug. 8, 1980, 94 Stat. 1022.)

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–325 provided: ''That this Act [enacting section 841c of this Appendix, amending sections 801 and 814 of this Appendix, and enacting a provision set out as a note under section 841c of this Appendix] may be cited as the 'Maritime Labor Agreements Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96–25, §1, June 19, 1979, 93 Stat. 71, provided: ''That this Act [amending sections 815, 817, 820, 821, 822, 826, 828, 829, and 831 of this Appendix and enacting provisions set out as a note under section 815 of this Appendix] may be cited as the 'Shipping Act Amendments of 1979'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–483, §1, Oct. 18, 1978, 92 Stat. 1607, provided: ''That this Act [amending sections 801 and 817 of this Appendix and enacting provision set out as a note under section 801 of this Appendix] may be cited as the 'Ocean Shipping Act of 1978'.''

REPEALS

For provisional repeal, see note set out preceding section 801 of this Appendix.

CHAPTER 24—MERCHANT MARINE ACT, 1920

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883a. Reports required of United States vessels rebuilt abroad; penalty for failure to report; mitigation of penalty.
883b. Regulations.
884. Charges for transportation subject to interstate transportation provisions.
885. Association of marine insurance companies; application of antitrust laws.
887. Partial invalidity.
888. Definitions.
889. Short title.

§ 861. Purpose and policy of United States

It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, insofar as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

(June 5, 1920, ch. 250, § 1, 41 Stat. 988; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(33), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

The shipping laws, referred to in text, are classified generally to Title 46, Shipping, and this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''United States Maritime Commission''. For prior transfer of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''United States Maritime Commission'' substituted in text for ''United States Shipping Board''. For dissolution of Board and transfer of functions to Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 864a. Purchase allowance in sale of vessels for cost of putting vessels in class

On and after June 30, 1948, the Secretary of Transportation may make allowances to purchasers of vessels for cost of putting such vessels in class, such allowances to be determined on the basis of competitive bids, without regard to the provisions of the last paragraph of section 1736(d)[1] of the Appendix to title 50.

(June 30, 1948, ch. 775, § 101, 62 Stat. 1199; Pub. L. 97–31, § 12(35), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

Section 1736(d) of the Appendix to title 50, referred to in text, was repealed by Pub. L. 101–225, title III, § 307(12), Dec. 12, 1989, 103 Stat. 1925.

CODIFICATION

Section was enacted as part of The Supplemental Independent Offices Appropriation Act, 1949, act June 30, 1948, and not as part of the Merchant Marine Act, 1920, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'', meaning the United States Maritime Commission.

§ 864b. Elements considered in sale of vessels in determination of selling price

On and after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price.

(June 29, 1949, ch. 281, § 1, 63 Stat. 349; Pub. L. 97–31, § 12(36), Aug. 6, 1981, 95 Stat. 156.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1920, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Maritime Administration of the Department of Transportation'' for ''Maritime Commission'' and ''Maritime Administration'' for ''Commission'', meaning United States Maritime Commission.

§ 865. Sale to aliens

The Secretary of Transportation is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as he may determine, not inconsistent with the provisions of section 5[1] (except that completion of the payment of the purchase price and interest shall not be deferred more than ten years after the making of the contract of sale), such vessels as he shall, after careful investigation, deem un-

[1] See References in Text note below.

[1] See References in Text note below.

necessary to the promotion and maintenance of an efficient American merchant marine; but no such sale shall be made unless the Secretary of Transportation, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5,[1] such vessels to persons citizens of the United States, and has determined to make such sale; and he shall make as a part of his records a full statement of his reasons for making such sale. Deferred payments of purchase price of vessels under this section shall bear interest at the rate of not less than 5½ per centum per annum, payable semiannually.

(June 5, 1920, ch. 250, § 6, 41 Stat. 991; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(37), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

Section 5, referred to in text, means section 5 of act June 5, 1920, which was classified to section 864 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, § 202(4), Nov. 23, 1988, 102 Stat. 4753.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places, ''he'' for ''it'' in three places, and ''his'' for ''its'' in two places, and struck out ''upon an affirmative vote of not less than five of its members, spread upon the minutes of the board,'' before ''determined to make such sale''. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 865a. Sale of inactive passenger vessels to foreigners; conditions; requisition in emergency; surety bond

Notwithstanding any other provision of law or of prior contract with the United States, any vessel heretofore operated as a passenger vessel, as defined in section 613(a) of the Merchant Marine Act, 1936, as amended [46 App. U.S.C. 1183(a)], under an operating-differential subsidy contract with the United States and now in inactive or layup status, except the steamship Independence and the steamship United States, may be sold and transferred to foreign ownership, registry, and flag, with the prior approval of the Secretary of Transportation. Such approval shall require (1) approval of the purchaser; (2) payment of existing debt and private obligations related to the vessel; (3) approval of the price, including terms of payment, for the sale of the vessel; (4) the seller to enter into an agreement with the Secretary whereby an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale shall within a reasonable period not to exceed twelve months of receipt be committed and thereafter be used as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [46 App. U.S.C. 1101 et seq.]; and (5) the purchaser to enter into an agreement with the Secretary, binding upon such purchaser and any later owner of the vessel and running with title to the vessel, that (a) the vessel will not carry passengers or cargo in competition, as determined by the Secretary, with any United States-flag passenger vessel for a period of two years from the date the transferred vessel goes into operation; (b) the vessel will be made available to the United States in time of emergency and just compensation for title or use; as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242); (c) the purchaser will comply with such further conditions as the Secretary may impose as authorized by sections 808, 835 and 839 of this Appendix; and (d) the purchaser will furnish a surety bond in an amount and with a surety satisfactory to the Secretary to secure performance of the foregoing agreements.

In addition to any other provision such agreements may contain for enforcement of (4) and (5) above, the agreements therein required may be specifically enforced by decree for specific performance or injunction in any district court of the United States. In the agreement with the Secretary the purchaser shall irrevocably appoint a corporate agent within the United States for service of process upon such purchaser in any action to enforce the agreement.

(Pub. L. 92–296, § 1, May 16, 1972, 86 Stat. 140; Pub. L. 97–31, § 12(38), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended, which is classified principally to chapter 27 (§ 1101 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1920, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

§ 866. Establishment and operation of steamship lines between ports of United States

Investigation and determination by Secretary—The Secretary of Transportation is authorized and directed to investigate and determine as promptly as possible after June 5, 1920, and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in his judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be em-

ployed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service.

Sale or charter of vessels—The Secretary of Transportation is authorized to sell, and if a satisfactory sale cannot be made, to charter such of the vessels referred to in section 863 of this Appendix or otherwise acquired by the Secretary of Transportation, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the Secretary of Transportation may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the Secretary of Transportation, the Secretary of Transportation shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line cannot be made self-sustaining.

Preference in sales or charters—Preference in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the Secretary of Transportation is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world-market port to which the Secretary of Transportation has determined that such service should be established.

Lines established by shipping board; continued operation—Where steamship lines and regular service had been established and were being maintained by ships of the United States Shipping Board on June 5, 1920, such lines and service shall be maintained by the Secretary of Commerce until, in the opinion of the Secretary, the maintenance thereof is unbusinesslike and against the public interests.

Additional lines established by Secretary; rates and charges—Whenever the Secretary of Transportation shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

(June 5, 1920, ch. 250, § 7, 41 Stat. 991; May 22, 1928, ch. 675, § 414(b), 45 Stat. 696; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; 1950 Reorg. Plan No. 21, § 204, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276; Pub. L. 97–31, § 12(39), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

Section 863 of this Appendix, referred to in text, was omitted from the Code.

CODIFICATION

United States Shipping Board, referred to in fourth undesignated par., dissolved and functions transferred to successive Federal agencies and departments. Secretary of Commerce, referred to in such par., exercised certain functions of Board pursuant to Reorg. Plan No. 21 of 1950, and was not changed to Secretary of Transportation in view of directory language of Pub. L. 97–31. See 1981 Amendment and Transfer of Functions notes below.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing except in fourth paragraph and ''his'' for ''its''. For prior transfers of functions, see Transfer of Functions note below.

1928—Act May 22, 1928, struck out paragraph which related to contracts for carrying mails.

TRANSFER OF FUNCTIONS

Functions conferred upon Secretary of Commerce by provisions of Reorg. Plan No. 21 of 1950 to remain vested in Secretary except to extent inconsistent with sections 101(b) and 104(b) of Reorg. Plan No. 7 of 1961. See section 202 of Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

In fourth undesignated par., ''Secretary of Commerce'' and ''Secretary'' substituted for ''Commission'', meaning United States Maritime Commission, on authority of Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix, section 306 of which abolished United States Maritime Commission and section 204 of which transferred to Secretary of Commerce such Commission's functions not transferred to Federal Maritime Board.

Previously, ''Commission'', meaning United States Maritime Commission, substituted for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. Executive and administrative functions of United States Maritime Commission transferred to Chairman thereof by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out under section 1111 of this Appendix.

§ 867. Investigation of port, terminal, and warehouse facilities

It shall be the duty of the Secretary of Transportation, in cooperation with the Secretary of the Army, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks,

warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: *Provided*, That if after such investigation the Secretary of Transportation shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Surface Transportation Board are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary of Transportation may submit his findings to the Surface Transportation Board for such action as such Board may consider proper under existing law.

(June 5, 1920, ch. 250, § 8, 41 Stat. 992; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; July 26, 1947, ch. 343, title II, § 205(a), 61 Stat. 501; Pub. L. 97–31, § 12(40), Aug. 6, 1981, 95 Stat. 156; Pub. L. 104–88, title III, § 321(1), Dec. 29, 1995, 109 Stat. 949.)

AMENDMENTS

1995—Pub. L. 104–88 substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'' in two places and ''Board'' for ''commission''.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in three places, ''his'' for ''its'', and ''he'' for ''it''. For prior transfers of functions, see Transfer of Functions note below.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 continued Department of the Army under administrative supervision of Secretary of the Army.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

TRANSFER OF FUNCTIONS

''Maritime Commission'' and ''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board). For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 868. Vessels sold under deferred payment plan; insurance

If the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the Secretary of Transportation shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the Secretary of Transportation so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the Secretary of Transportation may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the Secretary of Transportation may prescribe or approve. The insurance required to be carried under this section shall be made payable to the Secretary of Transportation and/or to the parties as interest may appear. The Secretary of Transportation is authorized to enter into any agreement that he deems wise in respect to the payment and/or the guarantee of premiums of insurance.

(June 5, 1920, ch. 250, § 9, 41 Stat. 992; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(41), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in six places and ''he'' for ''it''. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 869. Creation of fund for insurance of interests of United States

The Secretary of Transportation may create out of insurance premiums, and revenue from operations and sales, and maintain and administer separate insurance funds which he may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in

process of construction; and (2) in any plants or property in the possession or under the authority of the Secretary of Transportation. The United States shall be held to have such an interest in any vessel toward the construction, reconditioning, remodeling, improving, or equipping of which a loan has been made under the authority of this Act, in any vessel upon which he holds a mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

(June 5, 1920, ch. 250, § 10, 41 Stat. 992; May 22, 1928, ch. 675, § 501, 45 Stat. 697; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(42), Aug. 6, 1981, 95 Stat. 156.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''he'' for ''it'' in two places. For prior transfers of functions, see Transfer of Functions note below.

1928—Act May 22, 1928, inserted sentence relating to extent of interest of United States, among other changes.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 871. Repair and operation of vessels until sale

All vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the Secretary of Transportation or chartered or leased by him on such terms and conditions as the Secretary of Transportation shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in section 861 of this Appendix and section 5 of this Act.[1]

The term ''reconditioned'' as used in this section includes the substitution of the most modern, most efficient, and most economical types of internal-combustion engines as the main propulsive power of vessels. Should the Secretary of Transportation have any such engines built in the United States and installed, in private shipyards or navy yards of the United States, in one or more merchant vessels owned by the United States, and the cost to the Secretary of Transportation of such installation exceeds the amount of funds otherwise available to him for that use, the Secretary of Transportation may transfer to his funds from which expenditures under this section may be paid, from his construction fund authorized by section 11[1] of the Merchant Marine Act, 1920, so much as in his judgment may be necessary to meet obligations under contracts for such installation; and the Treasurer of the United States shall, at the request of the Secretary of Transportation, make the transfer accordingly: *Provided*, That the total amount expended by the Secretary of Transportation for this purpose shall not in the aggregate exceed $25,000,000. Any such vessel after June 5, 1920, so equipped by the Secretary of Transportation under the provisions of this section shall not be sold for a period of five years from the date the installation thereof is completed, unless it is sold for a price not less than the cost of the installation thereof and of any other work of reconditioning done at the same time plus an amount not less than $10 for each dead-weight ton of the vessel as computed before such reconditioning thereof is commenced. The date of the completion of such installation and the amount of the dead-weight tonnage of the vessel shall be fixed by the Secretary of Transportation: *Provided further*, That in fixing the minimum price at which the vessel may thus be sold the Secretary of Transportation may deduct from the aggregate amount above prescribed 5 per centum thereof per annum from the date of the installation to the date of sale as depreciation: *And provided further*, That no part of such fund shall be expended upon the reconditioning of any vessel unless the Secretary of Transportation shall have first made a binding contract for a satisfactory sale of such vessel in accordance with the provisions of this Act, or for the charter or lease of such vessels for a period of not less than five years by a capable, solvent operator; or unless the Secretary of Transportation is prepared and intends to directly put such vessel in operation immediately upon completion. Such vessel, in any of the enumerated instances, shall be documented under the laws of the United States and shall remain documented under such laws for a period of not less than five years from the date of the completion of the installation, and during such period it shall be operated only on voyages which are not exclusively coastwise.

(June 5, 1920, ch. 250, § 12, 41 Stat. 993; June 6, 1924, ch. 273, § 2, 43 Stat. 468; Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1083; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(43), Aug. 6, 1981, 95 Stat. 157.)

REFERENCES IN TEXT

Section 5 of this Act, referred to in text, is section 5 of act June 5, 1920, which was classified to section 864 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, § 202(4), Nov. 23, 1988, 102 Stat. 4753.

Section 11 of the Merchant Marine Act, 1920, referred to in text, was classified to section 870 of former Title 46, and was repealed by act June 29, 1936, ch. 858, § 903(b), (c), 49 Stat. 2016. See section 1116 of this Appendix.

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections re-

[1] See References in Text note below.

pealed or reenacted in Title 46) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

CODIFICATION

The first paragraph of this section originally contained a further provision continuing the United States Shipping Board Merchant Fleet Corporation in existence with authority to operate vessels. The corporation was subsequently dissolved by section 203 of act June 29, 1936.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in twelve places, ''him'' for ''it'' in two places, and ''his'' for ''its'' in three places. For prior transfers of functions, see Transfer of Functions note below.

1927—Act Feb. 11, 1927, substituted ''U.S. Shipping Board Merchant Fleet Corporation'' for ''U.S. Shipping Board Emergency Fleet Corporation'' in first par.

1924—Act June 6, 1924, added second par.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§872. Sale of property other than vessels

The Secretary of Transportation is further authorized to sell all property other than vessels transferred to him under section 4[1] upon such terms and conditions as the Secretary of Transportation may determine and prescribe.

(June 5, 1920, ch. 250, §13, 41 Stat. 993; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(44), Aug. 6, 1981, 95 Stat. 157.)

REFERENCES IN TEXT

Section 4, referred to in text, means section 4 of act June 5, 1920, which was classified to section 863 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, §202(4), Nov. 23, 1988, 102 Stat. 4753.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''him'' for ''it''. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

[1] See References in Text note below.

§875. Possession and control of terminal equipment and facilities

The possession and control of such other[1] docks, piers, warehouses, wharves and terminal equipment and facilities or parts thereof, including all leasehold easements, rights of way, riparian rights and other rights, estates or interests therein or appurtenant thereto which were acquired by the War Department[2] or the Navy Department for military or naval purposes during the war emergency may be transferred by the president to the Secretary of Transportation whenever the President deems such transfer to be for the best interests of the United States.

The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the Secretary of Transportation under this section to the Department of the Army, Department of the Air Force, or Department of the Navy for their needs, and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the Secretary of Transportation. None of such property shall be sold except as may be provided by law.

(June 5, 1920, ch. 250, §17, 41 Stat. 994; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; July 26, 1947, ch. 343, title II, §§205(a), 207(a), (f), 61 Stat. 501, 502; Pub. L. 97–31, §12(45), Aug. 6, 1981, 95 Stat. 157.)

REFERENCES IN TEXT

Words ''such other'', referred to in first par., mean other than docks, etc., acquired by President by or under act Mar. 28, 1918, ch. 28, 40 Stat. 459, which was referred to in original first par. prior to repeal by Pub. L. 97–31. See 1981 Amendment note below.

AMENDMENTS

1981—Pub. L. 97–31 struck out first par., directing Commission to take over, on Jan. 1, 1921, possession and control of docks, etc., acquired by President by or under act Mar. 28, 1918, ch. 28, 40 Stat. 459, and substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions, see Transfer of Functions note below.

CHANGE OF NAME

Department of War designated Department of the Army and title of Secretary of War changed to Secretary of the Army by section 205(a) of act July 26, 1947. Section 207(a), (f) of act July 26, 1947, established Department of the Air Force, headed by a Secretary, and transferred functions (relating to Army Air Forces) of Secretary of the Army and Department of the Army to Secretary of the Air Force and Department of the Air Force. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 3010 to 3013 and 8010 to 8013 continued Departments of the Army and Air Force under administrative supervision of Secretary of the Army and Secretary of the Air Force, respectively.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted for ''board'', meaning United

[1] See References in Text note below.

[2] See Change of Name note below.

States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 876. Power of Secretary and Commission to make rules and regulations

(a) In general

The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(1) To make all necessary rules and regulations to carry out the provisions of this Act;

And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(2) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(3) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the steamboat inspection service.

(b) Approval and final action

No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the steamboat inspection service, until such rule or regulation has been submitted to the Federal Maritime Commission for its approval and final action has been taken thereon by the Commission or the President.

(c) Submission of facts to President

Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the Federal Maritime Commission, as provided in subsection (a)(3) of this section, or objects to the decision of the Commission in respect to the approval of any rule or regulation, as provided in subsection (b) of this section, either the Commission or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is authorized to establish or suspend, modify, or annul such rule or regulation.

(d) Prohibition against preference

No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

(e) Motion or petition

The Commission may initiate a rule or regulation under subsection (a)(2) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under subsection (a)(2) of this section.

(f) Filing of information

In furtherance of the purposes of subsection (a)(2) of this section—

(1) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(2) the Commission may require a report or answers to questions to be made under oath;

(3) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(4) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000 for each day that the information is not provided.

(g) Discovery; witnesses; evidence

In proceedings under subsection (a)(2) of this section—

(1) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(2) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence;

(3) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(4) for failure to supply information ordered to be produced or compelled by subpoena under paragraph (2), the Commission may—

(A) after notice and an opportunity for hearing, suspend tariffs and service contracts of a common carrier or that common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member, or

(B) assess a civil penalty of not more than $5,000 for each day that the information is not provided; and

(5) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(h) Disclosure to public

Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

(i) Finding of unfavorable conditions

If the Commission finds that conditions that are unfavorable to shipping under subsection (a)(2) of this section exist, the Commission may—

(1) limit sailings to and from United States ports or the amount or type of cargo carried;

(2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

(3) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(4) impose a fee, not to exceed $1,000,000 per voyage; or

(5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(j) Refusal of clearance and denial of entry

Upon request by the Commission—

(1) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 91 of this Appendix to a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, and shall collect any fees imposed by the Commission under subsection (i)(4) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(k) Operation under suspended tariff or service contract

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under subsection (g)(4) or (i)(2) of this section, or after its right to use another tariff or service contract has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.

(*l*) Consultation with other agencies

The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

(June 5, 1920, ch. 250, §19, 41 Stat. 995; Ex. Ord. No. 6166, §12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, §204, title IX, §904, 49 Stat. 1987, 2016; Pub. L. 97–31, §12(46), Aug. 6, 1981, 95 Stat. 157; Pub. L. 101–595, title I, §103, Nov. 16, 1990, 104 Stat. 2979; Pub. L. 102–587, title VI, §6205(b), Nov. 4, 1992, 106 Stat. 5094; Pub. L. 105–258, title III, §301, Oct. 14, 1998, 112 Stat. 1915.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–258, §301(a)(1)–(3), (b)(1), (2), redesignated par. (1) as subsec. (a) and former subdivs. (a) to (c) as pars. (1) to (3), respectively, and, in par. (2) as redesignated, struck out ''forwarding and'' before ''agency services'' and substituted ''ocean transportation intermediary services and operations,'' for ''non-vessel-operating common carrier operations,'' and ''methods, pricing practices, or other practices'' for ''methods or practices''.

Subsec. (b). Pub. L. 105–258, §301(b)(1), redesignated par. (2) as subsec. (b).

Subsec. (c). Pub. L. 105–258, §301(b)(1), (8), (9), redesignated par. (3) as subsec. (c) and substituted ''subsection (a)(3)'' for ''subdivision (c) of paragraph (1)'' and ''subsection (b)'' for ''paragraph (2)''.

Subsec. (d). Pub. L. 105–258, §301(b)(1), redesignated par. (4) as subsec. (d).

Subsec. (e). Pub. L. 105–258, §301(a)(7), (b)(1), (10), redesignated par. (5) as subsec. (e), substituted ''transportation intermediary,'' for ''freight forwarder,'', and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)'' in two places.

Subsec. (f). Pub. L. 105–258, §301(b)(1), (10), redesignated par. (6) as subsec. (f) and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)'' in introductory provisions.

Subsec. (f)(1). Pub. L. 105–258, §301(a)(7), (b)(3), redesignated subd. (a) as par. (1) and substituted ''transportation intermediary,'' for ''freight forwarder,''.

Subsec. (f)(2) to (4). Pub. L. 105–258, §301(b)(3), redesignated subds. (b) to (d) as pars. (2) to (4), respectively.

Subsec. (g). Pub. L. 105–258, §301(b)(1), (10), redesignated par. (7) as subsec. (g) and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)'' in introductory provisions.

Subsec. (g)(1) to (3). Pub. L. 105–258, §301(b)(4), redesignated subds. (a) to (c) as pars. (1) to (3), respectively.

Subsec. (g)(4). Pub. L. 105–258, § 301(b)(4), (11), redesignated subd. (d) as par. (4) and substituted ''paragraph (2),'' for ''subdivision (b),'' in introductory provisions.

Subsec. (g)(4)(A). Pub. L. 105–258, § 301(a)(4), (5), (b)(5), redesignated cl. (i) as subpar. (A) and substituted ''tariffs and service contracts of a common carrier'' for ''tariffs of a common carrier'' and ''use tariffs of conferences and service contracts of agreements'' for ''use the tariffs of conferences''.

Subsec. (g)(4)(B). Pub. L. 105–258, § 301(b)(5), redesignated cl. (ii) as subpar. (B).

Subsec. (g)(5). Pub. L. 105–258, § 301(b)(4), redesignated subd. (e) as par. (5).

Subsec. (h). Pub. L. 105–258, § 301(b)(1), redesignated par. (8) as subsec. (h).

Subsec. (i). Pub. L. 105–258, § 301(b)(1), (10), redesignated par. (9) as subsec. (i) and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)'' in introductory provisions.

Subsec. (i)(1). Pub. L. 105–258, § 301(b)(6), redesignated subd. (a) as par. (1).

Subsec. (i)(2). Pub. L. 105–258, § 301(a)(6), (b)(6), redesignated subd. (b) as par. (2) and substituted ''tariffs and service contracts'' for ''tariffs filed with the Commission''.

Pub. L. 105–258, § 301(a)(5), which directed amendment of par. (2) by substituting ''use tariffs of conferences and service contracts of agreements'' for ''use the tariffs of conferences'', was executed by making the substitution for ''use tariffs of conferences'', to reflect the probable intent of Congress.

Subsec. (i)(3) to (5). Pub. L. 105–258, § 301(b)(6), redesignated subds. (c) to (e) as pars. (3) to (5), respectively.

Subsec. (j). Pub. L. 105–258, § 301(b)(1), redesignated par. (10) as subsec. (j).

Subsec. (j)(1). Pub. L. 105–258, § 301(b)(7), (10), (12), redesignated subd. (a) as par. (1) and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)'' and ''subsection (i)(4)'' for ''paragraph (9)(d)''.

Subsec. (j)(2). Pub. L. 105–258, § 301(b)(7), (10), redesignated subd. (b) as par. (2) and substituted ''subsection (a)(2)'' for ''paragraph (1)(b)''.

Subsec. (k). Pub. L. 105–258, § 301(a)(8), (b)(1), (13), redesignated par. (11) as subsec. (k), substituted ''subsection (g)(4) or (i)(2)'' for ''paragraph (7)(d) or (9)(b)'', and substituted ''tariff or service contract'' for ''tariff'' wherever appearing.

Subsec. (*l*). Pub. L. 105–258, § 301(b)(1), redesignated par. (12) as subsec. (*l*).

1992—Par. (1)(b). Pub. L. 102–587, § 6205(b)(1), substituted ''systems'' for ''sysetms'' after ''integral to transportation''.

Par. (7)(d). Pub. L. 102–587, § 6205(b)(2), substituted ''under subdivision (b)'' for ''in proceedings under paragraph (1)(b)(7) of this section''.

1990—Par. (1)(b). Pub. L. 101–595, § 103(1), inserted ''including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation sysetms,'' after ''generally,''.

Pars. (5) to (12). Pub. L. 101–595, § 103(2), added pars. (5) to (12).

1981—Par. (1). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'', and added after subsec. (a) an undesignated paragraph respecting authority of Federal Maritime Commission. For prior transfers of functions, see Transfer of Functions note below.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendments by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

Functions of Public Health Service and of all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out in the Appendix to Title 5. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

Steamboat Inspection Service consolidated in Bureau of Marine Inspection and Navigation which was later abolished. Functions relating to inspection of vessels now vested in Commandant of the Coast Guard. See note preceding section 3 of this Appendix.

§ 877. Coastwise laws extended to island Territories and possessions

From and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of the United States not covered thereby on June 5, 1920, and the Secretary of Transportation is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: *Provided*, That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: *And provided further*, That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same.

(June 5, 1920, ch. 250, § 21, 41 Stat. 997; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; Apr. 16, 1936, ch.

228, 49 Stat. 1207; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Pub. L. 97–31, § 12(47), Aug. 6, 1981, 95 Stat. 157.)

CODIFICATION

Provisos of this section authorizing the government of Philippine Islands to regulate transportation between ports or places in Philippine Archipelago until Congress authorized registry of vessels owned in those islands, and providing that this section should not go into effect in Philippine Islands until after investigation and proclamation by President, omitted on authority of Proc. No. 2695 of 1946, set out under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed independence of Philippines.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions, see Transfer of Functions note below.

1936—Act Apr. 16, 1936, inserted last proviso.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 883. Transportation of merchandise between points in United States in other than domestic built or rebuilt and documented vessels; incineration of hazardous waste at sea

No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of the[1] title 46), or a subdivision of a State, shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by section 808 of this Appendix or section 22[2] of this Act: *Provided*, That no vessel of more than 200 gross tons (as measured under chapter 143 of title 46) having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: *Provided further*, That no vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its territories (not including trust territories), or its possessions: *Provided further*, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Surface Transportation Board for which routes rate tariffs have been or shall hereafter be filed with the Board when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Transportation shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further*, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Board, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 1322(a) of title 19, if the articles described in clauses (a) through (d)

[1] So in original. The word ''the'' probably should not appear.

[2] See References in Text note below.

are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: *Provided further*, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to November 16, 1979, and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 6903(5) of title 42, from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: *Provided, however*, That the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982, for a corporation wholly owned by a citizen of the United States; the term ''citizen of the United States'', as used in this proviso, means a corporation as defined in section 802(a) and (b) of this Appendix. The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States[3] *Provided further*, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise: *Provided further*, That for purposes of this section, the term ''merchandise'' includes valueless material: *Provided further*, That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone: *Provided further*, That the transportation of any platform jacket in or on a non-coastwise qualified launch barge, that was built before December 31, 2000, and has a launch capacity of 12,000 long tons or more, between two points in the United States, at one of which there is an installation or other device within the meaning of section 1333(a) of title 43, shall not be deemed transportation subject to this section if the Secretary of Transportation makes a determination, in accordance with procedures established pursuant to this proviso that a suitable coastwise-qualified vessel is not available for use in the transportation and, if needed, launch or installation of a platform jacket and; that the Secretary of Transportation shall adopt procedures implementing this proviso that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified-vessels, which procedures shall, among other things, establish that for purposes of this proviso, a coastwise-qualified vessel shall be

[3] So in original. Probably should be followed by a colon.

deemed to be not available only (1) if upon application by an owner or operator for the use of a non-coastwise qualified launch barge for transportation of a platform jacket under this section, which application shall include all relevant information, including engineering details and timing requirements, the Secretary promptly publishes a notice in the Federal Register describing the project and the platform jacket involved, advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties upon request, and requesting that information on the availability of coastwise-qualified vessels be submitted within 30 days after publication of that notice; and (2) if either (A) no information is submitted to the Secretary within that 30 day period, or (B) although the owner or operator of a coastwise-qualified vessel submits information to the Secretary asserting that the owner or operator has a suitable coastwise-qualified vessel available for this transportation, the Secretary, within 90 days of the date on which the notice is first published determines that the coastwise-qualified vessel is not suitable or reasonably available for the transportation; and that, for the purposes of this proviso, the term ''coastwise-qualified vessel'' means a vessel that has been issued a certificate of documentation with a coastwise endorsement under section 12106 of title 46 and the term ''platform jacket'' refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as ''topsides'').

(June 5, 1920, ch. 250, § 27, 41 Stat. 999; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; Apr. 11, 1935, ch. 58, 49 Stat. 154; July 2, 1935, ch. 355, 49 Stat. 442; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; 1950 Reorg. Plan No. 21, § 204, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276; July 14, 1956, ch. 600, § 1, 70 Stat. 544; Pub. L. 85–508, § 27(a), July 7, 1958, 72 Stat. 351; Pub. L. 86–583, § 1, July 5, 1960, 74 Stat. 321; Pub. L. 89–194, Sept. 21, 1965, 79 Stat. 823; Pub. L. 90–474, Aug. 11, 1968, 82 Stat. 700; Pub. L. 92–163, § 1, Nov. 23, 1971, 85 Stat. 486; Pub. L. 95–410, title II, § 213, Oct. 3, 1978, 92 Stat. 904; Pub. L. 96–112, § 4, Nov. 16, 1979, 93 Stat. 848; Pub. L. 97–31, § 12(49), Aug. 6, 1981, 95 Stat. 157; Pub. L. 97–389, title V, §§ 502, 504, Dec. 29, 1982, 96 Stat. 1954, 1956; Pub. L. 100–239, § 6(c)(1), Jan. 11, 1988, 101 Stat. 1782; Pub. L. 100–329, § 1(a), June 7, 1988, 102 Stat. 588; Pub. L. 102–587, title V, § 5501(b), Nov. 4, 1992, 106 Stat. 5085; Pub. L. 104–324, title VII, § 747, title XI, § 1120(e), Oct. 19, 1996, 110 Stat. 3943, 3978; Pub. L. 107–295, title II, § 213(c), Nov. 25, 2002, 116 Stat. 2100; Pub. L. 108–293, title IV, § 417, Aug. 9, 2004, 118 Stat. 1048.)

REFERENCES IN TEXT

Section 22 of this Act, referred to in text, is section 22 of act June 5, 1920, which was classified to section 13 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, § 202(4), Nov. 23, 1988, 102 Stat. 4753.

The Presidential Proclamation of March 10, 1983, referred to in text, is Proc. No. 5030, Mar. 10, 1983, 48 F.R. 10605, which is set out as a note under section 1453 of Title 16, Conservation.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248, which was classified to section 290 of this Appendix.

AMENDMENTS

2004—Pub. L. 108–293 amended thirteenth proviso pertaining to transportation by launch barge generally. Prior to amendment, proviso read as follows: ''*Provided further*, That the transportation of any platform jacket in or on a launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 1333(a) of title 43, shall not be deemed transportation subject to this section if the launch barge has a launch capacity of 12,000 long tons or more, was built as of June 7, 1988, and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a launch barge of lesser launch capacity that is identified by the Secretary of Transportation and is available for such transportation; and for the purposes of this proviso, the term 'platform jacket' includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as 'topsides') of a hydrocarbon development and production platform.''

2002—Pub. L. 107–295 in proviso pertaining to transportation by launch barge, inserted before period at end ''; and for the purposes of this proviso, the term 'platform jacket' includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as 'topsides') of a hydrocarbon development and production platform''.

1996—Pub. L. 104–324 in first proviso inserted ''of more than 200 gross tons (as measured under chapter 143 of title 46)'' after ''no vessel'', in third proviso substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'' and ''the Board'' for ''said Commission'', and in fifth proviso substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'' the first place appearing and ''Board'' for ''Interstate Commerce Commission'' the second place appearing.

1992—Pub. L. 102–587, in first sentence, substituted ''No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of the title 46), or a subdivision of a State,'' for ''No merchandise''.

1988—Pub. L. 100–329 inserted provision relating to alternate determination of penalty as based on actual cost of the transportation, and provisos defining term ''merchandise'' to include valueless material, making section applicable to valueless or dredged material, and relating to transportation of any platform jacket in or on a launch barge.

Pub. L. 100–239 struck out ''of more than five hundred gross tons'' after ''no vessel'' in second proviso.

1982—Pub. L. 97–389, § 502, inserted provision relating to the transportation of hazardous waste, the proviso thereto for foreign-flag transport, and further provisions relating to standards for and the inspection of vessels engaged in such transport.

Pub. L. 97–389, § 504, inserted proviso defining supplies aboard United States fish processing vessels used for fishery products manufacture as ship's equipment.

1981—Pub. L. 97–31 in fourth proviso substituted ''Secretary of Transportation'' for ''Secretary of Commerce''. For prior transfers of functions, see Transfer of Functions note below.

1979—Pub. L. 96–112 inserted proviso that, until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by citizens of the United States could, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement had either a foreign origin or a foreign destination, but that the proviso would apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to Nov. 16, 1979, and would not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions.

1978—Pub. L. 95–410, in first sentence, substituted ''forfeiture of merchandise'' for ''forfeiture thereof'' and inserted parenthetical text for forfeiture of a monetary amount up to the value of the merchandise as determined by the Secretary of the Treasury to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons transporting or causing the merchandise to be transported.

1971—Pub. L. 92–163 inserted ''and equipment, excluding propulsion equipment, for use with such barges'' after ''(c) empty barges specifically designed for carriage aboard a vessel'' and inserted reciprocity proviso reciprocally permitting foreign-flag specialty barges, specifically designed and regularly carried aboard a barge carrying ship in foreign trade to carry export or import cargo between United States points which has been transferred from one such barge to another.

1968—Pub. L. 90–474 in final proviso designated existing provisions relating to empty cargo vans, empty lift vans, and empty shipping tanks as cl. (a), added cls. (b) to (d), saved modifying provisions relating to empty cargo vans, empty lift vans, and empty shipping tanks so as to render them applicable to cls. (a) to (d), and added cl. (e).

1965—Pub. L. 89–194 inserted proviso that section should not apply to the transportation of empty cargo vans, lift vans, and shipping tanks by vessels of the United States not qualified to engage in the coastwise trade or by vessels of foreign registry so long as such vans or tanks are owned or leased by the owner or operator of the transporting vessels and are being transported for use in the carriage of goods in foreign trade.

1960—Pub. L. 86–583 prohibits the operation in the coastwise trade of a rebuilt vessel unless the entire rebuilding, including the construction of any major components of the hull and superstructure of the vessel, is accomplished in the United States.

1958—Pub. L. 85–508 substituted ''including Alaska'' for ''excluding Alaska''.

1956—Act July 14, 1956, inserted proviso to prohibit the operation in coastwise trade of vessels of more than 500 gross tons which have been rebuilt outside the United States.

1935—Act July 2, 1935, amended section generally.

Act Apr. 11, 1935, inserted fifth proviso.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6(c)(2) of Pub. L. 100–239 provided that: ''Paragraph (1) of this subsection [amending this section] does not apply to a vessel under contract to be purchased or rebuilt entered into before July 28, 1987, if that vessel is rebuilt before July 28, 1990.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–583 provided that: ''This Act [amending this section and section 883a of this Appendix] shall be effective from the time of enactment [July 5, 1960] hereof: *Provided, however*, That no vessel shall be deemed to have lost its coastwise privileges as a result of the amendments made by this Act if it is rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before such date of enactment and if the work of rebuilding is commenced not later than twenty-four months after such date of enactment.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 4 of act July 14, 1956, provided that: ''This Act [amending this section and enacting sections 883a and 883b of this Appendix] shall be effective from the date of enactment [July 14, 1956] hereof: *Provided, however*, That no vessel shall be deemed to have lost its coastwise privileges hereunder if it is rebuilt under a contract entered into before such date of enactment and if the work of rebuilding is commenced not later than six months after such date of enactment.''

REGULATIONS

Section 3 of Pub. L. 86–583 provided that: ''The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act [amending sections 883 and 883a of this Appendix].''

REPEALS

For effect of subtitle IV (§ 10101 et seq.) of Title 49, Transportation, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions conferred upon Secretary of Commerce by provisions of Reorg. Plan No. 21 of 1950 to remain vested in Secretary except to extent inconsistent with sections 101(b) and 104(b) of Reorg. Plan No. 7 of 1961. See section 202 of Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

''Secretary of Commerce'' substituted in text for ''United States Maritime Commission'' on authority of Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix, section 306 of which abolished United States Maritime Commission and section 204 of which transferred to Secretary of Commerce such Commission's functions not transferred to Federal Maritime Board.

Previously, ''United States Maritime Commission'' substituted for ''Shipping Board''. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. Executive and administrative functions of United States Maritime Commission transferred to Chairman thereof by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out under section 1111 of this Appendix.

CERTIFICATE OF DOCUMENTATION FOR LIQUIFIED GAS TANKER

Section 1120(f) of Pub. L. 104–324 provided that: ''Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) and any agreement with the United States Government, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquified natural gas or liquified petroleum gas to the

Commonwealth of Puerto Rico from other ports in the United States, if the vessel—

''(1) is a foreign built vessel that was built prior to the date of enactment of this Act [Oct. 19, 1996]; or

''(2) is documented under chapter 121 of title 46, United States Code, before the date of enactment of this Act, even if the vessel is placed under a foreign registry and subsequently redocumented under that chapter for operation under this section.''

NONAPPLICABILITY OF PUB. L. 100–329 TO CERTAIN VESSELS

Section 5501(c) of Pub. L. 102–587 provided that: ''The Act of June 7, 1988 (Public Law 100–329; 102 Stat. 588) [amending this section and section 316 of this Appendix, and enacting provisions set out above and below], including the amendments made by that Act, does not apply to a vessel—

''(1) engaged in the transportation of valueless material or valueless dredged material; and

''(2) owned or chartered by a corporation that had on file with the Secretary of Transportation on August 1, 1989, the certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883–1).''

LAUNCH BARGE INVENTORY; PURPOSE; DEVELOPMENT, MAINTENANCE, AND UPDATING; CONTENTS; PUBLICATION OF INITIAL AND CURRENT INVENTORY

Section 1(b) of Pub. L. 100–329 provided that:

''(1) For purposes of interpreting the proviso pertaining to transportation of any platform jacket by launch barge, as added by subsection (a) of this section to section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), the Secretary of Transportation shall develop, maintain, and periodically update an inventory of launch barges with less than a launch capacity of 12,000 long tons that are qualified to engage in the coastwise trade. Each launch barge listed on such inventory shall be identified by its name, launch capacity, length, beam, depth, and other distinguishing characteristics. For each such launch barge, the name and address of the person to whom inquiries may be made shall also be included on the inventory. A launch barge not listed on such inventory shall be deemed not to be 'a launch barge of lesser launch capacity identified by the Secretary of Transportation' within the meaning of such proviso to section 27 of the Merchant Marine Act, 1920.

''(2) Not later than 15 days after the date of enactment of this Act [June 7, 1988], the Secretary of Transportation shall publish in the Federal Register an initial inventory of launch barges developed and maintained in accordance with paragraph (1) of this subsection.

''(3) Not later than 60 days after the date of enactment of this Act [June 7, 1988], and periodically thereafter, the Secretary shall publish in the Federal Register a current inventory of launch barges developed, maintained, and updated in accordance with paragraph (1) of this subsection.''

TRANSPORTATION OF MUNICIPAL SEWAGE SLUDGE

Section 3 of Pub. L. 100–329 provided that: ''Notwithstanding the provisions of section 1 of this Act [amending this section and enacting provisions set out as a note above], a vessel may transport municipal sewage sludge if that vessel, regardless of where it was built, is documented under the laws of the United States and, on the date of enactment of this Act [June 7, 1988], that vessel—

''(1) is in use by a municipality for the transportation of sewage sludge; or

''(2) is under contract with a municipality for the transportation of sewage sludge.''

VESSEL UNDER CONTRACT WITH MUNICIPALITY FOR TRANSPORTATION OF SEWAGE SLUDGE: APPLICABILITY OF PROVISIONS

Section 4 of Pub. L. 100–329 provided that: ''For purposes of the first paragraph of section 805(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1223(a)), a vessel described in section 3(2) of this Act [set out as a note above] is not a vessel engaged in domestic intercoastal or coastwise service, but the prohibitions in the second paragraph apply to that vessel.''

CERTIFICATE OF DOCUMENTATION TO VESSEL TRANSPORTING VALUELESS MATERIAL IN COASTWISE TRADE, OR DREDGED MATERIAL, WHETHER OR NOT OF VALUE; ISSUANCE, ENDORSEMENT, ETC.

Section 5 of Pub. L. 100–329 provided that: ''Notwithstanding the provisions of section 1 of this Act [amending this section and enacting provisions set out as a note above], the Secretary of the department in which the Coast Guard is operating may issue a certificate of documentation under section 12106 of title 46, United States Code, to a vessel that—

''(1) is engaged in transporting only valueless material in the coastwise trade or transporting dredged material, whether or not of value, (A) from a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983 [16 U.S.C. 1453 note], to a point or place in the United States or to another point or place on the high seas within such Exclusive Economic Zone or (B) from a point or place within the United States to a point or place on the high seas within such Exclusive Economic Zone;

''(2) had a certificate of documentation issued under section 12105 of that title on October 1, 1987;

''(3) had been sold foreign or placed under a foreign registry before that certificate was issued; and

''(4) was built in the United States;

except that such certificate of documentation shall be endorsed to restrict the use of such vessel to the transportation of valueless material in the coastwise trade, and to the transportation of dredged material, whether or not of value, (i) from a point or place on the high seas within such Exclusive Economic Zone to a point or place in the United States or to another point or place on the high seas within such Exclusive Economic Zone, or (ii) from a point or place within the United States to a point or place on the high seas within such Exclusive Economic Zone.''

TRANSPORTATION OF MERCHANDISE OR PASSENGERS WITHIN ALASKA BY FOREIGN BUILT HOVERCRAFT

Pub. L. 95–599, title I, §146, Nov. 6, 1978, 92 Stat. 2714, provided that:

''(a) Effective during the five-year period beginning on the date of enactment of this Act [Nov. 6, 1978], nothing in section 27 of the Merchant Marine Act, 1920 [this section], or any other provision of law restricting the coastwise trade to vessels of the United States shall prohibit the transportation within the State of Alaska of merchandise or passengers by foreign built hovercraft.

''(b) For the purpose of this section the term 'hovercraft' means a vehicle which travels over land or water in a cushion of air generated by such vehicle.''

REPORT TO CONGRESS REGARDING EFFECT OF RECIPROCITY PROVISIONS

Section 2 of Pub. L. 92–163 authorized the Secretary of the Treasury, for a period of five years following Nov. 23, 1971, to make a report at the beginning of each regular session to the Congress regarding activities under Pub. L. 92–163, including but not limited to the extent to which foreign governments are extending reciprocal privileges to the vessels of the United States.

ADMISSION OF ALASKA AS STATE

Effectiveness of amendment of this section by Pub. L. 85–508 was dependent upon the admission of Alaska into the Union under section 8(b) of Pub. L. 85–508. Admission was accomplished Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85–508. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

JURISDICTION OVER COMMON CARRIERS BETWEEN PORTS IN HAWAII AND OTHER PORTS

Pub. L. 86–3, § 18(a), Mar. 18, 1959, 73 Stat. 12, as amended Pub. L. 86–624, § 46, July 12, 1960, 74 Stat. 423, provided that: ''Nothing contained in this Act shall be construed as depriving the Federal Maritime Board [now Secretary of Transportation] of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Hawaii and other ports in the United States, or possessions, or as conferring on the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.''

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.]

JURISDICTION OVER COMMON CARRIERS BETWEEN PORTS IN ALASKA AND OTHER PORTS

Section 27(b) of Pub. L. 85–508 provided that: ''Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board [now Secretary of Transportation] of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.''

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.]

TRANSPORTATION OF LUMBER TO PUERTO RICO

Pub. L. 87–877, § 4, Oct. 24, 1962, 76 Stat. 1201, allowed for suspension of this section during a 1-year period beginning Oct. 24, 1962, with respect to transportation of lumber to Puerto Rico from ports or terminal areas in the United States if Secretary of Commerce determined that no domestic vessel was reasonably available.

TRANSPORTATION OF COAL BETWEEN POINTS IN UNITED STATES IN CANADIAN VESSELS

Act Aug. 7, 1956, ch. 1028, 70 Stat. 1090, permitted Canadian vessels to transport coal to Ogdensburg, N.Y., from other points in the United States, on the Great Lakes, or their connecting or tributary waters for a period ending June 30, 1957.

TRANSPORTATION OF IRON ORE IN VESSELS OF CANADIAN REGISTRY

Act June 24, 1952, ch. 458, 66 Stat. 156, provided for the transportation of iron ore and terminated on Dec. 31, 1952. Similar provisions were contained in the following acts:

Mar. 29, 1951, ch. 25, 65 Stat. 28.
June 30, 1950, ch. 427, § 5, 64 Stat. 309.
Mar. 28, 1949, ch. 36, 63 Stat. 16.
Mar. 24, 1948, ch. 144, 62 Stat. 84.
Jan. 27, 1942, ch. 21, 56 Stat. 19, as amended Aug. 1, 1942, ch. 544, 56 Stat. 735, and repealed July 25, 1947, ch. 327, § 2b, 61 Stat. 451, eff. six months after July 25, 1947.
May 31, 1941, ch. 158, 55 Stat. 236.

TRANSPORTATION OF GRAIN BETWEEN UNITED STATES PORTS ON GREAT LAKES BY VESSELS OF CANADIAN REGISTRY DURING 1951

Act Oct. 10, 1951, ch. 459, 65 Stat. 371, provided for the transportation of grain and terminated on Dec. 31, 1951.

TRANSPORTATION OF MERCHANDISE BETWEEN HYDER, ALASKA, AND UNITED STATES

Act July 30, 1947, ch. 387, 61 Stat. 632, as amended June 28, 1948, ch. 693, 62 Stat. 1067, provided for the transportation of merchandise between Hyder, Alaska, and United States and terminated on June 30, 1949.

§ 883–1. Corporation as citizen; fisheries and transportation of merchandise or passengers between points in United States; parent and subsidiary corporations; domestic built vessels; certificate; surrender of documents on change in status

Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 316, 808, 835, and 883 of this Appendix, and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) a majority of the officers and directors of such corporation are citizens of the United States;

(b) not less than 90 per centum of the employees of such corporation are residents of the United States;

(c) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(e) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic noncontiguous trades from any such corporation to a carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, which otherwise qualifies as a citizen under sections 802 and 803 of this Appendix, and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term ''parent'' means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and (2), the term

''subsidiary'' means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a ''parent'' or ''subsidiary'' hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title, shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A ''parent'' or ''subsidiary'' of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such ''parent'' or ''subsidiary'' complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of $200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 2107(b) of title 46.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury.

(June 5, 1920, ch. 250, § 27A, as added Pub. L. 85–902, Sept. 2, 1958, 72 Stat. 1736; amended Pub. L. 104–88, title III, § 321(2), Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–324, title VII, § 706, Oct. 19, 1996, 110 Stat. 3934.)

CODIFICATION

In fourth par., ''section 2107(b) of title 46'' substituted for ''section 7 of title 46, United States Code'' on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

AMENDMENTS

1996—Pub. L. 104–324, in third par., inserted ''as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title,'' after ''five hundred gross tons''.

1995—Pub. L. 104–88, in first par., substituted ''carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, which otherwise'' for ''common or contract carrier subject to part 3 of the Interstate Commerce Act, as amended, which otherwise''.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

§ 883a. Reports required of United States vessels rebuilt abroad; penalty for failure to report; mitigation of penalty

If any vessel of more than five hundred gross tons as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title documented under the laws of the United States, or last documented under such laws, is rebuilt, and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories) or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury, upon the first arrival of the vessel thereafter at a port within the customs territory of the United States, if rebuilt outside the United States, its Territories (not including trust territories), or its possessions, or, in any other case, upon completion of the rebuilding, in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 2107(b) of title 46.

(July 14, 1956, ch. 600, § 2, 70 Stat. 544; Pub. L. 86–583, § 2, July 5, 1960, 74 Stat. 321; Pub. L. 104–324, title VII, § 707, Oct. 19, 1996, 110 Stat. 3934.)

REFERENCES IN TEXT

This Act, referred to in text, means act July 14, 1956, ch. 600, 70 Stat. 544, as amended, which enacted sections

883a, and 883b of this Appendix, amended section 883 of this Appendix, and enacted provisions set out as a note under section 883 of this Appendix. For complete classification of this Act to the Code, see Tables.

CODIFICATION

''Section 2107(b) of title 46'' substituted in text for ''section 5294 of the Revised Statutes of the United States, as amended (U.S.C., title 46, sec. 7)'' on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

Section was enacted as part of act July 14, 1956, and not as part of act June 5, 1920, ch. 250, 41 Stat. 988, known as the Merchant Marine Act, 1920, which comprises this chapter.

AMENDMENTS

1996—Pub. L. 104–324 inserted ''as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title'' after ''five hundred gross tons''.

1960—Pub. L. 86–583 provided for a report of the rebuilding of any part of the vessel, including the construction of major components of the hull and superstructure of the vessel, and for a report upon completion of the rebuilding in certain cases.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–583 effective July 5, 1960, and effect on rebuilding contracts executed before such date, see section 4 of Pub. L. 86–583, set out as a note under section 883 of this Appendix.

EFFECTIVE DATE

Section effective July 14, 1956, see section 4 of act July 14, 1956, set out as an Effective Date of 1956 Amendment note under section 883 of this Appendix.

REGULATIONS

Secretary of the Treasury to prescribe regulations to carry out the purposes of this section, see section 3 of Pub. L. 86–583, set out as a note under section 883 of this Appendix.

§ 883b. Regulations

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

(July 14, 1956, ch. 600, § 3, 70 Stat. 544.)

REFERENCES IN TEXT

This Act, referred to in text, means act July 14, 1956, ch. 600, 70 Stat. 544, as amended, which enacted sections 883a, and 883b of this Appendix, amended section 883 of this Appendix, and enacted provisions set out as a note under section 883 of this Appendix. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of act July 14, 1956, and not as part of act June 5, 1920, ch. 250, 41 Stat. 988, known as the Merchant Marine Act, 1920, which comprises this chapter.

EFFECTIVE DATE

Section effective July 14, 1956, see section 4 of act July 14, 1956, set out as an Effective Date of 1956 Amendment note under section 883 of this Appendix.

§ 884. Charges for transportation subject to interstate transportation provisions

No carrier shall charge, collect, or receive for transportation subject to subtitle IV of title 49 of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary of Transportation is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented he shall certify this fact to the Surface Transportation Board, and the Board may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported to such ports, for such length of time and under such terms and conditions as he may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the Board whenever the Secretary of Transportation is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the Board.

(June 5, 1920, ch. 250, § 28, 41 Stat. 999; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, §§ 204, 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(50), Aug. 6, 1981, 95 Stat. 157; Pub. L. 104–88, title III, § 321(3), Dec. 29, 1995, 109 Stat. 950.)

CODIFICATION

''Subtitle IV of title 49'' substituted in text for ''the Interstate Commerce Act [49 U.S.C. 1 et seq.]'' on authority of Pub. L. 95–473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1995—Pub. L. 104–88 struck out ''common'' after first reference to ''carrier'', substituted ''Surface Transportation Board'' for ''Interstate Commerce Commission'', and substituted ''Board'' for ''commission'' wherever appearing.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''he'' for ''it''. For prior transfers of functions, see Transfer of Functions note below.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

REPEALS

For effect of subtitle IV (§ 10101 et seq.) of Title 49, Transportation, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

''Maritime Commission'', meaning United States Maritime Commission, substituted in text for ''board'',

meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 885. Association of marine insurance companies; application of antitrust laws

(a) Whenever used in this section—

(1) The term ''association'' means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term ''marine insurance companies'' means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the ''antitrust laws'' as designated in section 12 of title 15, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

(June 5, 1920, ch. 250, § 29, 41 Stat. 1000.)

§ 887. Partial invalidity

If any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of such Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

(June 5, 1920, ch. 250, § 36, 41 Stat. 1007.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

§ 888. Definitions

When used in this Act, unless the context otherwise requires, the terms ''person'', ''vessel'', ''documented under the laws of the United States'', and ''citizen of the United States'' shall have the meaning assigned to them by sections 801, 802, and 803 of this Appendix; and the term ''alien'' means any person not a citizen of the United States.

(June 5, 1920, ch. 250, § 37, 41 Stat. 1008; Pub. L. 86–327, § 2, Sept. 21, 1959, 73 Stat. 597.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

CODIFICATION

The words ''the term 'commission' means the United States Maritime Commission;'' were omitted preceding the definition of ''alien'' in view of Reorg. Plan No. 21 of 1950, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277, set out under section 1111 of this Appendix, which abolished United States Maritime Commission and transferred its functions to Federal Maritime Board and to Secretary of Commerce.

AMENDMENTS

1959—Pub. L. 86–327 substituted ''sections 1 and 2 of the 'Shipping Act, 1916,' as amended'' for ''sections 1 and 2 of the 'Shipping Act, 1916,' as amended by this Act'', which sections are referred to in the text as ''sections 801, 802, and 803 of this Appendix'' for purposes of codification.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, and ''United States Maritime Commission'' substituted in text for ''board'' and ''Shipping Board'', meaning United States Shipping Board, respectively. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. Executive and administrative functions of United States Maritime Commission transferred to Chairman thereof by Reorg. Plan No. 6 of 1949, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069 set out under section 1111 of this Appendix.

§ 889. Short title

This Act may be cited as the Merchant Marine Act, 1920.

(June 5, 1920, ch. 250, § 39, 41 Stat. 1008.)

REFERENCES IN TEXT

This Act, referred to in text, means act June 5, 1920, ch. 250, 41 Stat. 988, as amended, known as the Merchant Marine Act, 1920, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to this chapter. For complete classification of this Act to the Code, see Tables.

CHAPTER 24A—MERCHANT MARINE ACT, 1928

Sec.
891. Declaration of policy.
891b. Vessels of Secretary; remodeling and improving.
891c. Replacement vessels.
891u. Definitions.
891v. Reaffirmation of steamship line policy.
891w. Ship operations; allocations.
891x. Short title.

§ 891. Declaration of policy

The policy and the primary purpose declared in section 861 of this Appendix are confirmed.

(May 22, 1928, ch. 675, § 1, 45 Stat. 689.)

§ 891b. Vessels of Secretary; remodeling and improving

In addition to his power to recondition and repair vessels under section 871 of this Appendix, the Secretary of Transportation may remodel and improve vessels owned by the United States and in his possession or under his control, so as

to equip them adequately for competition in the foreign trade of the United States. Any vessel so remodeled or improved shall be documented under the laws of the United States and shall remain documented under such laws for not less than five years from the date of the completion of the remodeling or improving and so long as there remains due the United States any money or interest on account of such vessel, and during such period it shall be operated only on voyages which are not exclusively coastwise.

(May 22, 1928, ch. 675, § 202, 45 Stat. 690; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(51), Aug. 6, 1981, 95 Stat. 157.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' and ''his'' for ''its'' in three places. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''United States Maritime Commission'' substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 891c. Replacement vessels

The necessity for the replacement of vessels owned by the United States and in the possession or under the control of the Secretary of Transportation and the construction for the Secretary of Transportation of additional up-to-date cargo, combination cargo and passenger, and passenger ships, to give the United States an adequate merchant marine, is recognized, and the Secretary of Transportation is authorized and directed to present to Congress from time to time, recommendations setting forth what new vessels are required for permanent operation under the United States flag in foreign trade, and the estimated cost thereof, to the end that Congress may, from time to time, make provision for replacements and additions. All vessels built for the Secretary of Transportation shall be built in the United States, and they shall be planned with reference to their possible usefulness as auxiliaries to the naval and military services of the United States.

(May 22, 1928, ch. 675, § 203, 45 Stat. 690; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(52), Aug. 6, 1981, 95 Stat. 157.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in four places. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 891u. Definitions

(a) When used in this Act, and for the purposes of this Act only, the words ''foreign trade'' mean trade between the United States, its Territories or possessions, or the District of Columbia and a foreign country: *Provided, however*, That the loading or the unloading of cargo, mail, or passengers at any port in any Territory or possession of the United States shall be construed to be foreign trade if the stop at such Territory or possession is an intermediate stop on what would otherwise be a voyage in foreign trade.

(b) When used in this Act the term ''citizen of the United States'' includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of sections 802 and 803 of this Appendix.

(May 22, 1928, ch. 675, § 703, 45 Stat. 698.)

REFERENCES IN TEXT

This Act, referred to in text, means act May 22, 1928, ch. 675, 45 Stat. 689, as amended, known as the Merchant Marine Act, 1928, which is classified generally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 891x of this Appendix and Tables.

§ 891v. Reaffirmation of steamship line policy

The policy and the primary purpose declared in section 866 of this Appendix are reaffirmed.

(May 22, 1928, ch. 675, § 704, 45 Stat. 698.)

§ 891w. Ship operations; allocations

In the allocations of the operations of the ships, the Secretary of Transportation shall distribute them as far as possible and without detriment to the service among the various ports of the country.

(May 22, 1928, ch. 675, § 705, 45 Stat. 698; Ex. Ord. No. 6166, § 12, eff. June 10, 1933; June 29, 1936, ch. 858, title II, § 204, title IX, § 904, 49 Stat. 1987, 2016; Pub. L. 97–31, § 12(53), Aug. 6, 1981, 95 Stat. 157.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Maritime Commission''. For prior transfers of functions, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

''Maritime Commission'', meaning United States Maritime Commission, substituted in text for ''board'', meaning United States Shipping Board. For dissolution of Board and transfer of functions to United States Maritime Commission, see Ex. Ord. No. 6166 and act June 29, 1936. Ex. Ord. No. 6166 is set out as a note under section 901 of Title 5, Government Organization and Employees. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 891x. Short title

This Act may be cited as the ''Merchant Marine Act, 1928''.

(May 22, 1928, ch. 675, § 706, 45 Stat. 698.)

REFERENCES IN TEXT

This Act, referred to in text, means act May 22, 1928, ch. 675, 45 Stat. 689, as amended, which enacted this chapter, and amended sections 866 and 869 of this Appendix, section 654 of former Title 39, The Postal Service, and sections 870 and 880 of former Title 46, Shipping. For complete classification of this Act to the Code, see Tables.

CHAPTER 27—MERCHANT MARINE ACT, 1936

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SUBCHAPTER I—DECLARATION OF POLICY

§ 1101. Fostering development and maintenance of merchant marine

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign waterborne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

(June 29, 1936, ch. 858, title I, § 101, 49 Stat. 1985; Pub. L. 91–469, § 1, Oct. 21, 1970, 84 Stat. 1018.)

AMENDMENTS

1970—Pub. L. 91–469 struck out ''on all routes'' after ''shipping service'' in cl. (a) and inserted cl. (e).

SUBCHAPTER II—CREATION AND FUNCTIONS OF MARITIME AGENCIES

§ 1111. Powers and duties of agencies

(a) Repealed. Pub. L. 97–31, § 12(58)(A), Aug. 6, 1981, 95 Stat. 158

(b) Repealed. Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925

(c) Records of meetings; seal; rules and regulations

The Commission shall, through its secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein, on every action, order, contract, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) Expenditures

The Commission and the Secretary of Transportation may make such expenditures as are necessary in the performance of their functions from funds made available to them by this chapter or appropriated after June 29, 1936, which further appropriations are authorized.

(e) Officers and employees

The Commission and the Secretary of Transportation may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission and not more than three assistants, a clerk to the general counsel, not more than a total of twenty naval architects or marine engineers, twenty special experts, twenty-two examiners, twelve attorneys, and two inspectors for each vessel at each shipyard at which vessels are being constructed by it or under its supervision. The Commission and the Secretary of Transportation may, subject to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of their functions.

(f) Traveling and subsistence expenses; pay for military officer on assignment

Each member, any employee of the Commission or the Secretary of Transportation, and any person detailed to it or the Secretary of Transportation from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission or the Secretary of Transportation. Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Commission or the Secretary of Transportation, he shall receive from the Commission or the Secretary of Transportation,

for the period during which he is so detailed, such compensation as added to his pay and allowances as an officer in such service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Commission or the Secretary of Transportation, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Commission or the Secretary of Transportation. Expenditures by the Commission or the Secretary of Transportation shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or the Secretary of Transportation or a designated employee thereof.

(June 29, 1936, ch. 858, title II, §201, 49 Stat. 1985; Aug. 4, 1939, ch. 417, §§3, 4, 53 Stat. 1182; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 85–507, §21(b)(4), July 7, 1958, 72 Stat. 337; Pub. L. 91–469, §36, Oct. 21, 1970, 84 Stat. 1036; Pub. L. 97–31, §12(58), Aug. 6, 1981, 95 Stat. 158; Pub. L. 101–225, title III, §307(7), Dec. 12, 1989, 103 Stat. 1925.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (e), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

Provisions of the first sentence of subsec. (e) that authorized the appointment and fixing of the salaries of a secretary, etc., ''without regard to the civil-service laws or the Classification Act of 1923, as amended'', and provisions that prohibited such employees from receiving an annual salary at a rate in excess of that provided under the Classification Act of 1923, as amended, were omitted as obsolete and superseded.

Such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the salaries of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In the last sentence of subsec. (e), ''chapter 51 and subchapter III of chapter 53 of title 5'' substituted for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–225 struck out subsec. (b) which read as follows: ''No person shall hold office as a member of the Commission who, within three years prior to his appointment, shall have been employed by, or have had any pecuniary interest, in any carrier by water or substantial pecuniary interest in any other person who derives a substantial portion of his revenues from any business associated with ships or shipping. Each member shall devote his full time to the duties of his office. It shall be unlawful for any member, officer, or employee of the Federal Maritime Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Commission may have business relations.''

Subsec. (g). Pub. L. 101–225 struck out subsec. (g) which provided that this section take effect June 29, 1936.

1981—Subsec. (a). Pub. L. 97–31, §12(58)(A), struck out subsec. (a) which related to establishment, etc., of the United States Maritime Commission. For prior transfers of functions, see Transfer of Functions note below.

Subsec. (d). Pub. L. 97–31, §12(58)(B), substituted ''their'' for ''its'' and ''them'' for ''it'' and inserted reference to Secretary of Transportation.

Subsec. (e). Pub. L. 97–31, §12(58)(C), substituted ''their'' for ''it'', inserted reference to Secretary of Transportation, and struck out proviso which related to the transfer of employees from the United States Shipping Board Bureau or United States Shipping Board Merchant Fleet Corporation to the United States Maritime Commission and to the Acquisition of United States Civil Service status.

Subsec. (f). Pub. L. 97–31, §12(58)(D), inserted references to Secretary of Transportation.

1970—Subsec. (b). Pub. L. 91–469 substituted in last sentence ''Federal Maritime Commission'' for ''Commission'' in two places.

1958—Subsec. (e). Pub. L. 85–507 struck out provisions which authorized detail of certain personnel for training at institutions for scientific education and research.

1949—Subsec. (e). Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923, as amended,''.

1939—Subsec. (e). Act Aug. 4, 1939, §3, authorized the appointment of a clerk to the general counsel, increased the number of naval architects and special experts from 12 to 20 each, and the number of examiners from 12 to 22, and permitted not more than 5 members to be detailed annually for engineering, technical, or other scientific education and training.

Subsec. (f). Act Aug. 4, 1939, §4, provided for the payment of compensation to officers of the Army, Navy, Marine Corps, or Coast Guard.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–507, see section 21(a) of Pub. L. 85–507.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out below.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury

transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

FEDERAL MARITIME COMMISSION; TERM OF OFFICE; VACANCIES; CONTINUITY OF SERVICE

Pub. L. 89–56, June 30, 1965, 79 Stat. 195, provided; ''That Commissioners of the Federal Maritime Commission, provided for by section 102 of Reorganization Plan Numbered 7 of 1961 (75 Stat. 849), shall hereafter be appointed for a term of five years except that one of the two terms which commence July 1, 1965, shall initially be for four years and thereafter shall be for five years: *Provided, however*, That a person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds: *Provided, further*, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified.''

COMPENSATION OF FEDERAL MARITIME COMMISSIONERS AND MARITIME ADMINISTRATOR

Annual basic compensation of Chairman of Commission, members of Commission, and Administrator, Maritime Administration, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

EX. ORD. NO. 11156. MARITIME ADVISORY COMMITTEE

Ex. Ord. No. 11156, eff. June 17, 1964, 29 F.R. 7855, which established the Maritime Advisory Committee, was revoked by Ex. Ord. No. 11427, eff. Sept. 4, 1968, 33 F.R. 12617.

REORGANIZATION PLAN NO. 7 OF 1961

Eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, as amended Pub. L. 88–426, title III, § 305(19), Aug. 14, 1964, 78 Stat. 425; Pub. L. 91–469, § 38, Oct. 21, 1970, 84 Stat. 1036; Pub. L. 105–258, title II, § 202, Oct. 14, 1998, 112 Stat. 1915

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 12, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

MARITIME FUNCTIONS

PART I. FEDERAL MARITIME COMMISSION

SECTION 101. CREATION OF FEDERAL MARITIME COMMISSION

(a) There is hereby established a Federal Maritime Commission, hereinafter referred to as the Commission.

(b) The Commission shall not be a part of any executive department or under the authority of the head of any executive department.

SEC. 102. COMPOSITION OF THE COMMISSION

(a) The Commission shall be composed of five Commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(b) The President shall from time to time designate one of the Commissioners to be the Chairman of the Commission.

(c) Of the first five Commissioners appointed hereunder, one shall be appointed for a term expiring on June 30, 1962, one for a term expiring on June 30, 1963, one for a term expiring on June 30, 1964, and two for terms expiring on June 30, 1965. Their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds. Not more than three of the Commissioners shall be appointed from the same political party. A vacancy in the office of any such Commissioner shall be filled in the same manner as the original appointment.

(d) A vacancy or vacancies in the membership of Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members serving on the Commission is required to dispose of any matter before the Commission. [As amended Pub. L. 88–426, title III, § 305(19)(A), Aug. 14, 1964, 78 Stat. 425; Pub. L. 105–258, title II, § 202, Oct. 14, 1998, 112 Stat. 1915.]

[Commissioners of the Federal Maritime Commission appointed to five year terms, appointed to vacancies only for unexpired term, and to serve until appointment and qualification of successor, see Pub. L. 89–56, set out as a Federal Maritime Commission; Term of Office; Vacancies; Continuity of Service note above.]

SEC. 103. TRANSFER OF FUNCTIONS TO COMMISSION

The following functions, which are now vested in the Federal Maritime Board under the provisions of Reorganization Plan No. 21 of 1950 (64 Stat. 1273), are hereby transferred from that Board to the Commission:

(a) All functions under the provisions of sections 14–20, inclusive, and sections 22–33, inclusive, of the Shipping Act, 1916, as amended ([former] 46 U.S.C. 812–819 and 821–832), including such functions with respect to the regulation and control of rates, services, practices, and agreements of common carriers by water and of other persons.

(b) All functions with respect to the regulation and control of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water under the provisions of the Intercoastal Shipping Act, 1933, as amended ([former] 46 U.S.C. 843–848).

(c) The functions with respect to the making of rules and regulations affecting shipping in the foreign trade to adjust or meet conditions unfavorable to such shipping, and with respect to the approval, suspension, modification, or annulment of rules or regulations of other Federal agencies affecting shipping in the foreign trade, under the provisions of section 19 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 876), exclusive of subsection (1)(a) thereof.

(d) The functions with respect to investigating discriminatory rates, charges, classifications, and practices in the foreign trade, and with respect to recommending legislation to correct such discrimination, under the provisions of section 212(e) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1122(f)).

(e) To the extent that they relate to functions transferred to the Commission by the foregoing provisions of this section:

(1) The functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended ([former] 46 U.S.C. 820).

(2) The functions with respect to adopting rules and regulations, making reports and recommendations to Congress, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under the provisions of sections 204, 208, and 214 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1118, and 1124).

SEC. 104. TRANSFER OF FUNCTIONS TO CHAIRMAN

There are hereby transferred to the Chairman of the Commission:

(a) The functions of the Chairman of the Federal Maritime Board, including his functions derived from the

provisions of Reorganization Plan No. 6 of 1949, to the extent that they relate to the functions transferred to the Commission by the provisions of section 103 of this reorganization plan.

(b) The functions of the Secretary of Commerce to the extent that they are necessary for, or incidental to, the administration of the functions transferred to the Commission by the provisions of section 103 of this reorganization plan.

SEC. 105. AUTHORITY TO DELEGATE

(a) The Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [see 5 U.S.C. 556].

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: *Provided, however*, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(d) There are hereby transferred to the Chairman of the Commission the functions with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to the foregoing subsections of this section.

PART II. DEPARTMENT OF COMMERCE

SECTION 201. MARITIME ADMINISTRATOR

There shall be at the head of the Maritime Administration (established by the provisions of Part II of Reorganization Plan No. 21 of 1950) a Maritime Administrator, hereinafter referred to as the Administrator. The Assistant Secretary of Commerce for Maritime Affairs shall, ex officio, be the Administrator. The Administrator shall perform such duties as the Secretary of Commerce shall prescribe. [As amended Pub. L. 88–426, title III, §305(19)(B), Aug. 14, 1964, 78 Stat. 425; Pub. L. 91–469, §38(a), Oct. 21, 1970, 84 Stat. 1036.]

SEC. 202. FUNCTIONS OF SECRETARY OF COMMERCE

(a) Except to the extent inconsistent with the provisions of sections 101(b) or 104(b) of this reorganization plan, there shall remain vested in the Secretary of Commerce all the functions conferred upon the Secretary by the provisions of Reorganization Plan No. 21 of 1950.

(b) There are hereby transferred to the Secretary of Commerce:

(1) All functions of the Federal Maritime Board under the provisions of section 105(1) to 105(3), inclusive, of Reorganization Plan No. 21 of 1950.

(2) Except to the extent transferred to the Commission by the provisions of section 103(e) of this reorganization plan, the functions described in the said section 103(e).

(3) Any other functions of the Federal Maritime Board not otherwise transferred by the provisions of part I of this reorganization plan.

(4) Except to the extent transferred to the Chairman of the Commission by the provisions of Part I of this reorganization plan, the functions of the Chairman of the Federal Maritime Board.

SEC. 203. DELEGATION OF FUNCTIONS

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to all functions transferred to the Secretary of Commerce by, or remaining vested in him under, the provisions of this reorganization plan.

PART III. GENERAL PROVISIONS

SECTION 301. CONFLICT OF INTEREST

The provisions of the last sentence of section 201(b) of the Merchant Marine Act, 1936, as affected by the provisions of Reorganization Plan No. 21 of 1950 (46 U.S.C. §1111(b)) (prohibiting the members of the Federal Maritime Board and all officers and employees of that Board or of the Maritime Administration from being in the employ of any other person, firm, or corporation, or from having any pecuniary interest in or holding any official relationship with any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Board or the Maritime Administration may have business relations) shall hereafter be applicable to the Commissioners composing the Commission and all officers and employees of the Commission. [As amended Pub. L. 91–469, §38(b), Oct. 21, 1970, 84 Stat. 1036.]

SEC. 302. INTERIM APPOINTMENTS

Pending the initial appointment hereunder of the Commissioners composing the Commission and of the Maritime Administrator, but not for a period exceeding 90 days, such officers of the executive branch of the Government (including any person who is a member of the Federal Maritime Board or Deputy Maritime Administrator immediately prior to the taking effect of the provisions of this reorganization plan) as the President shall designate under the provisions of this section shall be Acting Commissioners of the Federal Maritime Commission or Acting Maritime Administrator. The President may designate one of such Acting Commissioners as Acting Chairman of the Commission. Any person who is not while serving under an interim appointment pursuant to the foregoing provisions of this section receiving compensation attached to another Federal office shall receive the compensation herein provided for the office wherein he serves in an interim capacity.

SEC. 303. INCIDENTAL TRANSFERS

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission or to the Chairman of the Commission by the provisions of Part I of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Commission at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) Subject to the foregoing provisions of this section, the Secretary of Commerce may transfer within the Department of Commerce personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions which

were transferred to the Department of Commerce (including the Federal Maritime Board and the Chairman thereof) by the provisions of Reorganization Plan No. 21 of 1950.

SEC. 304. ABOLITION OF FEDERAL MARITIME BOARD

The Federal Maritime Board, including the offices of the members of the Board, is hereby abolished, and the Secretary of Commerce shall provide for the termination of any outstanding affairs of the said Board not otherwise provided for in this reorganization plan.

SEC. 305. STATUS OF PRIOR PLAN

The following provisions of Reorganization Plan No. 21 of 1950 are hereby superseded:

(1) Part I.

(2) Section 202.

(3) Sections 302 to 307, inclusive.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 7 of 1961, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for the reorganization of maritime functions.

The basic objective of the plan is to strengthen and revitalize the administration of our Federal programs concerned with the promotion and development of the U.S. merchant marine by concentrating responsibility in separate agencies for the performance of regulatory and promotional functions. The plan provides, therefore, for the creation of a separate Federal Maritime Commission, composed of five Commissioners, which would be charged with the regulatory functions of the present Federal Maritime Board. There would be transferred from the Federal Maritime Board to the Secretary of Commerce the award of subsidies and related promotional functions. The Secretary of Commerce would retain the functions transferred to him by Reorganization Plan No. 21 of 1950 which reorganized the U.S. Maritime Commission into a Federal Maritime Board and a Maritime Administration in the Department of Commerce. The plan retains the present Maritime Administration, provides for an Administrator as head thereof, retains a Deputy Maritime Administrator, and effects no change in the Office of the Under Secretary of Commerce for Transportation. The Federal Maritime Board is abolished.

Existing organizational arrangements have not proved to be satisfactory. The development and maintenance of a sound maritime industry require that the Federal Government carry out its dual responsibilities for regulation and promotion with equal vigor and effectiveness. Intermingling of regulatory and promotional functions has tended in this instance to dilute responsibility and has led to serious inadequacies, particularly in the administration of regulatory functions. Recent findings by committees of the Congress disclose serious violations of maritime laws and point to the urgent need for a reorganization to vest in completely separate agencies a responsibility for (1) regulatory functions and (2) promotional and operating functions.

The plan would provide the most appropriate organizational framework for each of the functions concerned. Regulation would be made the exclusive responsibility of a separate commission organized along the general lines of other regulatory agencies. On the other hand, nonregulatory functions, including the determination and award of subsidies and other promotional and operating activities, would be concentrated in the head of the Department of Commerce. The Secretary of Commerce is best qualified to coordinate these activities with other transportation and related economic programs.

The vesting of all subsidy functions in the Secretary of Commerce will make it possible for the Congress and the President to hold a single official responsible and accountable for the effective conduct of all aspects of this program, including the size and character of the fleet under the U.S. flag, the need for Government assistance, and requirements for appropriations to support subsidy programs. Furthermore, the placing of these functions in the Secretary of Commerce will assure essential supervision and review of subsidy awards.

The taking effect of the reorganizations included in the accompanying reorganization plan will result in a modest increase in expenditures. The improved organizational alinements provided by the plan will, however, make possible a more effective and expeditious administration of the statutory objectives to foster and promote a U.S. merchant marine capable of meeting the Nation's needs in peace and war. Failure to meet these objectives would be far more costly than the anticipated increase in expenditures under the plan.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 7 of 1961 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I have also found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of new officers specified in sections 102 and 201 of the plan. The rates of compensation fixed for these officers are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

I recommend that the Congress allow the reorganization plan to become effective.

JOHN F. KENNEDY.

THE WHITE HOUSE, June 12, 1961.

REORGANIZATION PLAN NO. 21 OF 1950

Eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, as amended Reorg. Plan No. 7 of 1961, § 305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Oct. 21, 1970, Pub. L. 91–469, § 37, 84 Stat. 1036

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

PART I. FEDERAL MARITIME BOARD

SECTIONS 101–106. [Superseded. Reorg. Plan No. 7 of 1961, § 305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section 101 established the Federal Maritime Board. Section 102 provided for the composition of the Federal Maritime Board. Section 103 transferred certain functions from the Chairman of the United States Maritime Commission to the Chairman of the Federal Maritime Board. Section 104 transferred regulatory functions of the United States Maritime Commission to the Federal Maritime Board. Section 105 transferred subsidy award and other functions of the United States Maritime Commission to the Federal Maritime Board. Section 106 provided that the Board was to be an agency within the Department of Commerce, but would be independent of the Secretary of Commerce with respect to functions transferred to it under section 104.]

PART II. MARITIME ADMINISTRATION

SEC. 201. CREATION OF MARITIME ADMINISTRATION

There is hereby established in the Department of Commerce a Maritime Administration.

SEC. 202 [Superseded. Reorg. Plan No. 7 of 1961, § 305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section provided for a Maritime Administrator to be at the head of the Maritime Administration, and that the Chairman of the Federal Maritime Board would be such Administrator and would perform duties prescribed by the Secretary of Commerce.]

SEC. 203. DEPUTY MARITIME ADMINISTRATOR

There shall be in the Maritime Administration a Deputy Maritime Administrator, who shall be appointed by

the Secretary of Commerce, after consultation with the Administrator, under the classified civil service, and who shall perform such duties as the Administrator shall prescribe. The Deputy Maritime Administrator shall be Acting Maritime Administrator during the absence or disability of the Administrator and, unless the Secretary of Commerce shall designate another person, during a vacancy in the office of Administrator: *Provided*, That such Deputy Administrator shall at no time sit as a member or acting member of the Federal Maritime Board.

SEC. 204. TRANSFER OF FUNCTIONS

Except as otherwise provided in part I of this reorganization plan, all functions of the United States Maritime Commission and of the Chairman of said Commission are hereby transferred to the Secretary of Commerce. The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by the Maritime Administrator of any function transferred to such Secretary by the provisions of this reorganization plan.

PART III. GENERAL PROVISIONS

SEC. 301. UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION

There shall be in the Department of Commerce an additional office of Under Secretary with the title ''Under Secretary of Commerce for Transportation.'' The Under Secretary of Commerce for Transportation shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and shall perform such duties as the Secretary of Commerce shall prescribe.

SECS. 302–307. [Superseded. Reorg. Plan No. 7 of 1961, §305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840. Section 302 provided that person who was both Administrator and Chairman was to make joint use of the personnel under his supervision. Section 303 made conflict of interest provisions of the Merchant Marine Act, 1936, applicable to members of the Federal Maritime Board and officers and employees of the Board or of the Maritime Administration. Section 304 allowed the President to make interim appointments to the Federal Maritime Board from officers of the Executive Branch. Section 305 transferred to the Department of Commerce all property, personnel, records, and funds of the United States Maritime Commission. Section 306 abolished the United States Maritime Commission. Section 307 provided that the functions transferred by this reorganization plan would not be subject to Reorg. Plan No. 5 of 1950.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 21 of 1950, prepared in accordance with the provisions of the Reorganization Act of 1949. This plan effects a basic reorganization of the functions of the United States Maritime Commission along the lines recommended by the Commission on Organization of the Executive Branch of the Government.

Within the last 3 years three different bodies have studied the administration of the Maritime Commission. All have concluded that the operating deficiencies of the agency arise from inappropriate and unsound organization and that a fundamental reorganization is essential. The first of these bodies, the President's Advisory Committee on the Merchant Marine, in 1947, stated:

> It appears to the Committee that the organization structure of the Maritime Commission as set up in the Merchant Marine Act of 1936 is wholly inadequate for the efficient conduct of the multitude of diverse activities for which the Maritime Commission is now responsible. The deficiencies of the statutory organization for administrative action are regarded by the Committee to be the most serious obstacle standing in the way of the development of the Merchant Marine of this country.

Similarly, the survey of the Maritime Commission in 1948 for the Senate Committee on Expenditures in the Executive Departments concluded that—

> The fundamental weakness of the Maritime Commission, as it is now constituted, lies in its proscribed organization.

On the basis of investigations of the Maritime Commission by two of its task forces, the Commission on Organization of the Executive Branch stated:

> It is an anomaly that a regulatory commission should also conduct the executive function of managing a huge business; that executive functions should be carried on by an agency that is not subject to Presidential directions; that executive functions should be carried on by a full-time board * * *.

While the recommendations of the various studies differ in some details, they agree on principles and on the main features of reorganization.

Basically, the administrative difficulties of the Maritime Commission have arisen, as all these studies agree, from the fact that the Commission is responsible for performing two fundamentally different types of functions which call for different types of organization. These two classes of functions are (a) regulatory and (b) operating and promotional. Under various acts the Commission regulates rates and services of water carriers; passes on agreements among carriers; and protects shippers against unfair and discriminatory practices. This type of activity requires the deliberation and independence of judgment which a board or commission is especially well designed to provide. But at the same time the Commission is charged with the conduct of a variety of large and costly promotional and business-type programs demanding the prompt and vigorous administration for which experience both in Government and in private enterprise has demonstrated that a single executive is essential.

The Maritime Commission has charge of the construction of merchant vessels for subsidized operators and for Government account. It owns and maintains the largest merchant fleet in the world, consisting of 2,200 vessels aggregating more than 22,000,000 deadweight tons. It charters and sells ships and, in time of war or national emergency, requisitions and operates vessels for the Government. It grants construction and operating differential subsidies to private shipping companies to maintain an active privately operated American merchant marine. It makes loans and insures mortgages to assist carriers in acquiring new vessels, and it conducts programs for training officers and seamen for the merchant marine. For the present fiscal year the performance of these functions will involve the expenditure of approximately $162,000,000 and the direction of an organization of 5,500 employees. In short, the administration of the Maritime Commission is a vast business undertaking. Moreover, the work of the Commission affects significantly the interests of both business and labor in the maintenance of a sound maritime industry.

Further than this, many of the activities of the Maritime Commission are closely related to other programs of the Government and have to be coordinated with them. In the construction of a subsidized ship the Commission must cooperate with the Coast Guard on those features of design, materials, and equipment which affect the safety of the vessel and with the Navy on those which especially affect the use of the ship for national defense. Furthermore, the whole program of subsidized ship construction needs to be adjusted to the plans and requirements for national defense. At the same time the Commission's programs for the development of the merchant marine must be coordinated with our foreign policy and with Federal programs with respect to other branches of transportation.

While an independent commission is an appropriate instrument for the performance of the regulatory func-

tions of the Maritime Commission, such an agency obviously is not the type required to provide strong and efficient administration of the large operating programs now entrusted to the Commission or to obtain the needed coordination with other activities of the executive branch. This fact is amply demonstrated by the administrative difficulties and the complicated problems of coordination encountered in the operation of the Commission since the war and by the necessity of transferring a large part of its functions to the War Shipping Administration, headed by a single executive, during the war.

Briefly, this reorganization plan provides for a small Federal Maritime Board and a Maritime Administration in the Department of Commerce to perform the functions of the Maritime Commission, and abolishes the existing Commission. It transfers to the Board the regulatory functions of the Commission and definitely guarantees the independence of the Board in the performance of these functions. In addition, it vests directly in the Board the determination and award of construction and operating differential subsidies. In the performance of its subsidy functions the Board will be subject to general policy guidance by the Secretary of Commerce. The Board, however, and it alone, will determine to whom subsidies shall be granted and will make and award the subsidy contracts. Its actions therein will be conclusive and will not be subject to modification by any other agency or officer of the Department of Commerce. The other functions of the Maritime Commission, including carrying out the subsidy agreements made by the Board and administering the various operating programs, are transferred to the Secretary of Commerce for administration through the Maritime Administration. Thus, the plan provides for each of the two types of functions now vested in the Maritime Commission the type of organization best suited to its performance. At the same time, the plan will facilitate coordination of maritime policies and programs with other related policies and programs.

The division of functions under this plan conforms directly to the recommendations of the Commission on Organization of the Executive Branch of the Government. While the award of subsidies is a promotional rather than a regulatory function and might logically be assigned to the Maritime Administration instead of the Board, its impact on the shipping industry and on individual carriers is such as to make desirable the deliberation and combined judgment of a board. Accordingly, I have adhered to the recommendation of the Commission on Organization that this function be vested in a multiple body rather than a single official. Likewise, in line with the recommendations of the Commission, the plan assigns the determination of the over-all route pattern to the Secretary of Commerce.

The Maritime Board will consist of three members appointed by the President with the consent of the Senate for overlapping terms of 4 years. Not more than two of the members can be of the same political party. The Board, therefore, will be a smaller and more wieldy body which can function with greater expedition and efficiency than the existing five-member Commission. The Chairman will be designated by the President from the members of the Board and will be, ex officio, the Maritime Administrator and as such the head of the Maritime Administration. The plan also provides for a Deputy Maritime Administrator appointed by the Secretary of Commerce under the classified civil service. After investigation I have found, and hereby declare, that by reason of the reorganizations made by this plan, it is necessary to include in the plan provisions for the appointment and compensation of the members of the Federal Maritime Board and for the appointment of the Deputy Maritime Administrator.

In making the Chairman of the Federal Maritime Board the Maritime Administrator, the plan adopts an arrangement substantially similar to that which prevailed during the war, when the same individual served as Chairman of the Maritime Commission and head of the War Shipping Administration. This arrangement will have important advantages. It will facilitate cooperation between the Board and the Administration on matters of concern to both. Also, it will avoid dividing the personnel of the Maritime Commission, since the Chairman of the Board will supervise the personnel assisting it in the performance of its functions, as is now the case in the Maritime Commission, and in his capacity as Administrator he will have charge of the personnel carrying on the work of the Maritime Administration. The plan provides for the joint operation of the officers and employees under the Administrator and Chairman as a single body of personnel. The maintenance of a unified staff is essential for efficient and economical administration because many of the technical and professional personnel, such as ship designers and attorneys, now assist the Maritime Commission on problems of subsidy determination and also participate in the subsequent administration of subsidy agreements and in performing nonsubsidy functions.

The inclusion of the new Board in the Department of Commerce will permit the use of the administrative services of the Department. More important, it will eliminate the necessity of splitting the personnel of the Maritime Commission between the Department and an outside agency. In addition, it will relieve the President of having to handle relations with a separate maritime agency.

In establishing the Department of Commerce the Congress provided in the organic act of the Department that—

> It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, * * * shipping, * * * and the transportation facilities of the United States.

Over the years, however, transportation functions have become widely scattered throughout the executive branch. As a result, intelligent planning and budgeting of Federal transportation activities and the necessary coordination of transportation programs have become extremely difficult or impossible. The transfer of the functions of the Maritime Commission to the Department of Commerce will constitute a major step in correcting this condition.

Without question the Department of Commerce is now the appropriate center for transportation programs. It contains the Civil Aeronautics Administration—the major operating and promotional agency of the Government in the field of air transportation—and the Weather Bureau, and the Coast and Geodetic Survey, which provide vital services to transportation. As a result of Reorganization Plan No. 7 of 1949, it now also includes the Bureau of Public Roads, the leading promotional agency dealing with land transportation. Also, it has the Inland Waterways Corporation in the field of water transportation. The transfer of the functions of the Maritime Commission will bring into the Department the principal water-transportation agency of the Government. These actions will go a long way toward the establishment of a sound and effective organization for the operating and promotional programs of the Government relating to transportation.

It is my purpose to look to the Secretary of Commerce for leadership with respect to transportation problems and for the development of over-all transportation policy within the executive branch. Because of the magnitude and importance of the transportation functions transferred to the Department of Commerce by this reorganization plan, I have found and hereby declare that it is necessary to strengthen the top administrative structure of the Department by providing for the appointment and compensation of a new Under Secretary of Commerce for Transportation. This will make available an officer of the highest rank to assist the Secretary in supervising the varied and complex transportation programs of the Department and providing central leadership in transportation matters. With the many responsibilities of the Secretary of Commerce in other areas, the creation of this office is essential to enable him properly to fulfill his obligations with respect to transportation.

After careful investigation I have found and I hereby declare that each of the reorganizations contained in this reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949. The rates of compensation fixed by the provisions of the reorganization plan for the Under Secretary of Commerce for Transportation, the Chairman, and the other two members of the Federal Maritime Board are, respectively, those which I have found to prevail in respect of comparable officers in the executive branch of the Government.

In summary, the reorganizations provided by this plan will have the following principal advantages: They will provide an efficient organization headed by a single responsible official to administer the large operating and business-type programs of the Maritime Commission. At the same time, they will preserve the benefits of a bipartisan board for the performance of the regulatory functions of the Commission and the determination of subsidies. They will reduce the number of agencies reporting directly to the President and simplify the over-all management of the executive branch. In doing so, they will provide more adequate machinery for supervising the administration of the maritime programs and will facilitate their coordination with related policies and programs of the executive branch. Finally, they will accomplish a major advance in the development of an effective organization of Federal transportation programs in accord with the recommendations of the Commission on Organization of the Executive Branch of the Government. While it is impossible to estimate in advance the savings which will be brought about by this plan, the improvements in administrative efficiency resulting from it should produce substantial reductions in expenditures for the programs transferred by the plan.

HARRY S TRUMAN.

THE WHITE HOUSE, March 13, 1950.

REORGANIZATION PLAN NO. 6 OF 1949

Eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 20, 1949, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

UNITED STATES MARITIME COMMISSION

SECTION 1. ADMINISTRATION OF FUNCTIONS OF COMMISSION

The Chairman of the United States Maritime Commission shall be the chief executive and administrative officer of the United States Maritime Commission. In executing and administering on behalf of the Commission its functions (exclusive of functions transferred by the provisions of section 2 of this reorganization plan) the Chairman shall be governed by the policies, regulatory decisions, findings, and determinations of the Commission.

SEC. 2. TRANSFER OF FUNCTIONS

There are hereby transferred from the United States Maritime Commission to the Chairman of the Commission the functions of the Commission with respect to (1) the appointment and supervision of all personnel employed under the Commission, (2) the distribution of business among such personnel and among organizational units of the Commission, and (3) the use and expenditure of funds for administrative purposes: *Provided*, That the provisions of this section do not extend to personnel employed regularly and full time in the offices of members of the Commission other than the Chairman: *Provided further*, That the heads of the major administrative units shall be appointed by the Chairman only after consultation with the other members of the Commission.

SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS

The functions of the Chairman under the provisions of this reorganization plan shall be performed by him or, subject to his supervision and direction, by such officers and employees under his jurisdiction as he shall designate.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 6 of 1949, prepared in accordance with the Reorganization Act of 1949. This plan is designed to strengthen the administration of the United States Maritime Commission by making the Chairman and the chief executive and administrative officer of the Commission and vesting in him responsibility for the appointment of its personnel and the supervision and direction of their activities. After investigation, I have found and hereby declare that each reorganization included in this plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

Unlike other major regulatory commissions, the Maritime Commission is responsible not only for the performance of important regulatory functions but also for the administration of large and complex operating and promotional programs. Whereas the budgets of most regulatory agencies amount to only a few million dollars annually, the expenditures of the Maritime Commission exceed $130,000,000 a year. As a result of the war the Commission is the owner of a fleet of over 2,300 ships, aggregating more than 23,000,000 deadweight tons.

While it is the policy of the Government, as set forth by the Merchant Marine Act of 1936 and the Merchant Ship Sales Act of 1946, to develop and maintain an adequate and effective merchant marine under private ownership, the Commission is still confronted with the necessity of carrying on substantial programs for the charter and sale of Government-owned vessels and with the continuing task of maintaining the reserve merchant fleet.

Apart from its functions with respect to the war-built fleet, the accomplishment of the Government's permanent objective with respect to the development of the American merchant marine inevitably involves the Commission to a wide variety of activities. Among these are the regulation of rates and competitive practices of water carriers, the determination of essential trade routes and services, the award of subsidies to offset differences between American and foreign costs, the design and construction of ships, the inspection of subsidized vessels, and the training of seamen.

In the last 2 years the operation of the Maritime Commission has been subjected to independent examination by three bodies—the President's Advisory Committee on the Merchant Marine, the Senate Committee on Expenditures in the Executive Departments, and the Commission on Organization of the Executive Branch of the Government. All of these studies have pointed to difficulties in the conduct of the Commission's business and the necessity of improved organization to strengthen the administration of the agencies. The remedies proposed have differed in some respects, but all the studies have emphasized the need of concentrating in a single official the management of a large part of the agency's work.

During the war such a concentration was temporarily accomplished by Executive order under the authority of the First War Powers Act. In effect, the Chairman of the Commission, as War Shipping Administrator, was made directly responsible for the administration of several major operating programs of the Commission. This arrangement proved its value under the stress of war. About a year after the end of the fighting, however, it was terminated and the organization reverted to the prewar pattern.

As a result of postwar experience, the Commission appointed a general manager in 1948. While this has

brought considerable improvement, it has not extricated the Commission from administration to the degree which is desirable.

After careful consideration of the problems involved in improving the operation of the Maritime Commission, I have concluded that the proper action at this time is to concentrate in the Chairman the responsibility for the internal administration of the agency. This is achieved by the proposed reorganization plan by transferring to the Chairman the appointment of the personnel of the agency, except for the immediate assistants of the Commissioners, and the supervision and direction of their work. This is substantially the arrangement recommended for regulatory commissions by the Commission on Organization of the Executive Branch of the Government.

Such a plan of organization has many advantages. It leaves in the Commission as a body the performance of regulatory functions, the determination of subsidies, and the determination of major policies. Thus, it utilizes the Commission for the type of work for which such a body is best adapted. At the same time the plan places under a single official the day-to-day direction of the work of the staff within the policies and determinations adopted by the Commission in the exercise of its functions. This will provide more businesslike administration and help to overcome the delays, backlogs, and operating difficulties which have hampered the agency. At the same time by freeing the members of the Commission of much detail, the plan will enable them to concentrate on major questions of policy and program and thereby will obtain earlier and better considered resolution of the basic problems of the agency.

Though the taking effect of this plan in itself may not result in substantial immediate economies, it is probable that the improved organizational arrangements will bring about, over a period of time, improved operations and substantially reduced expenditures. An itemization of these reductions, however, in advance if actual experience under the plan is not practicable.

I am convinced that this reorganization plan will contribute importantly to the more businesslike and efficient administration of the programs of the Maritime Commission.

HARRY S TRUMAN.

THE WHITE HOUSE, June 20, 1949.

FEDERAL MARITIME BOARD AND MARITIME ADMINISTRATION

The following is a statement, in part, of the Department of Commerce, relating to the organization and functions of the Federal Maritime Board, and the Maritime Administration, created by Reorg. Plan No. 21 of 1950, set out above, as such statement appeared in 16 F.R. 44 to 46, Jan. 3, 1951:

The statement of organization and functions of the Maritime Administration issued in 15 F.R. 4454–4457 is hereby revoked and the following substituted therefor:

1. *Establishment*. The Federal Maritime Board and the Maritime Administration were established in the Department of Commerce by Reorganization Plan No. 21 of 1950, effective May 24, 1950 [set out above]. In performance of their functions the Federal Maritime Board and the Maritime Administration are guided by the broad declaration of policy stated in Title I of the Merchant Marine Act, 1936 (49 Stat. 1985) [46 U.S.C. 1101], reaffirmed in section 2 of the Merchant Ship Sales Act, 1946 (60 Stat. 41) [50 App. U.S.C. 1735] * * *.

2. *Organization of the Federal Maritime Board*. The Federal Maritime Board is composed of three members appointed by the President by and with the advice and consent of the Senate. The President designates one of the members to serve as Chairman of the Federal Maritime Board. The Chairman serves as chief executive and administrative officer of the Federal Maritime Board. Any two members in office constitute a quorum for the transaction of the business of the Federal Maritime Board, and the affirmative votes of any two members are sufficient for the disposition of any matter which may come before the Federal Maritime Board.

The Federal Maritime Board has the following organizational components: (a) Office of the Chairman of the Federal Maritime Board; (b) Offices of the Members of the Federal Maritime Board; (c) Secretary's Office; (d) Regulation Office; and (e) Hearing Examiners' Office.

Insofar as he deems desirable, the Chairman of the Federal Maritime Board makes use of the officers and employees of the Maritime Administration to perform activities for the Federal Maritime Board.

3. *Functions of the Federal Maritime Board*—(a) *Regulatory functions*. Under Reorganization Plan No. 21 of 1950 the Federal Maritime Board is independent of the Secretary of Commerce in the performance of the following functions: (1) All functions under the provisions of sections 14 to 20, inclusive, and sections 22 to 33, inclusive, of the Shipping Act, 1916, as amended [former 46 U.S.C. 812–819, 821–832], including such functions with respect to the regulation and control of rates, services, practices, and agreements of common carriers by water and of other persons;

(2) All functions with respect to the regulation and control of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water under the provisions of the Intercoastal Shipping Act, 1933, as amended [former 46 U.S.C. 843–848];

(3) The functions with respect to the making of rules and regulations affecting shipping in the foreign trade to adjust or meet conditions unfavorable to such shipping, and with respect to the approval, suspension, modification, or annulment of rules or regulations of other Federal agencies affecting shipping in the foreign trade, under the provisions of section 19 of the Merchant Marine Act, 1920, as amended [46 U.S.C. 876], exclusive of subsection (1)(a) thereof;

(4) The functions with respect to investigating discriminatory rates, charges, classifications, and practices in the foreign trade, and with respect to recommending legislation to correct such discrimination, under the provisions of section 212(e) of the Merchant Marine Act, 1936 [46 U.S.C. 1122(e)]; and

(5) So much of the functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended [former 46 U.S.C. 820], as relates to its functions under items (1) through (4), above.

(b) *Subsidy contracts*. Under Reorganization Plan No. 21 of 1950 the Federal Maritime Board is guided by the general policies of the Secretary of Commerce in performing the following functions: (1) The functions with respect to making, amending, and terminating construction (reconstruction or reconditioning) differential subsidy contracts, including contracts for the construction, reconstruction, or reconditioning of vessels and contracts for the sale of vessels to subsidy applicants or contracts to pay a differential subsidy and the cost of national defense features. In the exercise of this function the Federal Maritime Board investigates and determines the relative cost of construction of comparable vessels in the United States and foreign countries and the extent and character of aids and subsidies granted by foreign governments to their merchant marines;

(2) The functions with respect to making, amending, and terminating operating differential subsidy contracts and, subsequent to entering into an operating differential subsidy contract, making determinations with respect to employment and wage conditions, and taking action on readjustment of operating cost differentials and the sale, assignment, or transfer of the contract. In the exercise of this function the Federal Maritime Board investigates and determines the relative cost of operating vessels under the registry of the United States and under foreign registry, and the extent and character of aids and subsidies granted by foreign governments to their merchant marines;

(3) The functions with respect to investigating and reporting on relative construction and operating costs in the United States and foreign maritime countries,

and the relative advantages of operating under United States or foreign registry, and on marine insurance, navigation laws, and vessel mortgages as authorized under section 12 of the Shipping Act, 1916 [former 46 U.S.C. 811]; and

(4) The functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda as relates to its functions as set forth in items (1), (2), and (3), above.

(c) *Charters under the Merchant Ship Sales Act, 1946*. The Federal Maritime Board makes determinations, after public hearings, as to whether the bareboat charter of warbuilt dry cargo vessels owned by the United States is required in the public interest in any service then not adequately served and for which privately owned American-flag vessels are not available for charter by private operators on reasonable conditions and rates, and certifies its findings to the Secretary of Commerce together with any restrictions and conditions which it determines to be necessary or appropriate to protect the public interest in respect to such charters and to protect privately owned vessels against competition from Government vessels chartered by the Secretary of Commerce. All such charters are reviewed annually by the Federal Maritime Board for the purpose of making recommendations to the Secretary of Commerce as to whether conditions exist justifying the continuance of the charters. The functions of the Secretary of Commerce with respect to the chartering of vessels has been delegated to the Maritime Administrator.

(d) *War risk insurance*. Pursuant to Public Law 763, 81st Congress [46 U.S.C. 1281–1294], the Federal Maritime Board makes determinations of the fair and reasonable value of vessels insured under the provisions of Title XII of the Merchant Marine Act, 1936, as amended [46 U.S.C. 1281–1294]. The Secretary of Commerce may not settle an insurance claim with respect to a vessel in an amount in excess of the vessel's fair and reasonable value as determined by the Federal Maritime Board.

(e) In carrying out its functions under paragraphs (a), (b), (c) and (d), above, the Federal Maritime Board adopts rules and regulations; makes reports and recommendations to Congress; subpoenas witnesses; administers oaths; takes evidence; requires the production of books, papers and documents as necessary; issues opinions; promulgates orders; engages in enforcement and other legal proceedings; and performs all functions formerly performable by the Maritime Commission, which have been transferred to the Federal Maritime Board pursuant to Reorganization Plan No. 21 of 1950.

4. *Organization of the Maritime Administration*—(a) *Maritime Administrator*. The Chairman of the Federal Maritime Board is ex officio the Maritime Administrator. When serving as Maritime Administrator, he reports and is responsible to the Secretary of Commerce.

(b) *Deputy Maritime Administrator*. The Maritime Administrator is assisted in his duties by a Deputy Maritime Administrator, who is the Acting Maritime Administrator during the absence or disability of the Maritime Administrator and, unless the Secretary of Commerce designates another person, during a vacancy in the Office of Maritime Administrator. The Deputy Maritime Administrator is appointed by the Secretary of Commerce, after consultation with the Maritime Administrator. The Deputy Maritime Administrator at no time sits as a member of the Federal Maritime Board.

(c) *Organizational components*. The Maritime Administration has the following organizational components: (1) Office of the Maritime Administrator; (2) Staff Offices including the Office of the General Counsel, the Program Planning Office, the Budget Office, and the Personnel Office; (3) Division of Claims; (4) Office of Subsidy and Government Aid; (5) Office of Maritime Operations; (6) Office of Ship Construction; (7) Office of the Comptroller; and (8) Offices of the Coast Directors.

(d) *Use of officers and employees of the Federal Maritime Board*. Insofar as he deems desirable, the Maritime Administrator makes use of officers and employees of the Federal Maritime Board under his supervision as Chairman to perform activities for the Maritime Administration.

(5) *Functions of the Maritime Administrator*. The Maritime Administrator is responsible for the performance of all functions transferred to the Secretary of Commerce under Reorganization Plan No. 21 of 1950, subject to the limitations set forth in Department Order No. 116, as amended, with power of redelegation, and for the performance of activities for the Federal Maritime Board as determined desirable by the Chairman of the Federal Maritime Board.

(a) The Office of the Maritime Administrator directs the activities of the Maritime Administration and includes personnel who render staff services to the Maritime Administrator.

(b) The Office of the General Counsel serves as the law office of the Maritime Administration and Federal Maritime Board, renders legal advice and opinions to them, and represents them in any litigation in which either is interested. The Office of the General Counsel has the following divisions: Division of Contracts, Division of Legislation, and Division of Litigation.

(c) The Program Planning Office develops and recommends long-range merchant marine policy and programs, reviews existing policies and programs in the light of adopted long-range policy, and conducts economic studies connected with policy formulation for the Maritime Administrator and the Federal Maritime Board.

(d) The Budget Office develops and presents budgetary requests and justifications and allots and maintains budgetary control of appropriated funds for the Maritime Administration and the Federal Maritime Board.

(e) The Personnel Office administers the personnel functions of the Maritime Administration and the Federal Maritime Board related to employment and position classification, including recruitment, placement, separations, disciplinary actions, counseling and grievance appeal services, training and safety programs, and wage rate studies.

(f) The Division of Claims is responsible for analyzing and recommending the basis of settlement of claims in favor of or against the Maritime Administration arising out of the war-time operations of the former Maritime Commission and War Shipping Administration and other claims referred to it for processing prior to August 22, 1949.

(g) The Office of Subsidy and Government Aid is responsible for the processing of applications to the Federal Maritime Board and the Maritime Administration for subsidy or other government aid and the administration of government aid contracts after their execution, for the coordination of the work of other organizational components in connection therewith, and for the making of recommendations with respect to the policy relating to vessel chartering. The Office of Subsidy and Government Aid has the following divisions: Division of Construction Cost Comparison, Division of Contract Evaluation and Administration, Division of Operating Cost Comparison, and Division of Shipping Data.

(h) The Office of Maritime Operations is responsible for the conduct of activities relating to the charter, operation, repair, reconversion, betterment, reconditioning, and disposal of government-owned merchant vessels; the maintenance of reserve fleets; the training of seagoing personnel; the procurement and disposal of real and personal property; the maintenance or operation of warehouses, marine terminals and reserve shipyards port development; and the rendering of office services. The Office of Maritime Operations has the following divisions: Division of General Services, Division of Maintenance and Repair, Division of Maritime Training, Division of Vessel Custody, and Division of Vessel Operations.

(i) The Office of Ship Construction is responsible for the conduct of activities of the Maritime Administra-

tion and the Federal Maritime Board relating to ship design and construction, and the rendering of technical direction to the Office of Maritime Operations with respect to the reconversion, betterment and reconditioning of Maritime Administration-owned vessels. The Office of Ship Construction has the following divisions: Division of Estimates, Division of Preliminary Design, Division of Production, and Division of Technical Development; and contains the Vessel Trial and Guarantee Survey Boards.

(j) The Office of the Comptroller is responsible for the accounting, auditing, and insurance activities of the Maritime Administration and the Federal Maritime Board. The Office of the Comptroller has the following divisions: Division of Accounts, Division of Audits, Division of Credits and Collections, and Division of Insurance.

(k) The Offices of the Atlantic, Gulf, and Pacific Coast Directors are responsible for maintaining general surveillance over the management of field offices of the various organizational components located on their respective coasts.

6. *Filing of applications and other formal documents*. All applications and other formal documents required to be filed with either the Federal Maritime Board or the Maritime Administration shall be filed with the Secretary's Office, Federal Maritime Board.

NATIONAL SHIPPING AUTHORITY AND ADDITIONAL FUNCTIONS OF MARITIME ADMINISTRATOR

The following is a statement of the Department of Commerce, 16 F.R. 2642, 2643, Mar. 23, 1951, amending the statement of such Department set out in 16 F.R. 44 to 46, Jan. 3, 1951 (set out as a note above):

The statement of organization and functions of the Federal Maritime Board and the Maritime Administration issued in 16 F.R. 44 [set out as a note above] is amended by the addition of the following:

Establishment of the National Shipping Authority. There is established in the Maritime Administration a National Shipping Authority, headed by a Director responsible to the Maritime Administrator.

The National Shipping Authority shall perform such functions in connection with the formulation and execution of plans and programs for the operation, acquisition, and allocation of merchant vessels and such other duties as the Maritime Administrator, within the scope of his authority, may from time to time direct.

Functions of the Maritime Administrator. In addition to the functions contained in paragraph 5 of 16 F.R. 44, the Maritime Administrator shall perform the following functions:

(a) The functions conferred upon the Secretary of Commerce by Public Law 591, 81st Congress, 2d Session [46 U.S.C. note prec. 1, 883 note; 50 App. U.S.C. 1735 note, 1738, 1744];

(b) The functions conferred upon the Secretary of Commerce by Public Law 763, 81st Congress, 2d Session [46 U.S.C. 1281–1294], except that the authority "to find that insurance adequate to the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions in companies authorized to do an insurance business in a State of the United States" is reserved to the Secretary;

(c) The functions conferred upon the Secretary by Public Law 911, 81st Congress, 2d Session [act Jan. 6, 1951, ch. 1213, 64 Stat. 1224];

(d) The functions conferred upon the Secretary by Reorganization Plan No. 21 of 1950 [set out above] to take action with respect to the determination of essential trade routes and services or subsequent modifications;

(e) The functions conferred upon the Secretary by Reorganization Plan No. 21 of 1950 to establish policies of general application for the purchase, acquisition, construction, charter, and sale of vessels and for the administration of programs concerning operating subsidies, reserve funds and transfers to foreign ownership or registry, and charters to foreigners.

The Maritime Administrator may redelegate to officers and employees of the Maritime Administration the performance of particular functions herein assigned to the Maritime Administrator.

Effect on other notices. All orders, regulations, rulings, certificates, directives, and other actions heretofore issued or taken under the notices appearing at 15 F.R. 8739 and 16 F.R. 1130 and in effect immediately prior to the effective date of this notice shall remain in full force and effect until hereafter suspended, amended, or revoked under appropriate authority.

This notice amends the notice issued in 15 F.R. 3195, "Temporary Delegations of Authority under Reorganization Plan No. 21 of 1950."

Effective date. This notice is effective March 13, 1951.

APPOINTMENT OF PERSONNEL

The following is a legal opinion, in part, dated August 29, 1950, and prepared by the General Counsel of the Maritime Administration, with respect to the authority of the chairman of the Federal Maritime Board to make appointments of personnel under the Board and the extent of the authority of the Secretary of Commerce under Reorg. Plan No. 21 of 1950, set out above, as to such personnel:

Sec. 103 of Reorganization Plan 21 of 1950 [set out above] transferred to the Chairman of the Federal Maritime Board "all functions of the Chairman of the United States Maritime Commission (including his functions under the provisions of Reorganization Plan No. 6 of 1949 [set out above]) with respect to the functions transferred to the Board by the provisions of Sections 104 and 105" of Plan 21. Section 104 transferred to the Board the regulatory functions of the Maritime Commission and Section 105 transferred certain of the subsidy functions of the Commission, not including, however, the function of administering subsidy contracts.

Sec. 106 of Plan 21 provides for the status of the Board and of the Chairman and their relationship to the Secretary of Commerce. * * *.

In order to fully understand the intent of Plan 21, it is necessary to examine the status of the appointing authority of the Chairman of the Maritime Commission immediately prior to the transfer of functions under Plan 21. As set forth above, Section 103 of Plan 21 makes specific reference to the authority of the Chairman of the Commission under Plan 6 of 1949 as being transferred to the Chairman of the Board.

Reorganization Plan 6 was transmitted by the President to Congress on June 20, 1949. Its purpose as stated in the message of transmittal [set out in Appendix to Title 5, Government Organization and Employees] was "to strengthen the administration of the United States Maritime Commission by making the Chairman the chief executive and administrative officer of the Commission and *vesting in him responsibility for the appointment of its personnel* and the supervision and direction of their activities." (Emphasis supplied.)

Section 2 of Plan 6 transferred from the Commission to the Chairman certain functions including the appointment of personnel (exclusive of "personnel employed regularly and full time" in the offices of other members) with the proviso that the Chairman would consult with other members before appointing the heads of major administration units. Section 1 of Plan 6 provided that in exercising certain functions the Chairman should be guided by policies of the Commission. This section significantly excepted from such requirement the authority transferred to the Chairman under Section 2 including the appointive authority. Thus the appointive authority (excluding only personnel in offices of Commission members) was exclusively and, except for the proviso relating to heads of major units, unconditionally vested in the Chairman of the Commission until Plan 21 took effect.

Plan 21 transferred all the functions of the Commission and of the Chairman of the Commission. As stated above, some of these functions went to the Federal Maritime Board (Secs. 104, 105). Others were transferred to the Chairman of the Board (Sec. 103). Functions not otherwise transferred went to the Secretary of Commerce (Sec. 204).

The functions transferred to the Board and to the Chairman relate to regulatory authority (to be exercised independently) and subsidy functions (to be exercised subject to the guidance of general policies established by the Secretary of Commerce). As Section 103 transferring functions to the Chairman relating to these subjects makes specific reference to the authority of the Chairman of the Commission under Plan 6, which included the appointment of personnel, it appears evident that so much of the appointive power as relates to personnel performing these functions passed to the Chairman of the Board to be exercised by him independently as to personnel performing regulatory functions and subject to the injunction of Sec. 106 (to be guided by the policies of the Secretary of Commerce) as to personnel performing services in connection with the subsidy functions performed by the Board.

This conclusion is reinforced by reference to a decision of the Attorney General to the Secretary of Commerce, dated May 13, 1940, construing somewhat similar provisions in a reorganization plan transferring to the Department certain functions of the Civil Aeronautics Authority [Reorg. Plan No. IV of 1940, § 7, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, set out in the Appendix to Title 5, Government Organization and Employees] * * *. Despite the specific mention of the personnel functions the Attorney General held that the appointive authority was in the Board. This decision was based upon reasoning recognizing the practical fact that independence in the exercise of the functions of the Board could not be achieved if the control of personnel and finances of the Board were in the Secretary of Commerce.

I have reached the conclusion that the appointive authority as to personnel engaged in regulatory and certain of the subsidy functions is vested in the Chairman, notwithstanding certain facts which might tend to indicate a different result.

Chief among these is the statement contained in the President's message transmitting Plan 21, as follows:

"In making the Chairman of the Federal Maritime Board the Maritime Administrator, the plan adopts an arrangement substantially similar to that which prevailed during the war, when the same individual served as Chairman of the Maritime Commission and head of the War Shipping Administration. This arrangement will have important advantages. It will facilitate cooperation between the Board and the Administration on matters of concern to both. Also, it will avoid dividing the personnel of the Maritime Commission, since the Chairman of the Board will supervise the personnel assisting it in the performance of its functions, as is now the case in the Maritime Commission, and in his capacity as Administrator he will have charge of the personnel carrying on the work of the Maritime Administration. The plan provides for the joint operation of the officers and employees under the Administrator and Chairman as a single body of personnel. The maintenance of a unified staff is essential for efficient and economical administration because many of the technical and professional personnel, such as ship designers and attorneys, now assist the Maritime Commission on problems of subsidy determination and also participate in the subsequent administration of subsidy agreements and in performing nonsubsidy functions.

"The inclusion of the new Board in the Department of Commerce will permit the use of the administrative services of the Department. More important, it will eliminate the necessity of splitting the personnel of the Maritime Commission between the Department and an outside agency. * * *".

A literal reading of portions of this statement might be used as a basis for argument that a single appointive authority was intended. This meaning cannot be given the statement, however, in view of the specific language of the Plan as previously discussed. It is more likely that the President had in mind the fact that the Plan seems to contemplate a delegation of authority from the Secretary to the Chairman-Administrator by providing in Sec. 204 that "The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by the Maritime Administrator of any function transferred to such Secretary by the provisions of this reorganization plan." Sec. 302 provides that the Chairman-Administrator shall make joint use of personnel.

Another argument against the conclusion stated could be based upon the fact that Plan 21 makes specific reference in transferring functions to the Board of certain titles and portions of the Merchant Marine Act, 1936, as amended [this chapter], without making any reference to Sec. 201(e) of that Act [subsec. (e) of this section] which is the source of the appointive authority formerly vested in the Commission. This argument fails, however, when consideration is given to the fact that immediately prior to Plan 21 this authority was vested not in the Commission but in the Chairman of the Commission under Plan 6 and is included in the specific reference to Plan 6.

It is clear that both Plan 21 and the President's transmittal message contemplate the use of personnel to perform dual functions for the Board and for the Administrator. It is equally clear that the Plan itself does not contain provisions vesting in a *single appointive authority* the power to establish such a group of personnel. It is evident, therefore, that the President contemplated that this objective be achieved by the Chairman's voluntarily utilizing the services of employees appointed under the authority of the Secretary to perform services in connection with Board functions and, in his capacity as Administrator, utilizing the services of employees employed by him under the direct grant of authority in the Plan to perform duties assigned to him by the Secretary. Thus the Plan, although directing the joint use of personnel, intends that result to be accomplished through the use of the administrative discretion granted the Chairman-Administrator by Section 302 of the Plan to be exercised in the interest of economy and efficiency, and does not vest exclusive appointing authority either in the Secretary or the Chairman-Administrator.

§ 1111a. Administrative expenses; limitations

After June 30, 1939, the Federal Maritime Commission and the Secretary of Transportation shall not incur any obligations for administrative expenses except pursuant to an annual appropriation specifically therefor or to authority to use appropriations or other funds otherwise available therefor.

(June 25, 1938, ch. 681, title I, 52 Stat. 1119; Pub. L. 97–31, § 12(59), Aug. 6, 1981, 95 Stat. 158.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted reference to the Federal Maritime Commission and the Secretary of Transportation for reference to the United States Maritime Commission. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1112. Operation of property by Secretary

Notwithstanding any other provision of law, the Secretary of Transportation may, in accordance with good business methods and on such terms and conditions as he determines to effec-

tuate the policy of this chapter, operate or lease any lands, docks, wharves, piers, or real property under his control, and all money received from such operation or lease shall be available for expenditure by the Secretary of Transportation as provided in this chapter. The Secretary of Transportation may, upon such terms and conditions as he may prescribe in accordance with sound business practice, make such extensions and accept such renewals of the notes and other evidences of indebtedness hereby transferred, and of the mortgages and other contracts securing the same, as he may deem necessary to carry out the objects of this chapter.

(June 29, 1936, ch. 858, title II, § 202, 49 Stat. 1986; Aug. 26, 1937, ch. 822, § 1, 50 Stat. 839; June 23, 1938, ch. 600, § 1, 52 Stat. 953; Pub. L. 97–31, § 12(60), Aug. 6, 1981, 95 Stat. 158.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'', wherever appearing, ''he'' for ''it'', and ''his'' for ''its'', and struck out provision relating to transfer of money, etc., to the United States Maritime Commission. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1938—Act June 23, 1938, permitted extensions and renewals of notes, other evidences of indebtedness, and mortgages.

1937—Act Aug. 26, 1937, permitted the operation or leasing of lands, docks, wharves, piers or real property.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1114. Transfer of powers; rules and orders

(a) Transfer of functions, powers, and duties

All the functions, powers, and duties vested in the former United States Shipping Board by the Shipping Act, 1916 [46 App. U.S.C. 801 et seq.], the Merchant Marine Act, 1920 [46 App. U.S.C. 861 et seq.], the Merchant Marine Act, 1928 [46 App. U.S.C. 891 et seq.], and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive Order [No. 6166] of June 10, 1933, are hereby transferred to the Federal Maritime Commission and the Secretary of Transportation: *Provided*, *however*, That after June 29, 1936, no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended.

(b) Rules and regulations

The Commission and the Secretary of Transportation are authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in them by this chapter.

(c) Enforcement of orders; penalties for violations

The orders issued by the Federal Maritime Commission and the Secretary of Transportation in the exercise of the powers transferred to them by this subchapter shall be enforced in the same manner as heretofore provided by law for enforcement of the orders issued by the former United States Shipping Board, and violation of such orders shall subject the person or corporation guilty of such violation to the same penalties or punishment as heretofore provided for violation of the orders of said Board.

(June 29, 1936, ch. 858, title II, § 204, 49 Stat. 1987; June 23, 1938, ch. 600, § 41, 52 Stat. 964; Pub. L. 97–31, § 12(61), Aug. 6, 1981, 95 Stat. 158; Pub. L. 104–88, title III, § 335(c)(1), Dec. 29, 1995, 109 Stat. 954.)

REFERENCES IN TEXT

The Shipping Act, 1916, referred to in subsec. (a), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified generally to chapter 23 (§ 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

The Merchant Marine Act, 1920, referred to in subsec. (a), is act June 5, 1920, ch. 250, 41 Stat. 988, as amended, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to chapter 24 (§ 861 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 889 of this Appendix and Tables.

The Merchant Marine Act, 1928, referred to in subsec. (a), is act May 22, 1928, ch. 675, 45 Stat. 689, as amended, which is classified principally to chapter 24A (§ 891 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 891x of this Appendix and Tables.

Executive Order No. 6166 of June 10, 1933, referred to in subsec. (a), is set out under section 901 of Title 5, Government Organization and Employees.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–88 struck out ''the Intercoastal Shipping Act, 1933,'' after ''the Merchant Marine Act, 1928,''.

1981—Subsec. (a). Pub. L. 97–31, § 12(61)(A), substituted ''Federal Maritime Commission and the Secretary of Transportation'' for ''United States Maritime Commission''. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31, § 12(61)(B)–(D), inserted ''and the Secretary of Transportation'' after ''Commission'' and substituted ''are authorized'' for ''is authorized'' and ''vested in them'' for ''vested in it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97–31, § 12(61)(A), (D), substituted ''Federal Maritime Commission and the Secretary of Transportation'' for ''United States Maritime Commission'' and ''transferred to them'' for ''transferred to it''. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

1938—Subsec. (b). Act June 23, 1938, struck out provisions which authorized the President to transfer to the Interstate Commerce Commission any or all regulatory powers, duties and functions of the United States Maritime Commission.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 21 of 1950 and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§1115. Discrimination at ports by carriers by water against other carriers

Without limiting the power and authority otherwise vested in the Federal Maritime Commission and the Secretary of Transportation, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

(June 29, 1936, ch. 858, title II, §205, 49 Stat. 1987; Pub. L. 97–31, §12(62), Aug. 6, 1981, 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Federal Maritime Commission and the Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

REPEALS

For effect of subtitle IV (§10101 et seq.) of Title 49, Transportation, see note set out preceding section 801 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§1116. Construction fund

All sums of money now in the construction loan fund created by section 11[1] of the Merchant Marine Act, 1920, as amended, together with the proceeds of all debts, accounts, choses in action, and the proceeds of all notes, mortgages, and other evidences of indebtedness, hereby transferred to the Department of Transportation, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest thereon, and, notwithstanding any other provision of law, all money representing amounts of unclaimed wages, salvage awards and miscellaneous unclaimed items carried as liabilities on the books of the former United States Shipping Board Merchant Fleet Corporation and all money heretofore or hereafter received from the operation or leasing of lands, docks, wharves, piers, or real property shall be deposited in the Treasury of the United States and there maintained as a revolving fund, herein designated as the construction fund, and shall be available for expenditure by the Secretary of Transportation in carrying out the provisions of this chapter. All moneys received by the Department of Transportation under the provisions of this chapter shall be deposited in its construction fund, and all disbursements made by the Secretary of Transportation under authority of this chapter shall be paid out of said fund, and, notwithstanding any other provision of law, all disbursements applicable to the money referred to in this section may be made by the Secretary of Transportation out of said fund. Further appropriations by Congress to replenish said fund are authorized.

(June 29, 1936, ch. 858, title II, §206, 49 Stat. 1987; Aug. 26, 1937, ch. 822, §2, 50 Stat. 839; Pub. L. 97–31, §12(63), Aug. 6, 1981, 95 Stat. 159.)

REFERENCES IN TEXT

Section 11 of the Merchant Marine Act, 1920, as amended, referred to in text, was classified to section 870 of former Title 46, Shipping, and was repealed by act June 29, 1936, ch. 858, title IX, §903(b), 49 Stat. 2016.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Department of Transportation'' for ''Commission'' in two places and ''Secretary of Transportation'' for ''Commission'' in three places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1937—Act Aug. 26, 1937, amended section generally.

EFFECTIVE DATE OF 1937 AMENDMENT

Amendment effective as of June 29, 1936, see section 4 of act Aug. 26, 1937.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

LIMITATIONS ON CONSTRUCTION FUND

Acts July 30, 1947, ch. 359, title I, §101, 61 Stat. 603, and June 30, 1948, ch. 775, §101, 62 Stat. 1199, which were the Independent Offices Appropriation Act, 1948, and The Supplemental Independent Offices Appropriation Act, 1949, respectively, placed limitations on obligations from the construction fund established by this section.

REDUCTION OF CONTRACT AUTHORIZATIONS

Act May 29, 1945, ch. 136, 59 Stat. 226, authorized the transfer out of the unexpended balance of appropriations made to the Maritime Commission under the head ''Construction fund, United States Maritime Commission Act, June 24, 1936, revolving fund'' up until May 29, 1945, of the sum of $3,100,000,000 to be carried to the surplus fund and be covered into the Treasury and reduced the contract authorization for ship construction and facilities incident by $4,265,000,000.

ADDITIONAL APPROPRIATIONS

Act Aug. 25, 1941, ch. 409, title III, 55 Stat. 682, appropriated an amount not to exceed $1,296,650,000 to enable the Commission to enter into further contracts for the construction of vessels, production and procurement of parts, equipment, plants, etc.

§1116a. Application to obligations against emergency ship construction fund

On and after March 22, 1947, the construction fund established by section 1116 of this Appendix shall be available for the payment of obligations previously incurred against the emergency ship construction fund.

(Mar. 22, 1947, ch. 20, title II, 61 Stat. 18; 1950 Reorg. Plan No. 21, §306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1277.)

[1] See References in Text note below.

CODIFICATION

Words ''United States Maritime Commission'' preceding ''construction fund'' omitted and words ''established by section 1116 of this Appendix'' inserted following ''construction fund'' on authority of Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

Section was enacted as part of act Mar. 22, 1947, popularly known as the Urgent Deficiency Appropriation Act, 1947, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1117. Power to contract; audit of accounts; reports of Comptroller General

The Federal Maritime Commission and the Secretary of Transportation may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its or his discretion, be necessary to carry on the activities authorized by this chapter, or to protect, preserve, or improve the collateral held by the Commission or Secretary to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's and Secretary's financial transactions shall be audited in the Government Accountability Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): *Provided*, That it shall be recognized that, because of the business activities authorized by this chapter, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission or Secretary from the provisions of this chapter.

(June 29, 1936, ch. 858, title II, § 207, 49 Stat. 1988; June 23, 1938, ch. 600, § 2, 52 Stat. 954; Pub. L. 97–31, § 12(64), Aug. 6, 1981, 95 Stat. 159; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

Act of March 20, 1922, ch. 104, 42 Stat. 444, referred to in text, is not classified to the Code.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1981—Pub. L. 97–31 substituted ''Federal Maritime Commission and the Secretary of Transportation'' for ''Commission'' first time it appeared, and inserted ''or his'' after ''its'', ''or Secretary'' after ''Commission'' and ''and Secretary's'' after ''Commission's''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1938—Act June 23, 1938, authorized disbursements, and provided for the protection, preservation, or improvement of collateral held to secure indebtedness.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1118. Reports to Congress

The Federal Maritime Commission and the Secretary of Transportation shall, by April 1 each year, make a report to Congress, which shall include the results of its or his investigations, a summary of its or his transactions, its or his recommendations for legislation, a statement of all receipts under this chapter, and the purposes for which all expenditures were made.

(June 29, 1936, ch. 858, title II, § 208, 49 Stat. 1988; Pub. L. 94–273, § 36, Apr. 21, 1976, 90 Stat. 380; Pub. L. 97–31, § 12(65), Aug. 6, 1981, 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Federal Maritime Commission and the Secretary of Transportation'' for ''Commission'' and inserted ''or his'' after ''its'' in three places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1976—Pub. L. 94–273 substituted ''by April 1 each year'' for ''at the beginning of each regular session''.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

REPORTING OF ADMINISTERED AND OVERSIGHT FUNDS

Pub. L. 106–398, § 1 [div. C, title XXXV, § 3506], Oct. 30, 2000, 114 Stat. 1654, 1654A–494, provided that: ''The Maritime Administration, in its annual report to the Congress under section 208 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1118), and in its annual budget estimate submitted to the Congress, shall state separately the amount, source, intended use, and nature of any funds (other than funds appropriated to the Administration or to the Secretary of Transportation for use by the Administration) administered, or subject to oversight, by the Administration.''

§ 1119. Authorization of appropriations

(a) Except as provided in subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(b) Notwithstanding any other provision of this chapter or any other law, there are authorized to be appropriated after December 31, 1967, for the use of the Maritime Administration for—

(1) acquisition, construction, or reconstruction of vessels;

(2) construction-differential subsidy incident to the construction, reconstruction, or reconditioning of ships;

(3) cost of national defense features;

(4) payment of obligations incurred for operating-differential subsidy;

(5) expenses necessary for research and development activities (including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental ship operations);

(6) reserve fleet expenses;

(7) maritime training at the Merchant Marine Academy at Kings Point, New York;

(8) financial assistance to State maritime academies under section 1295c of this Appendix;

(9) the Vessel Operations Revolving Fund;

(10)[1] expenses necessary for additional training provided under section 1295d of this Appendix;

[1] See 1980 Amendment note below.

(10)[1] expenses necessary to carry out subchapter XIII of this chapter; and

(11) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, or general administration;

only such sums as the Congress may specifically authorize by law: *Provided*, *however*, That the Congress finds and declares that the national policy set forth in section 1101 of this Appendix requires that there should be authorized and appropriated for fiscal years 1971 through 1980 such sums as may be necessary to construct 300 ships of such sizes, types and designs as the Secretary of Transportation may consider best suited to carry out the purposes and policy of this chapter.

(June 29, 1936, ch. 858, title II, § 209, 49 Stat. 1988; Aug. 26, 1937, ch. 822, § 3, 50 Stat. 839; Pub. L. 90–81, Sept. 5, 1967, 81 Stat. 193; Pub. L. 91–469, § 2, Oct. 21, 1970, 84 Stat. 1018; Pub. L. 95–173, § 6(a), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 96–387, § 4, Oct. 7, 1980, 94 Stat. 1546; Pub. L. 96–453, § 3(a), Oct. 15, 1980, 94 Stat. 2008; Pub. L. 97–31, § 12(66), Aug. 6, 1981, 95 Stat. 159.)

CODIFICATION

Subsec. (c) of this section, which related to availability, for all objects of expenditure under this chapter, of all appropriations and unexpended balances of appropriations in connection with then existing ocean-mail contracts entered into under sections 891e to 891r of former Title 46, Shipping, in connection with which the powers and duties with respect thereto had been transferred from the Postmaster General to the United States Maritime Commission by section 1144 of this Appendix, was omitted.

Subsec. (d) of this section, which made funds available under former subsection (b) available for expenditures authorized by former United States Maritime Commission under former provisions in section 1111 of this Appendix, as soon as a majority of the members of the United States Maritime Commission had taken the oath of office, notwithstanding section 1246 of this Appendix, was omitted.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1980—Subsec. (b). Pub. L. 96–453, which directed that pars. (7) and (9) be amended, that par. (10), relating to other operations and training expenses, be redesignated as (11), and that a par. (10), relating to expenses necessary to carry out subchapter XIII of this chapter, be added, was executed by amending pars. (8) and (10), set out first, and adding a par. (10), set out second, as the probable intent of Congress, in view of the prior redesignation of par. (7) as (8), par. (9) as (10), set out first and (10) as (11) by Pub. L. 96–387. The amendment substituted in par. (8) ''State maritime academies under section 1295c of this Appendix'' for ''State Marine Schools'' and in par. (10) ''for additional training provided under section 1295d'' for ''for extension and correspondence courses authorized under section 1126(c)'' and added a par. (10), relating to expenses necessary to carry out subchapter XIII of this chapter.

Pub. L. 96–387 struck out in par. (2) ''and cost of national defense features'' after ''subsidy'', added par. (3), and redesignated former pars. (3) to (10) as (4) to (11), respectively.

1977—Subsec. (b). Pub. L. 95–173 added pars. (9) and (10).

1970—Subsec. (b). Pub. L. 91–469 authorized appropriations for construction of 300 ships for fiscal years 1971 through 1980.

1967—Subsec. (a). Pub. L. 90–81 inserted ''Except as provided in subsection (b) of this section'' at beginning of subsec.

Subsec. (b). Pub. L. 90–81 added subsec. (b). A prior subsec. (b), making available to the United States Maritime Commission all appropriations and unexpended balances of the United States Shipping Board Bureau and the United States Shipping Board Merchant Fleet Corporation, had been eliminated as executed and obsolete.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–453 effective Oct. 1, 1981, see section 4 of Pub. L. 96–453, set out as an Effective Date note under section 1295 of this Appendix.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 6(b) of Pub. L. 95–173 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective for fiscal years beginning after September 30, 1978.''

§ 1120. Survey of existing merchant marine for creation of adequate American-owned fleet

It shall be the duty of the Secretary of Transportation to make a survey of the American merchant marine, as it now exists, to determine what additions and replacements are required to carry forward the national policy declared in section 1101 of this Appendix, and the Secretary of Transportation is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

First, the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service essential for maintaining the flow of the foreign commerce of the United States, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Secretary of Transportation is directed to cooperate closely with the Navy Department as to national-defense needs and the possible speedy adaptation of the merchant fleet to national-defense requirements.

Second, the ownership and the operation of such a merchant fleet by citizens of the United States insofar as may be practicable.

Third, the planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

Fourth, the creation and maintenance of efficient shipbuilding and repair capacity in the United States with adequate numbers of skilled personnel to provide an adequate mobilization base.

(June 29, 1936, ch. 858, title II, § 210, 49 Stat. 1989; Pub. L. 91–469, §§ 3, 35(a), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, § 12(67), Aug. 6, 1981, 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469, § 35(a), substituted ''Secretary of Commerce'' for ''Commission'', twice in introductory par. and once in par. ''First''.

Par. First. Pub. L. 91–469, § 3(1), struck out ''on all routes'' after ''shipping service''.

Par. Fourth. Pub. L. 91–469, § 3(2), added par. ''Fourth''.

COMMISSION ON MERCHANT MARINE AND DEFENSE

Pub. L. 98–525, title XV, § 1536, Oct. 19, 1984, 98 Stat. 2633, as amended by Pub. L. 99–145, title XIV, § 1431, Nov. 8, 1985, 99 Stat. 754; Pub. L. 99–426, § 1, Sept. 30, 1986, 100 Stat. 979, provided that:

''(a) There is hereby established a commission to be known as the Commission on Merchant Marine and Defense (hereinafter in this section referred to as the 'Commission').

''(b) The Commission shall study problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the United States merchant marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base of the United States to meet the needs of naval and merchant ship construction in time of war or national emergency. Based on the results of the study, the Commission shall make such specific recommendations, including recommendations for legislative action, action by the executive branch, and action by the private sector, as the Commission considers appropriate to foster and maintain a United States merchant marine capable of meeting national security requirements. The recommendations of the Commission shall be provided in the reports of the Commission due 12 months after the date on which sufficient members of the Commission to constitute a quorum have been appointed and 24 months after such date, under subsection (g).

''(c)(1) The Commission shall be composed of seven members, as follows:

''(A) The Secretary of the Navy (or his delegate), who shall be the chairman of the Commission.

''(B) The Administrator of the Maritime Administration (or his delegate).

''(C) Five members appointed by the President, by and with the advice and consent of the Senate, from among individuals of recognized stature and distinction who by reason of their background, experience, and knowledge in the fields of merchant ship operations, shipbuilding and its supporting industrial base, maritime labor, and defense matters are particularly suited to serve on the Commission.

''(2) A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under paragraph (1)(C) without regard to section 5311(b) of title 5, United States Code. Members appointed under such paragraph shall be appointed for the life of the Commission.

''(3) Four members of the Commission shall constitute a quorum, but a lesser number may hold hearings. The Commission shall meet at the call of the chairman.

''(d)(1) Members of the Commission appointed under subsection (c)(1)(C) may each be paid at a rate equal to the daily equivalent of the rate of basic pay payable for level IV of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of the business of the Commission. Other members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

''(2) A member of the Commission appointed under subsection (c)(1)(C) (who is not otherwise employed by the Federal Government) shall not be considered to be a Federal employee, except for the purposes of—

''(A) chapter 81 of title 5, United States Code, relating to compensation for work-related injuries; and

''(B) chapter 171 of title 28, United States Code, relating to tort claims.

''(e)(1) The Commission may (without regard to section 5311(b) of title 5, United States Code) appoint an executive director, who shall be paid at a rate not to exceed the rate of basic pay payable for level IV of the Executive Schedule.

''(2) The Commission may appoint such additional staff as it considers appropriate. Such personnel shall be paid at a rate not to exceed the rate of basic pay payable for grade GS–18 of the General Schedule under section 5332 of title 5, United States Code.

''(3) The executive director and staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the executive branch and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(4) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(f)(1) The Secretary of the Navy and the Administrator of the Maritime Administration may detail personnel under their jurisdiction to the Commission to assist the Commission in carrying out its duties under this section.

''(2) The Secretary of the Navy and the Administrator of the Maritime Administration may provide to the Commission such administrative support services as the Commission may require.

''(g) Not later than nine months after the date on which sufficient members of the Commission to constitute a quorum have been appointed and not later than 21 months after such date, the Commission shall submit to the President and to Congress a report containing its findings of fact and its conclusions. Not later than 12 months after such date and not later than 24 months after such date, the Commission, based upon those findings and conclusions, shall prepare a report containing the recommendations of the Commission as specified in subsection (b) and shall submit the report to the President and Congress. Each such report shall be prepared without any prior review or approval by any official of the executive branch (other than the members and staff of the Commission).

''(h) The Commission shall cease to exist 90 days after the date on which the final report of the Commission under subsection (g) is submitted to the President and the Congress.

''(i) There is authorized to be appropriated for fiscal years 1985, 1986, and 1987, a total of $1,500,000 to carry out this section. Any amount appropriated under this subsection shall remain available until 36 months after the date on which sufficient members of the Commission to constitute a quorum have been appointed.''

§ 1121. Investigations, studies, records, etc.

The Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of—

(a) Suitable ocean routes and lines to foreign ports; vessels and costs of operation

The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching his determination the Secretary of Transportation shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States, to

the national defense, and to other national requirements;

(b) Bulk cargo carrying services

The bulk cargo carrying services that should, for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and for the national defense or other national requirements be provided by United States-flag vessels whether or not operating on particular services, routes, or lines;

(c) Vessels required in proposed routes

The type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, which should be employed in such services or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view to furnishing adequate, regular, certain, and permanent service, or which should be employed to provide the bulk cargo carrying services necessary to the promotion, maintenance, and expansion of the foreign commerce of the United States and its national defense or other national requirements whether or not such vessels operate on a particular service, route, or line;

(d) Cost of construction in United States and abroad

The relative cost of construction of comparable vessels in the United States and in foreign countries;

(e) Relative cost of operation under laws of United States and foreign countries

The relative cost of marine insurance, maintenance, repairs, wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels under the laws, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American vessel;

(f) Foreign subsidies

The extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(g) Shipyards

The number, location, and efficiency of the shipyards existing on June 29, 1936, or thereafter built in the United States;

(h) Laws applicable to aircraft

To investigate and determine what provisions of this chapter and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce in order to further the policy expressed in this chapter, and to recommend appropriate legislation to this end;

(i) Transportation to foreign ports of cotton, coal, lumber, and cement

The advisability of enactment of suitable legislation authorizing the Secretary of Transportation in an economic or commercial emergency, to aid the farmers and cotton, coal, lumber, and cement producers in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Secretary of Transportation, until such time as the Secretary of Transportation shall deem such special rate reduction and operation unnecessary for the benefit of the American farmers and such producers; and

(j) New designs of vessels; intercoastal and inland water transportation

New designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of American foreign trade in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

(June 29, 1936, ch. 858, title II, § 211, 49 Stat. 1989; Pub. L. 91–469, §§ 4, 5, 35(a), (b), Oct. 21, 1970, 84 Stat. 1018, 1035; Pub. L. 97–31, § 12(67), Aug. 6, 1981, 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97–31 in introductory text and subsecs. (a) and (i) substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469, § 35(a), substituted ''Secretary of Commerce'' for ''Commission'', once in introductory par., twice in subsec. (a), and thrice in subsec. (i).

Subsec. (a). Pub. L. 91–469, §§ 4(1), 35(b), required consideration of the benefit the maintenance of any steamship line may afford to other national requirements and substituted ''his'' for ''its'' before ''determination'', respectively.

Subsec. (b). Pub. L. 91–469, § 4(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 91–649, § 4(2), (4), (5), redesignated former subsec. (b) as (c), inserted ''method of propulsion'' after ''speed'', and required that the various requirements of the vessels should be employed to provide bulk cargo carrying services, necessary to the promotion, maintenance, and expansion of the foreign commerce of the United States and its national defense or other national requirements whether or not such vessels operate on a particular service, route, or line, respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 91–469, § 4(2), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91–469, §§ 4(2), 5, redesignated former subsec. (d) as (e) and struck out ''in particular services, routes, and lines'' after ''comparable vessels'' and substituted ''American vessel'' for ''American service route, or line'', respectively. Former subsec. (e) redesignated (f).

Subsecs. (f) to (j). Pub. L. 91–469, § 4(2), redesignated former subsecs. (e) to (i) as (f) to (j), respectively.

§ 1121–1. Priority loading for vessels engaged in coastwise transportation of coal; exception, report to Congress

Notwithstanding any other provisions of law, any vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall have the priority to load at any such ports ahead of any waiting vessels engaged in the export trade of coal produced in the United States: *Provided*, That, the Secretary of Transportation may, if he determines that it is in the national interest, eliminate priority loading, as provided herein, at any such port or ports, and to report such action to the Congress within 30 days.

(Pub. L. 96–387, § 5, Oct. 7, 1980, 94 Stat. 1546; Pub. L. 97–31, § 12(68), Aug. 6, 1981, 95 Stat. 159; Pub. L. 99–662, title IX, § 947, Nov. 17, 1986, 100 Stat. 4200.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1986—Pub. L. 99–662 struck out ''until June 30, 1987,'' after ''shall''.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

§ 1121–2. National Maritime Enhancement Institutes

(a) Designation by Secretary of Transportation

The Secretary of Transportation may designate National Maritime Enhancement Institutes.

(b) Activities

Activities undertaken by such an Institute may include—

(1) conducting research concerning methods for improving the performance of maritime industries;

(2) enhancing the competitiveness of domestic maritime industries in international trade;

(3) forecasting trends in maritime trade;

(4) assessing technological advancements;

(5) developing management initiatives and training;

(6) analyzing economic and operational impacts of regulatory policies and international negotiations or agreements pending before international bodies;

(7) assessing the compatibility of domestic maritime infrastructure systems with overseas transport systems;

(8) fostering innovations in maritime transportation pricing; and

(9) improving maritime economics and finance.

(c) Submission of applications

An institution seeking designation as a National Maritime Enhancement Institute shall submit an application under regulations prescribed by the Secretary.

(d) Designation criteria

The Secretary shall designate an Institute under this section on the basis of the following criteria:

(1) the demonstrated research and extension resources available to the designee for carrying out the activities specified in subsection (b) of this section;

(2) the capability of the designee to provide leadership in making national and regional contributions to the solution of both long-range and immediate problems of the domestic maritime industry;

(3) the existence of an established program of the designee encompassing research and training directed to enhancing maritime industries;

(4) the demonstrated ability of the designee to assemble and evaluate pertinent information from national and international sources and to disseminate results of maritime industry research and educational programs through a continuing education program; and

(5) the qualification of the designee as a nonprofit institution of higher learning.

(e) Awards

The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) of this section from amounts appropriated. The aggregate annual amount of the Federal share of the awards by the Secretary shall not exceed $500,000.

(f) University transportation research funds

(1) In general

The Secretary may make a grant under section 5505 of title 49 to an institute designated under subsection (a) of this section for maritime and maritime intermodal research under that section as if the institute were a university transportation center.

(2) Advice and consultation of MARAD

In making a grant under the authority of paragraph (1), the Secretary, through the Research and Innovative Technology Administration, shall advise the Maritime Administration concerning the availability of funds for the grants, and consult with the Administration on the making of the grants.

(Pub. L. 101–115, § 8, Oct. 13, 1989, 103 Stat. 694; Pub. L. 101–595, title VII, § 702, Nov. 16, 1990, 104 Stat. 2994; Pub. L. 102–241, § 47, Dec. 19, 1991, 105 Stat. 2227; Pub. L. 106–398, § 1 [div. C, title XXXV, § 3504], Oct. 30, 2000, 114 Stat. 1654, 1654A–493; Pub. L. 108–426, § 2(c)(4), Nov. 30, 2004, 118 Stat. 2424.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

2004—Subsec. (f)(2). Pub. L. 108–426 substituted ''Research and Innovative Technology Administration'' for ''Research and Special Programs Administration''.

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1991—Subsec. (e). Pub. L. 102–241 inserted ''by the Secretary'' before ''shall not'' and substituted ''$500,000'' for ''$100,000''.

1990—Subsec. (e). Pub. L. 101–595 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary may make research grants, on an equal matching basis, to an institute from amounts appropriated pursuant to section 1(2)(B). The aggregate amount of such grants shall not exceed $100,000.''

§ 1122. Maritime problems; cooperation with others; cargo carriage; recommendations

The Secretary of Transportation is authorized and directed—

(a) Study of maritime problems

To study all maritime problems arising in the carrying out of the policy set forth in subchapter I of this chapter;

(b) Inducing preferences for American vessels; construction of super-liners

To study, and to cooperate with vessel owners in devising means by which—

(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

(2) there may be constructed by or with the aid of the United States express-liner or super-liner vessels comparable with those of other nations, especially with a view to their use in

national emergency, and the use in connection with or in lieu of such vessels of transoceanic aircraft service;

(c) Collaboration with owners and builders

To collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits accruing from standardized production where practicable and desirable; and

(d) Liaison with other agencies and trade organizations

To establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly, with any movement of commodities in the waterborne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities.

(e) Repealed. Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 88

(f) Development and implementation of new methods of cargo carriage; preferences for cargo containers

To study means and methods of encouraging the development and implementation of new concepts for the carriage of cargo in the domestic and foreign commerce of the United States, and to study the economic and technological aspects of the use of cargo containers as a method of carrying out the declaration of policy set forth in subchapter I of this chapter, and in carrying out the provisions of this subsection and such policy the United States shall not give preference as between carriers upon the basis of length, height, or width of cargo containers or length, height, or width of cargo container cells and this requirement shall be applicable to all existing container vessels and any container vessel to be constructed or rebuilt; and

(g) Recommendations for further legislation

To make recommendations to Congress, from time to time, for such further legislation as he deems necessary better to effectuate the purpose and policy of this chapter.

(June 29, 1936, ch. 858, title II, § 212, 49 Stat. 1990; Pub. L. 90–268, § 1, Mar. 16, 1968, 82 Stat. 49; Pub. L. 97–31, § 12(69), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(a), (c), Mar. 20, 1984, 98 Stat. 88, 90.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–237, § 20(a), struck out subsec. (e) which related to investigation of any and all discriminatory rates, charges, classifications, and practices whereby exporters and shippers of cargo originating in the United States are required by any common carrier by water in foreign trade of United States to pay a higher rate from any United States port to a foreign port than rate charged by such carrier on similar cargo from such foreign port to such United States port, and making of recommendations to Congress of measures by which such discrimination could be corrected. See section 1710 of this Appendix.

Pub. L. 98–237, § 20(c), struck out undesignated pars. following subsec. (d), ''The Federal Maritime Commission is authorized and directed—'' and following subsec. (e), ''The Secretary of Transportation, is authorized and directed—''.

1981—Pub. L. 97–31 substituted in provision preceding subsec. (a) ''Secretary of Transportation'' for ''Commission''; inserted, following subsec. (d), ''The Federal Maritime Commission is authorized and directed—''; inserted, following subsec. (e), ''The Secretary of Transportation, is authorized and directed—''; and substituted, in subsec. (g), ''he'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1968—Subsecs. (f), (g). Pub. L. 90–268 added subsec. (f) and redesignated former subsec. (f) as (g).

SAVINGS PROVISION

Amendment by Pub. L. 98–237 not to affect suits filed before Mar. 20, 1984, or claims arising out of conduct engaged in before Mar. 20, 1984, and filed within 1 year after that date; and agreements, contracts, modifications, and exemptions approved or licenses issued by the Federal Maritime Commission prior to Mar. 20, 1984, to continue as if approved or issued under chapter 36 (§ 1701 et seq.) of this Appendix, but new agreements, contracts, and modifications to existing, pending, or new contracts or agreements to be considered under chapter 36 of this Appendix, see section 1719 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1122a. Vessel utilization and performance reports; filing; civil penalty; lien upon vessel; remission or mitigation of penalty

The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Transportation may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this chapter. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Transportation may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

(June 29, 1936, ch. 858, title II, § 212(A), as added June 25, 1956, ch. 437, 70 Stat. 332; amended Pub. L. 97–31, § 12(70), Aug. 6, 1981, 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

§ 1122b. Mobile trade fairs

(a) Use of United States flag vessels and aircraft insofar as practicable

The Secretary of Commerce shall encourage and promote the development and use of mobile trade fairs which are designed to show and sell the products of United States business and agriculture at foreign ports and at other commercial centers throughout the world where the operator or operators of the mobile trade fairs use insofar as practicable United States flag vessels and aircraft in the transportation of their exhibits.

(b) Technical and financial assistance; exceptions

The Secretary of Commerce is authorized to provide to the operator or operators of such mobile trade fairs technical assistance and support as well as financial assistance for the purpose of defraying certain expenses incurred abroad (other than the cost of transportation on foreign-flag vessels and aircraft), when the Secretary determines that such operations provide an economical and effective means of promoting export sales.

(c) Use of foreign currencies

In addition to any amounts appropriated to carry out trade promotion activities, the President may use foreign currencies owned by or owed to the United States to carry out this section.

(June 29, 1936, ch. 858, title II, § 212(B), as added Pub. L. 87–839, § 1, Oct. 18, 1962, 76 Stat. 1074; amended Pub. L. 89–66, July 7, 1965, 79 Stat. 211; Pub. L. 90–434, July 27, 1968, 82 Stat. 449; Pub. L. 100–418, title X, § 10003(a), Aug. 23, 1988, 102 Stat. 1572.)

CODIFICATION

Subsec. (d) of this section, which required the Secretary of Commerce to submit an annual report to Congress on activities under this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, 14th item on page 53 of House Document No. 103–7.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–418 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''There is authorized to be appropriated not to exceed $500,000 per fiscal year for each of the six fiscal years during the period beginning July 1, 1962, and ending June 30, 1968, and not to exceed $166,000 for the fiscal year ending June 30, 1969. In addition to such appropriated sums, the President shall make maximum use of foreign currencies owned by or owed to the United States to carry out the purposes of this section.''

1968—Subsec. (a). Pub. L. 90–434 substituted ''use insofar as practicable'' for ''exclusively use''.

Subsec. (b). Pub. L. 90–434 inserted ''(other than the cost of transportation on foreign-flag vessels and aircraft),'' after ''expenses incurred abroad''.

Subsec. (c). Pub. L. 90–434 authorized appropriation of not to exceed $166,000 for the fiscal year ending June 30, 1969.

1965—Subsec. (c). Pub. L. 89–66 substituted ''six'' and ''June 30, 1968'' for ''three'' and ''June 30, 1965'', respectively.

§ 1123. Obsolete tonnage; tramp service

The Secretary of Transportation shall make studies of and make reports to Congress on the following:

(1) The scrapping or removal from service of old or obsolete merchant tonnage owned by the United States or in use in the merchant marine.

(2) Tramp shipping service and the advisability of citizens of the United States participating in such service with vessels under United States registry.

(June 29, 1936, ch. 858, title II, § 213, 49 Stat. 1991; Pub. L. 87–877, § 2(c), (d), Oct. 24, 1962, 76 Stat. 1201; Pub. L. 94–273, § 27, Apr. 21, 1976, 90 Stat. 380; Pub. L. 97–31, § 12(71), Aug. 6, 1981, 95 Stat. 159; Pub. L. 105–85, div. C, title XXXVI, § 3602, Nov. 18, 1997, 111 Stat. 2075.)

AMENDMENTS

1997—Pub. L. 105–85 substituted ''on the following:'' for ''on—'' in introductory provisions, redesignated subsecs. (a) and (b) as pars. (1) and (2), respectively, and realigned margins, substituted period for semicolon at end of par. (1), directed substitution of period for semicolon at end of par. (2) which could not be executed because par. (2) already contained period at end, and struck out subsec. (c) which read as follows: ''The relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may compete for work on an equalized basis; reports under this paragraph shall be made annually on the first day of October of each year.''

1981—Pub. L. 97–31 substituted in provision preceding subsec. (a) ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1976—Subsec. (c). Pub. L. 94–273 substituted ''October'' for ''July''.

1962—Pub. L. 87–877 substituted ''reports to Congress'' for ''a report to Congress as soon as practicable on'', in text preceding subsec. (a), and inserted ''; reports under this paragraph shall be made annually on the first day of July of each year'' in subsec. (c).

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

§ 1124. Witnesses

(a) Summoning; oaths; production of books and papers; fees

For the purpose of any investigation which, in the opinion of the Secretary of Transportation, is necessary and proper in carrying out this chapter, the Secretary may subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of books, papers, or other documents that are relevant to the matter under investigation. The attendance of witnesses and the production of books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof at any designated place of hearing. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Refusal to obey subpena; court orders; contempt

Upon failure of any person to obey a subpoena issued by the Secretary, the Secretary may invoke the aid of any district court of the United States within the jurisdiction in which the person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring the person to appear before the Secretary, or an employee designated by the Secretary, there to produce books, papers, or other documents, if so ordered, or to give testimony relevant to the matter under investigation. A failure to obey an order of the court may be punished by the court as a contempt thereof. Process in such a case may be served in the judicial district in which the person resides or may be found.

(June 29, 1936, ch. 858, title II, § 214, 49 Stat. 1991; June 23, 1938, ch. 600, § 3, 52 Stat. 954; Pub. L. 91–452, title II, § 241, Oct. 15, 1970, 84 Stat. 930; Pub. L. 97–31, § 12(72), Aug. 6, 1981, 95 Stat. 159; Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 89; Pub. L. 98–595, § 2, Oct. 30, 1984, 98 Stat. 3132.)

AMENDMENTS

1984—Pub. L. 98–595 amended section generally, striking out in subsec. (a) ''the Federal Maritime Commission or'' before ''the Secretary of Transportation'', ''any member of the Commission, or any officer or employee thereof designated by it or'' before ''the Secretary'', and ''the Commission or'' before ''the Secretary shall be paid'', and in subsec. (b), striking out ''the Commission or'' before ''the Secretary,'' substituting ''the Secretary'' for ''it or he'', and striking out ''the Commission or'' before ''the Secretary'' in two places.

Pub. L. 98–237 provided that this section is repealed wherever it applies to the Federal Maritime Commission, any member of the Commission, or any member, officer, or employee designated by the Commission. See Amendment note above for Pub. L. 98–595.

1981—Subsec. (a). Pub. L. 97–31, § 12(72)(A)–(C), substituted ''Federal Maritime Commission or the Secretary of Transportation'' for ''Commission''; inserted ''or the Secretary,'' after ''designated by it,'' and ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31, § 12(72)(C), (D), inserted ''or the Secretary,'' after ''Commission'' in three places and substituted ''it or he'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1970—Subsec. (c). Pub. L. 91–452 struck out subsec. (c) which related to the immunity from prosecution of any person compelled to testify or produce evidence, document or otherwise, after claiming his privilege against self-incrimination.

1938—Subsec. (a). Act June 23, 1938, struck out ''within the Federal judicial district in which the witness resides'' after ''place of hearing''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Amendment by Pub. L. 98–237 not to affect suits filed before Mar. 20, 1984, or claims arising out of conduct engaged in before Mar. 20, 1984, and filed within 1 year after that date; and agreements, contracts, modifications, and exemptions approved or licenses issued by the Federal Maritime Commission prior to Mar. 20, 1984, to continue as if approved or issued under chapter 36 (§ 1701 et seq.) of this Appendix, but new agreements, contracts, and modifications to existing, pending, or new contracts or agreements to be considered under chapter 36 of this Appendix, see section 1719 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1125. Acquisition of vessels

The Secretary of Transportation is authorized to acquire by purchase or otherwise such vessels constructed in the United States as he may deem necessary to establish, maintain, improve, or effect replacements upon any service, route, or line in the foreign commerce of the United States determined to be essential under section 1121 of this Appendix, and to pay for the same out of his construction fund: *Provided*, That the price paid therefor shall be based upon a fair and reasonable valuation, but it shall not exceed by more than 5 per centum the cost of such vessel to the owner (excluding any construction-differential subsidy and the cost of national defense features paid by the Secretary of Transportation) plus the actual cost previously expended thereon for reconditioning less depreciation based upon a twenty-five year life expectancy of the vessel. No such vessel shall be acquired by the Secretary of Transportation unless the Secretary of the Navy has certified to the Secretary of Transportation that such vessel is suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States in time of war or national emergency. Every vessel acquired under authority of this section that is not documented under the laws of the United States at the time of its acquisition shall be so documented as soon as practicable.

(June 29, 1936, ch. 858, title II, § 215, as added June 23, 1938, ch. 600, § 4, 52 Stat. 954; amended Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(73), Aug. 6, 1981, 95 Stat. 160.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing, ''his'' for ''it'', and ''his'' for ''its'' in first sentence. In first sentence after ''United States as'', ''he'' (rather than ''his'') was substituted for ''it'' as the probable intent of Congress. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Pub. L. 86–518 substituted ''twenty-five year life expectancy'' for ''twenty-year life expectancy''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(a) of Pub. L. 86–518 provided that: ''The amendments made by this Act [amending this section, sections 1152, 1153, 1156, 1157, 1159, 1160, 1175, 1177, 1181, 1195, 1204, 1274, and 1276 of this Appendix, section 1276a

of former Title 46, Shipping, and section 1737 of Title 50, Appendix, War and National Defense] shall apply only to vessels delivered by the shipbuilder on or after January 1, 1946, and with respect to such vessels shall become effective on January 1, 1960. With respect to vessels delivered by the shipbuilder before January 1, 1946, the provisions of the Merchant Marine Act, 1936 [this chapter], existing immediately before the date of enactment of this Act [June 12, 1960] shall continue in effect.''

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

Section 8(b) of Pub. L. 86–518 provided that with regard to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, depreciation under this section and sections 1152(g), 1157, 1160(d), 1177(b), 1181(c), 1195, and 1204 of this Appendix and section 1276a(4) of former Title 46, Shipping, was generally to be taken for the period prior to Jan. 1, 1960, at the rate provided by this chapter, as it existed immediately prior to the amendments made by Pub. L. 86–518, and for the period after Jan. 1, 1960, such depreciation was generally to be taken on the basis of the remaining years of a useful life of twenty-five years unless the vessel was reconstructed or reconditioned in which event such depreciation, from the time of such reconstruction or reconditioning, was generally to be taken on the basis of the remaining years of a useful life of the vessel determined jointly by the Secretary of Commerce and the Secretary of the Treasury.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960; AMENDMENT OF CONTRACT DEALING WITH VESSELS HAVING EXTENDED LIFE

Section 8(c) of Pub. L. 86–518, as amended by Pub. L. 88–225, Dec. 23, 1963, 77 Stat. 469, provided that any contract, commitment to insure a mortgage under subchapter XI of this chapter, or mortgage, between any person and the United States or any agency thereof, or any mortgage insurance contract under subchapter XI of this chapter, which was entered into prior to June 12, 1960 and which would have been affected if the provisions of the amendments made by Pub. L. 86–518 [see Effective Date of 1960 Amendment note above] were applicable thereto, could, at the request of such person agreed to by any third parties in interest, or at the request of the mortgagor agreed to by the mortgagee in the case of such a mortgage insurance contract, made within one hundred and eighty days after June 12, 1960 to the agency of the United States holding such contract, be revised to be in accordance with the law as amended by Pub. L. 86–518, with respect to such of the vessels covered thereby as were designated by the applicant, that any such revision was to provide with respect to the amendments to this section and sections 1152(g), 1157, 1160(d), 1177(b), 1181(c), 1195, and 1204 of this Appendix and section 1276a(4) of former Title 46, Shipping, that depreciation for the period prior to Jan. 1, 1960, was to be taken at the rate provided by the Merchant Marine Act, 1936, act June 29, 1936, ch. 858, 49 Stat. 1985, prior to the amendments made by Pub. L. 86–518, and that the remaining depreciation was to be taken for the period beginning Jan. 1, 1960, on the basis of the remaining years of a useful life of twenty-five years, unless the vessel was reconstructed or reconditioned, in which event such depreciation from the time of such reconstruction or reconditioning was to be taken on the basis of the remaining years of a useful life of the vessel determined jointly by the Secretary of Commerce and the Secretary of the Treasury, that any such revision was to provide with respect to any remaining unpaid debts that such unpaid debts were to be paid in equal annual installments over the remaining years of a useful life of twenty-five years, and that provisions in such contracts affecting vessels covered by Pub. L. 86–518 providing for refund of construction-differential subsidy for domestic operations under section 1156 of this Appendix and costs of national defense features for commercial use were to be amended so that for such refund payments made for the period after Dec. 31, 1959, the base upon which such refund payments were computed annually thereafter were to be the undepreciated amount of subsidy or the national defense feature, as the case may be, as at Dec. 31, 1959, divided by the years of life of the vessels as provided under Pub. L. 86–518, remaining after Dec. 31, 1959.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Section 9 of Pub. L. 86–518 provided that: ''Nothing in any amendment made by this Act [see Effective Date of 1960 Amendment note above] shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as amended [this chapter], relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.''

§ 1125a. Construction, repair, etc., of vessels for Government agencies

The Secretary of Transportation is authorized to construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the Government, to the extent that such other department or agency is authorized by law to do so for its own account, and any obligations heretofore or hereafter incurred by the Secretary for any of the aforesaid purposes shall not diminish or otherwise affect any contract authorization granted to the Secretary: *Provided*, The obligations incurred or the expenditures made are charged against and, to the amount of such obligation or expenditure, diminish the existing appropriation or contract authorization of such department or agency.

(Feb. 6, 1941, ch. 5, § 4, 55 Stat. 6; Pub. L. 97–31, § 12(74), Aug. 6, 1981, 95 Stat. 160.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' the first time it appeared and ''Secretary'' for ''Commission'' the next two times it appeared. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949 and Reorg. Plan No. 21 of 1950, set out under section 1111 of this Appendix.

§ 1126–1. Training of future naval officers under Naval Reserve Officer Training Corps programs at merchant marine academies for promotion of maximum integration of naval and merchant marine seapower of Nation

(a) It is the policy of the United States that the United States Navy and the Merchant Ma-

rine of the United States work closely together to promote the maximum integration of the total seapower forces of the Nation. In furtherance of this policy, it is necessary and desirable that special steps be taken to assure that Naval Reserve Officer Training Corps programs (for training future naval officers) be maintained at Federal and State merchant marine academies.

(b) It is the sense of the Congress that the Secretary of the Navy should work with the Maritime Administrator and the administrators of the several merchant marine academies to assure that the training available at these academies is consistent with Navy standards and needs.

(Pub. L. 94–361, title VI, §603, July 14, 1976, 90 Stat. 929; Pub. L. 97–31, §12(76), Aug. 6, 1981, 95 Stat. 160.)

CODIFICATION

Section was enacted as part of Pub. L. 94–361, popularly known as the Department of Defense Appropriation Authorization Act, 1977, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–31 substituted ''Maritime Administrator'' for ''Assistant Secretary of Commerce for Maritime Affairs''.

SUBCHAPTER III—AMERICAN SEAMEN

§1131. Manning and wage scales; subsidy contracts

(a) Investigation of wages and working conditions; establishment of wage and manning scales; incorporation in subsidy contracts

The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under subchapters VI and VII of this chapter minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: *Provided*, *however*, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) Subsidy contracts; provisions relative to officers and crew

Every contract executed under authority of subchapters VI and VII of this chapter shall require—

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

(3) Licensed officers who are members of the United States Navy Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation or the Coast Guard;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Navy Reserve.

(June 29, 1936, ch. 858, title III, §301, 49 Stat. 1992; June 23, 1938, ch. 600, §§5, 6, 52 Stat. 955; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 97–31, §12(82), Aug. 6, 1981, 95 Stat. 160; Pub. L. 109–163, div. A, title V, §515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236.)

AMENDMENTS

2006—Subsec. (b)(3), (5). Pub. L. 109–163 substituted ''Navy Reserve'' for ''Naval Reserve''.

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in five places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b)(2). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in three places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note set out below.

1938—Subsec. (a). Act June 23, 1938, §5, substituted ''minimum working conditions'' for ''reasonable working conditions,'' struck out provisions which required a formal complaint before any change in scales or working conditions, and permitted representatives of organizations certified as the proper collective bargaining agencies to represent employees at hearings.

Subsec. (b). Act June 23, 1938, §6, struck out provisions which permitted complaints and recommendations to be made to the Coast Guard or the Department of Labor, and which required licensed officers to take their meals in the main dining salon of the vessel.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

Phrase ''or the Coast Guard'' inserted in subsec. (b)(3) on authority of Reorg. Plan No. 3 of 1946, §§ 101–104, set out as a note preceding section 3 of this Appendix.

§ 1132. Reemployment rights for certain merchant seamen

(a) In general

An individual who is certified by the Secretary of Transportation under subsection (c) of this section shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38 for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) Time for application

An individual may submit an application for certification under subsection (c) of this section to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) of this section with respect to which the application is submitted.

(c) Certification determination

Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether or not the individual—

(A) was employed in the activation or operation of a vessel—

(i) in the National Defense Reserve Fleet maintained under section 1744 of Title 50, Appendix, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

(ii) that is requisitioned or purchased under section 1242 of this Appendix; or

(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46; and

(2) if the Secretary makes affirmative determinations under paragraph (1)(A) and (B), certify that individual under this subsection.

(d) Equivalence to Military Selective Service Act certificate

For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) of this section shall be considered to be the equivalent of a certificate referred to in paragraph (1) of section 4301(a) of title 38.[1]

(June 29, 1936, ch. 858, title III, § 302, as added Pub. L. 104–239, § 10(a), Oct. 8, 1996, 110 Stat. 3133.)

REFERENCES IN TEXT

A certificate referred to in paragraph (1) of section 4301(a) of title 38, referred to in subsec. (d), probably means a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)), which was referred to in section 4301(a)(1) of Title 38, Veterans' Benefits, prior to the general amendment of that section by section 2(a) of Pub. L. 103–353.

PRIOR PROVISIONS

A prior section 1132 of former Title 46, Shipping, acts June 29, 1936, ch. 858, title III, § 302, 49 Stat. 1992; Aug. 6, 1981, Pub. L. 97–31, § 12(83), 95 Stat. 160, related to citizenship of officers and crew prior to repeal by Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603. See sections 7102 and 8103 of Title 46, Shipping.

EFFECTIVE DATE

Pub. L. 104–239, § 10(b), Oct. 8, 1996, 110 Stat. 3134, provided that: ''The amendment made by subsection (a) [enacting this section], shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936 [subsec. (c)(1)(A) of this section], as amended by subsection (a), occurring after the date of enactment of this Act [Oct. 8, 1996].''

REGULATIONS

Pub. L. 104–239, § 8, Oct. 8, 1996, 110 Stat. 3133, provided that:

''(a) IN GENERAL.—The Secretary of Transportation may prescribe rules as necessary to carry out this Act [see Short Title of 1996 Amendment note set out under section 1245 of this Appendix] and the amendments made by this Act.

''(b) INTERIM RULES.—The Secretary of Transportation may prescribe interim rules necessary to carry out this Act and the amendments made by this Act. For this purpose, the Secretary of Transportation is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the date of enactment of this Act [Oct. 8, 1996].''

[1] See References in Text note below.

Pub. L. 104–239, §10(c), Oct. 8, 1996, 110 Stat. 3134, provided that: ''Not later than 120 days after the date of the enactment of this Act [Oct. 8, 1996], the Secretary of Transportation shall issue regulations implementing this section [enacting this section and provisions set out as a note above].''

SUBCHAPTER V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

§1151. Subsidy authorized for vessels to be operated in foreign trade

(a) Application for subsidy for construction; conditions precedent to granting

Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this chapter. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of higher transport capability and productivity.

(b) Submission of plans to Navy Department; certification of approval

The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(c) Application for subsidy for reconstruction or reconditioning; conditions precedent to granting; contracts

Any citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this chapter, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this subchapter and under such further conditions and limitations as may be prescribed in the rules and regulations of the Secretary of Transportation has adopted as provided in section 1114(b) of this Appendix; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this chapter.

(June 29, 1936, ch. 858, title V, §501, 49 Stat. 1995; June 23, 1938, ch. 600, §8, 52 Stat. 955; July 17, 1952, ch. 939, §§1, 2, 66 Stat. 760, 761; Pub. L. 91–469, §§6, 35(a), (c), (d), Oct. 21, 1970, 84 Stat. 1019, 1035; Pub. L. 91–603, §4(a), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469, §35(a), substituted ''Secretary of Commerce'' for ''Commission'', twice in subsecs. (a) and (b) and five times in subsec. (c).

Subsec. (a). Pub. L. 91–603 substituted ''for the operation and maintenance of'' for ''to enable it to operate and maintain'' in cl. (2).

Pub. L. 91–469, §§6(1), 35(c), substituted ''Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States'' for ''Any citizen of the United States'', inserted in subd. (2) ''if the applicant is the proposed ship purchaser,'' struck out of cl. (3) ''to replace worn-out or obsolete tonnage with new and modern ships, or otherwise'' after ''reasonably calculated'', and authorized the Secretary of Commerce to give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity; and substituted ''he'' for ''it'' before ''determines'', respectively.

Subsec. (c). Pub. L. 91–469, §§6(2), 35(d), inserted ''or any shipyard of the United States'' after ''Any citizen of the United States'' and substituted ''his'' for ''its'' before ''discretion'', respectively.

1952—Subsecs. (a), (c). Act July 17, 1952, §§1, 2, struck out requirements as to essentiality of the service, route, or line to be served by the vessel and provided that the lawful or proper use of the vessel may not be restricted.

1938—Subsec. (c). Act June 23, 1938, inserted reference to section 1114(b).

COMMISSION ON AMERICAN SHIPBUILDING

Section 41 of Pub. L. 91–469 established a Commission on American Shipbuilding, provided for the appointment and compensation of an Executive Director of the commission and other personnel, empowered the com-

mission to study American shipbuilding with a view toward increased productivity and reduced costs, and to make a report to the President and Congress no later than three years after Oct. 21, 1970 of the commission's findings and recommendations, and provided that the commission was to terminate sixty days after filing its report.

§ 1152. Construction of vessels; bids; subsidies

(a) Approval of bids; contract with bidder; acceptance of negotiated price; shipyard records, availability; contract with applicant or qualified citizen for purchase of vessel

If the Secretary of the Navy certifies his approval under section 1151(b) of this Appendix, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 1155 of this Appendix with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this chapter, of building such vessel in a foreign shipyard.

(b) Basis for fixing subsidy; cost of construction in foreign yards; annual recomputation and publication of foreign cost; limitation on construction differential; report on American shipbuilding industry

The amount of reduction in selling price which is herein termed ''construction differential subsidy'' shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of that type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary's consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 1155 of this Appendix) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

(c) Terms of sale of vessel to purchaser

In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same pro-

portion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

(d) Repealed. Pub. L. 87–877, §2(a), Oct. 24, 1962, 76 Stat. 1200

(e) Construction in navy yards; sales to citizens; terms

If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b) of this section, such sale to be in accordance with all the provisions of this subchapter.

(f) Survey of shipbuilding capability; correction of inadequacies; reimbursement of certain vessel construction and delivery expenses

The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this chapter, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under this subchapter and subchapter VII of this chapter, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this chapter, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this chapter, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under this subchapter, except section 1159 of this Appendix) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the con-

struction-differential subsidy: *Provided*, That no interest shall be paid on any refund authorized under this chapter. If the vessel is constructed under section 1159 of this Appendix the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

(g) Sale of vessels acquired by Secretary

Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 1125 of this Appendix, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b) of this section, such sale to be in accordance with all the provisions of this subchapter. Such vessel shall thereupon be eligible for an operating-differential subsidy under subchapter VI of this chapter, notwithstanding the provisions of section 1171(a)(1), and section 1180(1) of this Appendix, or any other provision of law.

(h) Installation or removal of national defense features; title to such features

The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 1744(a) of the Appendix to title 50, (2) which is requisitioned, purchased, or chartered under section 1242 of this Appendix, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under subchapter XI of this chapter, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this subchapter.

(i) Plans, specifications, and proposals for national defense features; certification of approval

The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(June 29, 1936, ch. 858, title V, § 502, 49 Stat. 1996; June 23, 1938, ch. 600, §§ 9–14, 52 Stat. 955–957; Aug. 4, 1939, ch. 417, § 6, 53 Stat. 1183; July 26, 1956, ch. 737, 70 Stat. 657; Pub. L. 86–518, §§ 1, 2, June 12, 1960, 74 Stat. 216; Pub. L. 86–607, § 1, July 7, 1960, 74 Stat. 362; Pub. L. 87–877, §§ 1, 2(a), (e), (f), Oct. 24, 1962, 76 Stat. 1200, 1201; Pub. L. 88–370, July 11, 1964, 78 Stat. 313; Pub. L. 88–410, § 1, Aug. 10, 1964, 78 Stat. 385; Pub. L. 89–127, Aug. 14, 1965, 79 Stat. 519; Pub. L. 89–589, Sept. 19, 1966, 80 Stat. 811; Pub. L. 90–572, Oct. 12, 1968, 82 Stat. 1004; Pub. L. 91–40, July 8, 1969, 83 Stat. 44; Pub. L. 91–469, §§ 7, 35(a), (e)–(g), Oct. 21, 1970, 84 Stat. 1019, 1035, 1036; Pub. L. 91–603, § 4(b), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 93–71, July 10, 1973, 87 Stat. 169; Pub. L. 94–372, §§ 2, 3, July 31, 1976, 90 Stat. 1042; Pub. L. 96–210, Mar. 17, 1980, 94 Stat. 100; Pub. L. 96–387, § 3, Oct. 7, 1980, 94 Stat. 1545; Pub. L. 97–31, § 12(84), (85), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Subsecs. (a), (b). Pub. L. 97–31, § 12(84), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

Subsec. (c). Pub. L. 97–31, § 12(84), (85), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing, and ''Secretary of Transportation's'' for ''Secretary of Commerce's''.

Subsecs. (e) to (i). Pub. L. 97–31, § 12(84), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1980—Subsec. (a). Pub. L. 96–210 struck out '', at any time prior to June 30, 1979,'' before ''to accept a price for''.

Subsecs. (h), (i). Pub. L. 96–387 added subsecs. (h) and (i).

1976—Subsec. (a). Pub. L. 94–372, § 2, in third sentence, substituted ''at any time prior to June 30, 1979'' for ''at any time prior to June 30, 1976'', struck out former par. (i) relating to a negotiated price resulting in a construction-differential subsidy equal to or less than 45%, 43%, 41%, 39%, 37% and 35% for fiscal years 1971, 1972,

1973, 1974, 1975 and 1976, respectively, and redesignated former pars. (ii), (iii), and (iv) as (1), (2), and (3), respectively.

Subsec. (b). Pub. L. 94–372, §3, substituted provisions limiting the construction differential to 50% (excluding costs for national defense features), and allowing the Secretary, where such differential is exceeded, to contract with any bidder (notwithstanding section 1155) to reduce the differential to within such percentage for provisions limiting the differential to 55% except for passenger vessels having characteristics set forth in section 1153, which shall be 60%, limiting the differential after June 30, 1970 to 50%, permitting the Secretary to negotiate and contract with any bidder, regardless of section 1155 if in the years 1972, 1973, 1974, 1975 and 1976 a specified percentage is exceeded, prohibiting contracts commencing in 1972, where such differential exceeds such limits unless consideration has been given to the possibility that the commitment to ship construction programs may not be continued under existing limits, and requiring notification to the Commission on American Shipbuilding if the Secretary finds it necessary to enter into such contracts.

1973—Subsec. (a). Pub. L. 93–71 in third sentence, substituted ''June 30, 1976'' for ''June 30, 1973'' and limited vessel construction subsidy to 39 per centum in fiscal 1974, 37 per centum in fiscal 1975, and 35 per centum in fiscal 1976.

1970—Pub. L. 91–469, §35(a), substituted ''Secretary of Commerce'' for ''Commission'', six times in subsec. (a), four times in subsec. (c), five times in subsec. (e), four times in subsec. (f), and four times in subsec. (g).

Subsec. (a). Pub. L. 91–603 substituted ''for the operation and maintenance of'' for ''to enable it to operate and maintain''.

Pub. L. 91–469, §§7(1), 35(e), struck out in first sentence '', on behalf of the applicant,'' after ''may secure'', substituted in second sentence ''proposed ship purchaser, the Secretary of Commerce'' for ''applicant, the Commission'', inserted conditions precedent to acceptance of negotiated price for ship construction in fiscal years 1971, 1972, and 1973, including availability of shipyard records in connection therewith, substituted in last sentence ''for the sale'' for ''with the applicant for the purchase by him'' before ''of such vessel'', and authorized sale of vessel upon its completion to the applicant if he is the proposed ship purchaser and if not to another citizen, if the Secretary determines that such citizen possesses the necessary qualifications to enable it to operate and maintain the vessel; and substituted ''he'' for ''it'' before ''may secure'', respectively.

Subsec. (b). Pub. L. 91–469, §7(2), provided for recomputation of estimated foreign cost annually, publication of notice to compute or recompute such estimated foreign cost, offer of opportunity to interested persons to file written statements, consideration of relevant matter so filed, explanation of basis of determination, prohibition commencing with fiscal year 1972 of construction contracts requiring construction-differential in excess of prescribed percentages unless there is no likelihood of attaining the percentages and the commitment to the ship construction program may not be continued, notice to Commission on American Shipbuilding of execution of such a contract, and submission of a Commission report on the American shipbuilding industry within six months of the notice, substituted ''may equal'' for ''shall equal'', ''construction of that type vessel'' for ''construction of the proposed vessel'', ''exceeds the following percentages: in fiscal year 1971, 45 per centum; in fiscal year 1972, 43 per centum; in fiscal year 1973, 41 per centum; in fiscal year 1974, 39 per centum; in fiscal year 1975, 37 per centum; in fiscal year 1976 and thereafter, 35 per centum'' for ''in any case exceeds the foregoing applicable percentage of such cost'', and ''with such bidder, notwithstanding the provisions of the first sentence of section 1155 of this Appendix with respect to competitive bidding,'' for ''on behalf of the applicant'', and inserted ''with any bidder, whether or not such bidder is the lowest bidder,'' after ''the Secretary may negotiate'' and '', or as close thereto as possible'' before ''or less''.

Subsec. (c). Pub. L. 91–469, §§7(3), 35(f), inserted ''of sale'' after introductory phrase ''In such contract'', in revising interest rate substituted provision for a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior rate of 3½ per centum per annum, substituted in last sentence ''rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel'' for ''rate of 3½ per centum per annum'', ''purchaser'' for ''applicant'' in six places, ''purchaser's portion of the price'' for ''applicant's purchase price'', and ''purchaser's'' for ''applicant's''; and substituted ''Secretary of Commerce's'' for ''Commission's'', respectively.

Subsec. (e). Pub. L. 91–469, §§7(4), 35(g), substituted ''a citizen of the United States'' for ''the applicant'' in first sentence and for ''an applicant'' in third sentence and ''his'' for ''its'' in second sentence, respectively.

Subsec. (f). Pub. L. 91–469, §7(5), in first par., substituted ''this subchapter and subchapter VII of this chapter'' for ''subchapter VII of this chapter and section 1159 of this Appendix, and the Federal Maritime Board, in connection with ship construction, reconstruction, or reconditioning under this subchapter (except section 1159 of this Appendix),'' and ''in such manner as he may determine'' for ''in such manner as it may be determined'' in second sentence; and in second par., substituted ''purchaser'' for ''applicant'' in six places and ''United States port in an essential service'' for ''United States port on any essential service of the operator'' in fourth sentence.

Subsec. (g). Pub. L. 91–469, §7(6), substituted ''application'' and ''any citizen of the United States'' for ''agreement'' and ''an applicant under this subchapter'' in first sentence.

1969—Subsec. (b). Pub. L. 91–40 substituted ''June 30, 1970'' for ''June 30, 1969''.

1968—Subsec. (b). Pub. L. 90–572 substituted ''June 30, 1969'' for ''June 30, 1968''.

1966—Subsec. (b). Pub. L. 89–589 substituted ''June 30, 1968'' for ''June 30, 1966''.

1965—Subsec. (b). Pub. L. 89–127 substituted ''June 30, 1966'' for ''June 30, 1965''.

1964—Subsec. (b). Pub. L. 88–370 substituted ''June 30, 1965'' for ''June 30, 1964''.

Subsec. (f). Pub. L. 88–410 provided for reimbursement of expenses incurred during construction and the delivery voyage of a vessel, if as a result of allocation under this subsection, they are in excess of the estimated expenses that would have been incurred if the vessel had been constructed by the lowest responsible bidder, less one-half of any gross income allocable to the delivery voyage, minus one-half the extra expenses incurred to produce such income, and that such reimbursement shall not be part of the construction-differential subsidy, that no interest be paid on any refund authorized, that if the vessel is constructed under section 1159 the price of the vessel is to be reduced by such excess expenses less such gross income, calculated as above, obtained on the delivery voyage, that if the vessel is not to receive the operating-differential subsidy the delivery voyage shall be deemed terminated at the port where the vessel begins loading, and if it does receive the subsidy, when the vessel begins loading at a United States port on any essential service of the operator, but in either case there is to be no compensation greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the one of the lowest bidder, that if the allocation results in a saving of expenses for the applicant, the applicant shall pay an equal amount to the Secretary, and if the vessel was built with the subsidy, such payment shall not be considered a reduction of the subsidy.

1962—Subsec. (b). Pub. L. 87–877, §1, among other changes, substituted references to the Secretary, for references to the Federal Maritime Board, wherever appearing, and provided that in the reconstruction or reconditioning of a passenger vessel having the characteristics set forth in section 1153 of this Appendix, the construction differential shall not exceed 60 per centum of the cost, excluding national defense features, however, after June 30, 1964, the construction differential approved by the Secretary for any vessel shall not exceed 50 per centum of such cost.

Subsec. (d). Pub. L. 87–877, §2(a), repealed subsec. (d) which provided for giving a preference to Pacific coast bidders in obtaining a subsidy and specified the conditions to be met therefor.

Subsec. (f). Pub. L. 87–877, §2(e), (f), substituted ''at least once each year'' for ''periodically'', ''existing or impending inadequacy'' for ''existing inadequacy'', and struck out '', with the approval of the President,'' before ''allocate such construction''.

1960—Subsec. (b). Pub. L. 86–607, §1(1), increased the limitation on construction differential from 50 to 55 per centum of the construction cost of a vessel and provided for such percentage limitation in lieu of former 33⅓ per centum of construction cost, increased to 50 per centum on affirmative vote of two Board members.

Subsec. (c). Pub. L. 86–518, §1, substituted ''twenty-five'' for ''twenty'' in two places.

Subsec. (d). Pub. L. 86–607, §1(2), increased the limitation on construction-differential from 50 to 55 per centum of the construction cost of a vessel.

Subsec. (g). Pub. L. 86–518, §2, substituted ''at the rate of 4 per centum per annum'' for ''based on a twenty-year life expectancy''.

1956—Subsec. (f). Act July 26, 1956, substituted provisions that required Secretary of Commerce, with advice of Secretary of the Navy, to make periodic survey of privately owned shipyards to determine adequacy for providing mobilization base, and that any inadequacies would be corrected by Secretary of Commerce or Federal Maritime Board with the approval of the President by allocating work to such yards, for former provisions allowing periodic survey by the Federal Maritime Board of both Navy and privately owned shipyards.

1939—Subsec. (b). Act Aug. 4, 1939, substituted ''a foreign shipbuilding center which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed'' for ''a principal foreign shipbuilding center which may reasonably be availed of by the principal foreign competitors in the service in which the vessel is to be operated, and which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated cost of construction in foreign countries of vessels of the type proposed to be constructed''.

1938—Subsec. (a). Act June 23, 1938, §9, substituted ''of the contract price of the vessel'' for ''the cost of the vessel''.

Subsec. (b). Act June 23, 1938, §10, permitted negotiations and contracts to build vessels in domestic shipyards in cases where the construction differential exceeds 33⅓ per centum or 50 per centum of the cost, and to require a report where there is reason to believe that the bidding is collusive.

Subsec. (c). Act June 23, 1938, §11, among other changes, substituted ''of not less than 25 per centum of the price at which the vessel is sold to the applicant'' for ''a sum equal to 25 per centum of the construction cost of the vessel paid by the Commission (excluding cost of national-defense features as above provided)'', and required the applicant to pay, not less frequently than annually, interest at the rate of 3½ per centum per annum on those portions of payments made to the shipbuilder which are chargeable to the applicant's purchase price of the vessel (after deduction of the applicant's cash payments).

Subsec. (d). Act June 23, 1938, §12, substituted ''construction-differential subsidy'' for ''construction subsidy'', and inserted provisions relating to limitation on approval of construction-differential in excess of 50 per centum of the construction cost of the vessel paid by the Commission.

Subsec. (f). Act June 23, 1938, §13, added subsec. (f).

Subsec. (g). Act June 23, 1938, §14, added subsec. (g).

EFFECTIVE DATE OF 1962 AMENDMENT

Section 5 of Pub. L. 87–877 provided that: ''The amendment made by the first section of this Act [amending this section] shall be effective only with respect to contracts entered into with respect to (a) the construction of a vessel the keel of which was laid after June 30, 1959, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Secretary may, with the consent of the parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Oct. 24, 1962] to the extent authorized by the amendment made by this Act.''

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 2 of Pub. L. 86–607, as amended by Pub. L. 87–222, Sept. 13, 1961, 75 Stat. 494, provided that: ''The amendment made by this Act [amending this section] shall be effective only with respect to any contract entered into not later than two years after the date of enactment of this Act [July 7, 1960] under the provisions of section 502 of the Merchant Marine Act, 1936 [this section], with respect to (a) the construction of a vessel the keel of which was laid, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Federal Maritime Board may, with the consent of the parties thereto, modify any such contract entered into prior to the date of enactment of the first amendment to Public Law 86–607 (74 Stat. 362) [Sept. 13, 1961], to the extent authorized by the amendment made by this Act, as amended.''

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

MODIFICATION OF CONTRACTS; CONDITIONS

Section 2 of Pub. L. 88–410 provided that: ''The amendment made by this Act [amending this section] shall be effective with respect to any contract entered into under the provisions of section 502 of the Merchant Marine Act, 1936, as amended [this section], and the Secretary of Commerce shall, with the consent of the other parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Aug. 10, 1964] to the extent authorized by the amendment made by this Act, except that the Secretary shall not agree to any such modification which would result in a payment by the United States unless, within one year after enactment of this Act, application is made for such modification. No payment shall be made by the Secretary under the provisions of the amendment made by this Act with respect to any contract entered into after the date of enactment of this Act unless the recipient of such payment has agreed to the modification of any contract which was entered into prior to the date of enactment of this Act and to which such recipient was a party, and which, if modified under the authority of this section, would result in a payment to the United States.''

CONTRACTS FOR NEW SHIP CONSTRUCTION AWARDED ON BIDS OPENED PRIOR TO OCTOBER 24, 1962

Section 2(a) of Pub. L. 87–877 provided in part: ''That the repeal of subsection (d) of section 502 of the Merchant Marine Act, 1936 [subsec. (d) of this section], shall not be effective with respect to contracts for new

ship construction under title V of said Act [this subchapter] awarded on the basis of bids opened prior to the date of the enactment of this Act. [Oct. 24, 1962].''

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

CONSTRUCTION AND SALE OF SUPERLINER PASSENGER VESSELS

Pub. L. 85–521, July 15, 1958, 72 Stat. 359, provided: ''That it is necessary, in order to carry out the merchant marine policy declared in the Merchant Marine Act, 1936, as amended [this chapter], to have (a) a superliner passenger vessel equivalent to the steamship United States, to replace the steamship America for operation on an essential trade route in the North Atlantic, and (b) a superliner passenger vessel with capacity of approximately one thousand four hundred passengers for operation on an essential trade route in the Pacific Ocean. Nothing herein shall preclude the operation of either of these vessels in other areas, subject to the approval of the Federal Maritime Board. There is hereby authorized to be appropriated to the Department of Commerce such sums as may be necessary, to remain available until expended, for the construction, outfitting, and equipping of such vessels.

''SEC. 2. Concurrently with entering into contracts with shipbuilders for the construction of said vessels, the Board is authorized to enter into contracts for the sale of the vessels, fully outfitted and equipped, upon their completion, (a) with respect to the superliner passenger vessel equivalent to the steamship United States, to the United States Lines Company, for the fixed price of $47,000,000, and (b) with respect to the superliner passenger vessel for operation in the Pacific Ocean, to the American President Lines, Limited, for the fixed price of $34,000,000, or 45 per centum of the domestic construction cost of the vessel fully outfitted and equipped (excluding national defense features and escalation) whichever is the greater. The sales prices stated herein shall include the cost of stabilizers, all outfit and equipment not covered by the shipbuilders' bids, customary architects' and interior decorators' fees for design, inspection during construction, and all escalation provided for in the shipbuilders' bids: *Provided, however*, That such prices shall be increased in an amount equal to 45 per centum of any net change in the cost of the vessels (other than national defense features) arising out of any changes in the bid specifications approved by the Federal Maritime Board or any changes in the usual outfitting and equipping of the vessels if such changes are requested by the purchasers and approved by the Federal Maritime Board after the enactment hereof. Terms and conditions of payment of the purchase price shall be as provided for in sections 502(c) and 503 of the Merchant Marine Act, 1936, as amended [sections 1152(c) and 1153 of this Appendix]. In order that such construction of the superliner passenger vessel equivalent to the steamship United States may be accomplished promptly, the Federal Maritime Board, in its discretion, may have such a vessel constructed, without further bidding, under outstanding bids which have hitherto been made by United States shipbuilders on a similar vessel.

''SEC. 3. Except as otherwise provided in this Act, the construction and sale of the superliner passenger vessels authorized by this Act shall be in accordance with the provisions of the Merchant Marine Act, 1936, as amended [this chapter].

''SEC. 4. For the purposes of this Act the words 'construction differential subsidy' used in the Merchant Marine Act, 1936, as amended [this chapter], shall mean the difference between the sales price paid by the purchaser hereunder and the cost of the vessel (less national defense features) including the cost of stabilizers, all outfit and equipment not covered by the shipbuilders' bids, customary architects' and interior decorators' fees for design, inspection during construction, and all escalation provided for in the shipbuilders' bids.

''SEC. 5. Any contract for an operating differential subsidy on the operation of a vessel constructed and sold under this Act shall be subject to the provisions of title VI of the Merchant Marine Act, 1936, as amended [subchapter VI of this chapter]: *Provided, however*, That such contract shall provide that, if at the end of any recapture period, the net profits on the operation of such vessel for such recapture period, computed without regard to profits or losses on other vessels operated by the contractor, exceed 10 per centum per annum on a cumulative basis upon the contractor's capital necessarily employed in the operation of such vessel, as determined by the Federal Maritime Board, the contractor shall account to the United States for an amount equal to 75 per centum of such excess profits.''

§ 1153. Documentation of completed vessel under laws of United States; delivery to purchaser; first mortgage to secure deferred payments

Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this subchapter and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchaser price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: *Provided*, That notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 1737(b)[1] of the Appendix to title 50, reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under subchapter V of this chapter, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed

[1] See References in Text note below.

speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation, such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 868 of this Appendix.

(June 29, 1936, ch. 858, title V, § 503, 49 Stat. 1997; June 23, 1938, ch. 600, § 15, 52 Stat. 957; July 17, 1952, ch. 939, § 3, 66 Stat. 761; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 91–469, §§ 8, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97–31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

REFERENCES IN TEXT

Section 1737 of the Appendix to title 50, referred to in text, was repealed by Pub. L. 101–225, title III, § 307(12), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469 substituted ''purchaser'' for ''applicant'' in three places, ''sale between the purchaser and the Secretary of Commerce'' for ''purchase between the applicant and the Commission'' in first sentence; and ''Secretary of Commerce'' for ''Commission'', in four places, respectively.

1960—Pub. L. 86–518 substituted ''twenty-five years'' for ''twenty years''.

1952—Act July 17, 1952, amended section to provide that as to passenger vessels delivered after Mar. 8, 1946, the balance of the payments shall be secured by a first preferred mortgage, that the purchasers' obligation to pay will be discharged by surrender of the vessel and all rights to the Government, and to set up conditions governing type of vessel.

1938—Act June 23, 1938, amended section generally, substituting ''construction-differential subsidy'' for ''construction subsidy'', and ''or so long as there remains due'' for ''and so long as there remains due''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1154. Purchase of vessel constructed in accordance with application for subsidy; bid or negotiated price basis for subsidy and payments for cost of national defense features; documentation

If a qualified purchaser under the terms of this subchapter desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this subchapter, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 1152 of this Appendix, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 1152(a) of this Appendix or under a contract negotiated by the Secretary of Transportation as provided in section 1152(b) of this Appendix in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this subchapter to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 1153 of this Appendix. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

(June 29, 1936, ch. 858, title V, § 504, 49 Stat. 1998; June 23, 1938, ch. 600, § 16, 52 Stat. 958; July 17, 1952, ch. 939, § 4, 66 Stat. 761; Pub. L. 91–469, §§ 9, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97–31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469, provided a negotiated price as an alternative basis for payment of subsidy and cost of national defense features, and substituted ''Secretary of Commerce'' for ''Commission'', respectively.

1952—Act July 17, 1952, inserted provision that the lawful or proper use of the vessel may not be restricted.

1938—Act June 23, 1938, substituted ''domestic shipyards'' for ''American shipyards'', struck out ''and if it is the lowest bid'' after ''fair and reasonable'', and changed ''construction subsidy'' to ''construction-differential subsidy''.

§ 1155. Eligible shipyards; materials; conditions of contracts; limitation to American shipyards; American materials, waiver; ability of bidders; filing bids and data

All construction in respect of which a construction-differential subsidy is allowed under this subchapter shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K[1] of section 1401 of title 19; *Provided, however*, That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise explanation of the basis therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this subchapter V, the term ''shipyard of the United States'' means shipyards within any of the United States and the Commonwealth of Puerto Rico.

(June 29, 1936, ch. 858, title V, § 505, 49 Stat. 1998; June 23, 1938, ch. 600, §§ 17, 40(a), 52 Stat. 958, 964; Oct. 25, 1951, ch. 562, § 3(4), 65 Stat. 639; Pub. L. 86–624, § 35(a), July 12, 1960, 74 Stat. 421; Pub. L. 91–469, §§ 10, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 97–31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

REFERENCES IN TEXT

Paragraph K of section 1401 of title 19, referred to in text, which was classified to par. (k) of section 1401 of Title 19, Customs Duties, was redesignated par. (h) of section 1401 of Title 19 by Pub. L. 91–271, title III, § 301(c)(1), June 2, 1970, 84 Stat. 288.

[1] See References in Text note below.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469 struck out subsec. (a) designation, struck out of first sentence ''within the continental limits'' and ''the applicant to reject, and in'' after ''shipyard'' and ''right reserved in'', provided for waiver of use of American materials, substituted definition of ''shipyard of the United States'' for definition of ''continental limits of the United States'', and struck out: subsec. (b) provisions for conditions of contracts, reports as to costs and net profits, limitation on profit, payment to Secretary of excess profit, subdivision of contracts, inspection of records and premises, and contracts for scientific equipment; subsec. (c) provisions as to method of determining profit and limitation on salaries; subsec. (d) provisions for utilization of Treasury Department employees; and subsec. (e) provisions for rescinding approval of bid on refusal of bidder to comply with conditions, new bids, and construction in navy yards; and substituted ''Secretary of Commerce'' for ''Commission'' in three places, respectively.

1960—Subsec. (a). Pub. L. 86–624 inserted definition of ''continental limits of the United States.''

1951—Subsec. (a). Act Oct. 25, 1951, substituted ''on file until disposed of as provided by law'' for ''permanently on file'' in last sentence.

1938—Subsec. (a). Act June 23, 1938, § 40(a), substituted ''construction-differential subsidy is allowed'' for ''subsidy is allowed''.

Subsec. (b). Act June 23, 1938, § 17, made section inapplicable to contracts or other arrangements entered into under this subchapter by the terms of which the United States undertakes to pay only for national-defense features.

§ 1156. Operation of subsidy constructed vessel limited to foreign trade; repayments to Secretary for deviations

Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this chapter. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as

such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

(June 29, 1936, ch. 858, title V, § 506, 49 Stat. 1999; June 23, 1938, ch. 600, § 18, 52 Stat. 958; Mar. 18, 1959, Pub. L. 86–3, § 18(b)(1), 73 Stat. 12; Pub. L. 86–518, § 3, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(87), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' the first time it appeared and ''Secretary'' for ''Commission'' the next four times it appeared. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Pub. L. 86–518 substituted ''one-twenty-fifth'' for ''one-twentieth''.

1959—Pub. L. 86–3 included stops at the State of Hawaii for vessels operated on voyages in foreign trade.

1938—Act June 23, 1938, made changes in phraseology and substituted ''construction-differential subsidy'' for ''construction subsidy''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960, AMENDMENT OF CONTRACTS DEALING WITH VESSELS HAVING EXTENDED LIFE

For provisions authorizing revision and amendment of certain contracts, see section 8(c) of Pub. L. 86–518, as amended, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1157. Construction of new vessel to replace obsolete; purchase of old vessel by Secretary; bond of seller against liens

If a contract is made by the Secretary of Transportation under authority of this subchapter for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided*, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further*, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

(June 29, 1936, ch. 858, title V, § 507, 49 Stat. 2000; June 23, 1938, ch. 600, § 19, 52 Stat. 959; July 17, 1952, ch. 939, § 5, 66 Stat. 761; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(88), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''his'' for ''its''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Pub. L. 86–518 substituted ''twenty-five-year life'' for ''twenty-year life''.

1952—Act July 17, 1952, made section applicable to vessels in domestic trade.

1938—Act June 23, 1938, struck out provisions which authorized a deduction for obsolescence.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker

or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1158. Disposition of vessels transferred to Maritime Administration of Department of Transportation

(a) Authority to scrap or sell obsolete vessels

If the Secretary of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 1112 of this Appendix, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisement and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: *Provided*, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

(b) Authority to convey vessels

(1) In general

Notwithstanding section 1160(j) of this Appendix, the Secretary of Transportation may convey the right, title, and interest of the United States Government in any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation, if—

(A) the recipient is a non-profit organization, a State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof, or the District of Columbia;

(B) the recipient agrees not to use, or allow others to use, the vessel for commercial transportation purposes;

(C) the recipient agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;

(D) the recipient agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;

(E) the recipient has a conveyance plan and a business plan that describes the intended use of the vessel, each of which have been submitted to and approved by the Secretary;

(F) the recipient has provided proof, as determined by the Secretary, of resources sufficient to accomplish the transfer, necessary repairs and modifications, and initiation of the intended use of the vessel; and

(G) the recipient agrees that when the recipient no longer requires the vessel for use as described in the business plan required under subparagraph (E)—

(i) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

(ii) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State in which the recipient is incorporated, then—

(I) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under the provisions of section 501(c)(3) of title 26, or to the Federal Government or a State or local government for a public purpose; and

(II) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to such organizations as the court shall determine are organized exclusively for public purposes.

(2) Other equipment

At the Secretary's discretion, additional equipment from other obsolete vessels of the National Defense Reserve Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.

(3) Additional terms

The Secretary may require any additional terms the Secretary considers appropriate.

(4) Delivery of vessel

If conveyance is made under this subsection the vessel shall be delivered to the recipient at a time and place to be determined by the Secretary. The vessel shall be conveyed in an ''as is'' condition.

(5) Limitations

If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of a vessel would better serve the interests of the Government, the Secretary shall pursue the more favorable disposition of the obsolete vessel and shall not be liable for any damages that may result from an intended recipient's reliance upon a proposed transfer.

(6) Reversion

The Secretary shall include in any conveyance under this subsection terms under which all right, title, and interest conveyed by the Secretary shall revert to the United States if the Secretary determines the vessel has been used other than as described in the business plan required under paragraph (1)(E).

(June 29, 1936, ch. 858, title V, § 508, 49 Stat. 2000; Pub. L. 97–31, § 12(89), Aug. 6, 1981, 95 Stat. 161; Pub. L. 108–136, div. C, title XXXV, § 3512, Nov. 24, 2003, 117 Stat. 1789.)

AMENDMENTS

2003—Pub. L. 108–136 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''the

Maritime Administration of the Department of Transportation'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1159. Vessels to be operated in domestic trade; terms and conditions of construction aid and sale to purchaser

Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this subchapter, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12½ per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: *Provided*, That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 1153 of this Appendix, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

(June 29, 1936, ch. 858, title V, § 509, 49 Stat. 2000; June 23, 1938, ch. 600, § 20, 52 Stat. 959; June 6, 1939, ch. 186, 53 Stat. 810; July 17, 1952, ch. 939, § 6, 66 Stat. 761; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–877, § 2(b), Oct. 24, 1962, 76 Stat. 1200; Pub. L. 90–183, Dec. 10, 1967, 81 Stat. 559; Pub. L. 90–214, Dec. 18, 1967, 81 Stat. 660; Pub. L. 91–469, § 11, Oct. 21, 1970, 84 Stat. 1022; Pub. L. 92–374, Aug. 10, 1972, 86 Stat. 528; Pub. L. 95–173, § 8, Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95–505, Oct. 24, 1978, 92 Stat. 1755; Pub. L. 97–31, § 12(90), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1978—Pub. L. 95–505 substituted ''ten knots'' for ''fourteen knots''.

1977—Pub. L. 95–173 inserted '', or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots'' after ''less than eight knots''.

1972—Pub. L. 92–374 inserted ''or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots'' in sentence dealing with percentage of cost payable by purchaser, after ''barge of more than two thousand five hundred gross tons''.

1970—Pub. L. 91–469 substituted ''Secretary of Commerce'' for ''Commission'' in seven places, ''purchaser'' for ''applicant'' in first three places, and provision for a rate of interest not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior rate of 3½ per centum per annum.

1967—Pub. L. 90–214 included provision for oceangoing tugs of more than two thousand five hundred horsepower or oceangoing barges of more than two thousand five hundred gross tons.

Pub. L. 90–183 inserted ''or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots'' after ''fourteen knots,''.

1962—Pub. L. 87–877 struck out second proviso which, in the case of a vessel to be constructed under this section, gave a preference to an applicant who had his principal place of business on the Pacific coast of the United States, but not including one in business on or before Aug. 1, 1935, who subsequently changed his principal place of business to the Pacific coast, if such vessel was to be operated from such coast, the amount of the lowest responsible shipyard bid did not exceed by more than six per centum, a bid by such a shipyard on the Atlantic coast, and a port on the Pacific coast was designated and continued as the home port of the vessel, which set a lower rate of interest on deferred payments that would otherwise be applicable with respect to periods of construction of such vessel and its operation exclusively in coastwise, intercoastal, and other

domestic trade, and which enumerated four conditions under which such lower interest rate would not apply.

1960—Pub. L. 86–518 substituted ''twenty-five'' for ''twenty'' in two places.

1952—Act July 17, 1952, provided that as to vessels delivered after Mar. 8, 1946, the balance of the payments shall be secured by a first preferred mortgage and that the purchaser's obligation to pay will be discharged by surrender of the vessel and all rights to the Government.

1939—Act June 6, 1939, struck out ''except as otherwise provided in this title'' after ''no construction-differential subsidy shall be allowed'', and inserted provisions requiring the applicant to pay not less than 12½ per centum of the cost in case the vessel is designed to be of not less than 3,500 gross tons and to be capable of a sustained speed of not less than 14 knots.

1938—Act June 23, 1938, substituted ''foreign or domestic trade'' for ''domestic trade'', and inserted provisions requiring the Commission to pay for the cost of national-defense features.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1160. Acquisition of obsolete vessels

(a) Definitions

When used in this section—

(1) The term ''obsolete vessel'' means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term ''new vessel'' means a vessel or vessels, each of which (A) is constructed under the provisions of this chapter, and is acquired within two years from the date of completion of such vessel, or is purchased under section 1204 of this Appendix, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this chapter, and documented under the laws of the United States.

(b) Promotion of construction of new vessels; allowance on obsolete vessels

In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be determined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel constructed under the provisions of this chapter, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this chapter. In case the new vessel is not constructed under the provisions of this chapter, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation, be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) Utility value of new vessel; gross tonnage

The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) Amount of allowance on obsolete vessel; determination of amount

The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of con-

struction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) Recognition of gain for income tax purposes; basis for gain or loss

No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) Report to Congress

The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) Use of vessels 25 years old or more

An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 1242 of this Appendix, as amended, and except as otherwise provided in this chapter for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(h) Repealed. Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925

(i) Exchange of vessels; valuation; scrapping of traded out vessels

The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 808 and 835 of this Appendix, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

(j) Placement in national defense reserve fleet of acquired vessels

Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 [50 App. U.S.C. 1744] and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this subchapter or in subchapters VII or XI of this chapter.

(June 29, 1936, ch. 858, title V, § 510, as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1183; amended July 17, 1952, ch. 939, §§ 7, 8, 66 Stat. 762; Aug. 10, 1954, ch. 664, 68 Stat. 680; Pub. L. 85–332, Feb. 20, 1958, 72 Stat. 17; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–575, July 5, 1960, 74 Stat. 312; Pub. L. 87–401, Oct. 5, 1961, 75 Stat. 833; Pub. L. 87–755, Oct. 5, 1962, 76 Stat. 751; Pub. L. 89–254, §§ 1, 2, Oct. 10, 1965, 79 Stat. 980; Pub. L. 91–469, §§ 12, 13, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 93–605, § 1, Jan. 2, 1975, 88 Stat. 1965; Pub. L. 95–177, Nov. 15, 1977, 91 Stat. 1368; Pub. L. 97–31, § 12(91), Aug. 6, 1981, 95 Stat. 161; Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925; Pub. L. 101–595, title VII, § 704, Nov. 16, 1990, 104 Stat. 2994.)

REFERENCES IN TEXT

The Federal income-tax laws, referred to in subsec. (e), are classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1990—Subsec. (i). Pub. L. 101–595 amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: "The Secretary of Transportation is authorized to acquire mariner class vessels constructed under subchapter VII of this chapter and Public Law 911, Eighty-first Congress, and other suitable vessels, constructed in the United States, which have never been under foreign documentation, in exchange for obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the trade-in and trade-out vessels shall be valued at the higher of their scrap value in domestic or foreign markets as of the date of the exchange: *Provided*, That in any exchange transactions, the value assigned to the traded-in and traded-out vessels will be determined on the same basis. The value of the traded-out vessels shall be as nearly as possible equal to the value of the traded-in vessel plus the fair value of the cost of towing the traded-out vessel to the place of scrapping. To the extent the value of the traded-out vessel exceeds the value of the traded-in vessel plus the fair value of the cost of towing, the owner of the traded-in vessel shall pay the excess to the Secretary of Transportation in cash at the time of exchange. This excess shall be deposited into the Vessel Operations Revolving Fund and all costs incident to the lay-up of the vessels acquired under this chapter may be paid from balances in the Fund. No payments shall be made by the Secretary of Transportation to the owner of any traded-in vessel in connection with any exchange under

this subsection. Notwithstanding the provisions of sections 808 and 835 of this Appendix, vessels traded out under this subsection may be scrapped in approved foreign markets. The provision of this subsection (i) as it read prior to the 1975 amendment shall govern all transactions made thereunder prior to that amendment.''

1989—Subsec. (h). Pub. L. 101–225 struck out subsec. (h) which related to acquisition of tankers for national defense reserve.

1981—Subsecs. (a)(1), (b). Pub. L. 97–31, §12(91)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

Subsecs. (c) to (e). Pub. L. 97–31, §12(91)(B), substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (f). Pub. L. 97–31, §12(91)(B), (C), substituted ''Secretary of Transportation'' for ''Commission'' and ''his'' for ''its''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (g). Pub. L. 97–31, §12(91)(B), (D), substituted ''Secretary of Transportation'' for ''Commission'' and ''Secretary's'' for ''Commission's'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (h), (i). Pub. L. 97–31, §12(91)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

Subsec. (j). Pub. L. 97–31, §12(91)(A), (E), substituted ''Maritime Administration of the Department of Transportation'' for ''Secretary of Commerce'' and ''Secretary of Transportation'' for ''Secretary of Commerce''.

1977—Subsec. (i). Pub. L. 95–177 struck out '', within two years after the enactment of this subsection,'' after ''is authorized'' and ''that are scheduled for scrapping'' after ''National Defense Reserve Fleet'', inserted ''and other suitable vessels, constructed in the United States, which have never been under foreign documentation,'' after ''Eighty-first Congress,'', and substituted ''the trade-in and trade-out vessels'' for ''the traded-in and traded-out vessels'' and ''the 1975 Amendment'' for ''this amendment''.

1975—Subsec. (i). Pub. L. 93–605 added subsec. (i). A prior subsec. (i) providing authority for the Secretary of Commerce to acquire vessels of one thousand five hundred gross tons or over which were constructed in the United States in exchange for more modern or efficient ocean-going vessels of one thousand five hundred gross tons or over owned by the United States under specified conditions expired on July 5, 1972.

1970—Subsec. (a)(1). Pub. L. 91–469, §12(a), in redefining ''obsolete vessel'', substituted in subd. (B) ''in the judgment of the Secretary of Commerce, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest'' for ''is not less than seventeen years old and, in the judgment of the Commission, is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States'', substituted in subd. (C) ''has been owned'' for ''is owned'' and deleted therefrom ''and has been owned by such citizen or citizens'' preceding ''for at least three years'', and deleted concluding proviso defining ''obsolete vessel'' as meaning a vessel, until June 30, 1964, which is not less than 1,350 gross tons, is not less than 12 years old, and is citizen owned for three year period prior to acquisition hereunder.

Subsec. (b). Pub. L. 91–469, §§12(b), 35(a), substituted ''capital construction fund'' for ''capital reserve fund'' and ''Secretary of Commerce'' for ''Commission'' in seven places, respectively.

Subsec. (i). Pub. L. 91–469, §13, in amending first sentence, substituted ''1972'' and ''which were constructed in the United States'' for ''1970'' and ''which were constructed or contracted for by the United States shipyards before September 3, 1945'' and struck out ''war-built vessels (which are defined for purposes of this subsection as'' and ''which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)'' before and after ''oceangoing vessels of one thousand five hundred gross tons or over''.

1965—Subsec. (i). Pub. L. 89–254, §1(a), substituted ''before July 5, 1970, vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards before September 3, 1945'' for ''within five years from the date of enactment of this Act war-built vessels (which are defined for purposes of this subsection as oceangoing vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)'', and inserted ''(which are defined for purposes of this subsection as oceangoing vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)''.

Subsec. (i)(1). Pub. L. 89–254, §1(b), amended par. (1) to apply the 3 year prohibition against any vessel being operated under an operating-differential subsidy to the applicant or any affiliate of the applicant rather than to the vessel itself.

Subsec. (i)(2). Pub. L. 89–254, §1(c), required the value of a traded out vessel to be calculated in the same manner as its value was determined when it was traded in, except that vessels traded in prior to Oct. 1, 1960, shall be valued on the basis yielding the highest fair return to the government commensurate with the purpose of this subsection, and required in each exchange of vessels under this subsection, the value of the traded-in vessel, unless based on scrap value, and the value of the traded-out vessel to be calculated in the same manner.

Subsec. (i)(9). Pub. L. 89–254, §1(d), substituted provisions permitting tanker vessels to be traded out under the provisions of this subsection only for major conversions into dry cargo carriers or liquid bulk carriers, including natural gas carriers but excluding bulk petroleum carriers, except where traded out for use exclusively in trade and commerce on the Great Lakes, including the St. Lawrence River and Gulf, for provisions which prohibited tanker-vessels to be traded out under the provisions of this subsection.

Subsec. (j). Pub. L. 89–254, §2, added subsec. (j).

1962—Subsec. (a)(1). Pub. L. 87–755 substituted ''June 30, 1964'' for ''June 30, 1962''.

1961—Subsec. (b). Pub. L. 87–401, §1(1), provided that if the owner requests, the vessel shall be acquired by the Federal Maritime Board or Secretary of Commerce either when the owner contracts for construction or purchase of a new ship or within 5 days of actual delivery of the new vessel to the owner, that the amount of allowance be determined at the time of acquisition of the vessel by the Board or Secretary, and if at such time, the owner contracts for construction or purchase of a new vessel, the allowance shall be applied upon the price of the new vessel, that if the Board or Secretary acquired title to the vessel at time of delivery of the new vessel, the allowance shall be deposited in the owner's capital reserve fund, and that this subsection shall apply to exchanges for vessels hereafter contracted to be built, or eligible for exchange but not so exchanged in connection with contracts for new vessels executed prior to Oct. 1, 1960.

Subsec. (d). Pub. L. 87–401, §1(2), provided for a depreciation value based upon a twenty-year life, if applicable, and substituted ''In the event the obsolete vessel is acquired by the Board or Secretary at the time the owner contracts for the construction of a new vessel, and the owner'' for ''If the owner of the obsolete vessel''.

1960—Subsec. (d). Pub. L. 86–518 substituted ''twenty-five-year life'' for ''twenty-year life''.

Subsec. (g). Pub. L. 86–518 substituted ''twenty-five years'' for ''twenty years'' in two places.

Subsec. (i). Pub. L. 86–575 added subsec. (i).

1958—Subsec. (a)(1). Pub. L. 85–332 substituted ''June 30, 1962'' for ''June 30, 1958''.

1954—Subsec. (h). Act Aug. 10, 1954, added subsec. (h).

1952—Subsec. (a)(1). Act July 17, 1952, § 7, provided that until June 30, 1958, the minimum age in determining the eligibility of ''obsolete vessels'' for turn in for credit allowance on a new vessel is reduced from 17 to 12 years.

Subsec. (d). Act July 17, 1952, § 8, provided that the rate for the use of the obsolete vessel should be fixed at the time that the contract for the new vessel is entered into.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

SECRETARY OF COMMERCE AUTHORIZED TO PURCHASE STEAMSHIP UNITED STATES; REQUISITION OR PURCHASE BY UNITED STATES

Pub. L. 92–296, § 2, May 16, 1972, 86 Stat. 140, as amended by Pub. L. 94–536, Oct. 17, 1976, 90 Stat. 2497; Pub. L. 96–111, § 2, Nov. 15, 1979, 93 Stat. 846, provided that: ''The Secretary of Commerce is authorized and directed to purchase the steamship United States, as is, where is, at the depreciated cost of the vessel to the owner, as determined by the Secretary of Commerce, less the unpaid principal and interest on the mortgage on the vessel, for layup in the National Defense Reserve Fleet and operation for the account of any agency or department of the United States during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1242], and/or for sale or charter to a qualified operator for operation under the American flag in the coastwise and/or foreign commerce of the United States and/or between foreign ports notwithstanding the provision of section 506 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1156]: *Provided*, That for hire carriage in coastwise commerce of the United States is limited to passengers, their accompanying baggage, and one thousand measurement tons of cargo, of forty cubic feet each, per annum in any single coastwise trade: *Provided further*, That for hire carriage of cargo in excess of the aforesaid one thousand tons shall be unlawful, or for use as a floating hotel in or on the navigable waters of the United States. Whenever the conditions set forth in section 902, the Merchant Marine Act of 1936 [46 App. U.S.C. 1242], exist, the vessel may be requisitioned or purchased by the United States and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, as amended (46 U.S.C. 1242) [46 App. U.S.C. 1242]. The depreciated cost of the vessel to the owner shall be computed on the schedule adopted by the Internal Revenue Service for income tax purposes. Such determination shall be final. The Secretary of Commerce shall require the owner of the vessel to agree that it will pay all existing private obligations related to the vessel, and that it will commit an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale, within a reasonable period not to exceed twelve months of receipt, as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [this chapter].''

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

SUSPENSION OF SUBSECTION (g) REPEALED

Act May 14, 1940, ch. 201, § 1, 54 Stat. 216, as extended by act June 16, 1942, ch. 416, 56 Stat. 370, which suspended subsec. (g) of this section until six months after the end of World War II should have been proclaimed or such earlier time as the Congress by concurrent resolution or the President might designate, was repealed by act July 25, 1947, ch. 327, § 1, 61 Stat. 449.

§ 1161. Reserve funds for construction or acquisition of vessels; taxation

(a) "New vessel" defined

When used in this section the term ''new vessel'' means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under subchapters V or VII of this chapter, or the construction of which has been aided by a mortgage insured under subchapter XI of this chapter; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this chapter, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) Establishment of construction reserve funds

For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in section 1101 of this Appendix, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or ves-

sels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(c) Recognition of gain for taxation where proceeds of sale or indemnity for loss deposited in fund

In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b) of this section, then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury,

no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) of this subsection and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term ''net proceeds'' and the term ''net indemnity'' mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) Basis for determining gain or loss and for depreciation of new vessels

The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g) of this section, in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c) of this section.

(e) Order, proportions, etc., of deposits and withdrawals

For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c) of this section, any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) Amounts in fund as accumulation of earnings or profits

With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code.

(g) Benefits of section conditioned upon manner and time of expenditure of deposits

The provisions of subsections (c) and (f) of this section shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation, for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of

any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12½ per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this subchapter or not purchased from the Secretary of Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) Authorizations of extensions of time

The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extensions of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: *Provided*, That until January 1, 1965, in addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) Taxation of deposits upon failure of conditions

Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) Assessment and collection of deficiency tax

Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: *Provided*, *however*, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) of this section to be included in gross income.

(k) Taxable years governed by section

This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(*l*) Vessels deemed constructed or acquired by taxpayers owning stock in corporations constructing or acquiring vessels

For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(m) Definitions

The terms used in this section shall have the same meaning as in chapter 1 of the Internal Revenue Code.

(n) "Contract for the construction" and "construction contract" defined

The terms ''contract for the construction'' and ''construction contract'', as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such

taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(*o*) "Reconstruction and reconditioning" defined

The terms ''reconstruction and reconditioning'', as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the objectives of this chapter will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a ''new vessel'' within the meaning of this section for such reconstruction, reconditioning, or modernization.

(June 29, 1936, ch. 858, title V, §511, as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; amended June 17, 1943, ch. 130, 57 Stat. 157; Dec. 23, 1944, ch. 714, 58 Stat. 920; July 17, 1952, ch. 939, §§9–14, 66 Stat. 762–764; Pub. L. 86–237, §1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 87–303, §3, Sept. 26, 1961, 75 Stat. 661; Pub. L. 87–782, §1, Oct. 10, 1962, 76 Stat. 796; Pub. L. 88–227, §1, Dec. 23, 1963, 77 Stat. 470; Pub. L. 88–595, §1, Sept. 12, 1964, 78 Stat. 943; Pub. L. 97–31, §12(92), Aug. 6, 1981, 95 Stat. 161.)

REFERENCES IN TEXT

Section 102 of the Internal Revenue Code, referred to in subsec. (f), means section 102 of the Internal Revenue Code of 1939, which was classified to section 102 of former Title 26, Internal Revenue Code. Section 102 was repealed by section 7851(a)(1) of Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 1 of the Internal Revenue Code, referred to in subsec. (m), means chapter 1 of the Internal Revenue Code of 1939, which was classified to chapter 1 of former Title 26, Internal Revenue Code. Chapter 1 was comprised of sections 1 to 482 of former Title 26. Sections 1 to 142 and 145 to 482 were repealed by section 7851(a)(1) of Title 26, Internal Revenue Code. Sections 143 and 144 were repealed by section 7851(a)(2) of Title 26. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

AMENDMENTS

1981—Subsecs. (a), (b). Pub. L. 97–31, §12(92)(A), substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (g). Pub. L. 97–31, §12(92), substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing and in subpars. (A) and (B), substituted ''him'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (h), (i), (n), (*o*). Pub. L. 97–31, §12(92)(A), substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1964—Subsec. (h). Pub. L. 88–595 substituted ''January 1, 1965'' for ''January 1, 1964'' and ''December 31, 1965'' for ''December 31, 1964''.

1963—Subsec. (h). Pub. L. 88–227 substituted ''January 1, 1964'' for ''January 1, 1963'' and ''December 31, 1964'' for ''December 31, 1963''.

1962—Subsec. (h). Pub. L. 87–782 substituted ''January 1, 1963'' for ''January 1, 1962'' and ''December 31, 1963'' for ''December 31, 1962''.

1961—Subsec. (h). Pub. L. 87–303 substituted ''January 1, 1962'' for ''January 1, 1961'' and ''December 31, 1962'' for ''December 31, 1961''.

1959—Subsec. (h). Pub. L. 86–237 substituted ''January 1, 1961'' and ''December 31, 1961'' for ''March 31, 1953'' and ''September 30, 1953,'' respectively.

1952—Subsec. (b). Act July 17, 1952, §9, extended its provisions to the reconstruction and reconditioning of vessels.

Subsec. (c). Act July 17, 1952, §10, struck out obsolete language.

Subsec. (d). Act July 17, 1952, §11, provided for the adjustment in the tax basis of a vessel if the reserve funds are used for reconstruction, reconditioning, or liquidation of a purchase-money indebtedness on vessels.

Subsec. (g). Act July 17, 1952, §12, provided that the reserve funds may be used for reconstruction, reconditioning, and liquidation of purchase money indebtedness, and extended the time of required commitment of deposits in order to avoid the imposition of taxes at the established rate.

Subsec. (h). Act July 17, 1952, §13(a), extended extension period.

Subsec. (i). Act July 17, 1952, §13(b), limited the additional 1.1% tax imposed on deposits in lieu of the capital-stock tax or declared excess profit tax to deposits made in taxable years ending on or before June 30, 1945.

Subsec. (*o*). Act July 17, 1952, §14, added subsec. (*o*).

1944—Subsec. (c). Act Dec. 23, 1944, amended first sentence generally.

Subsec. (n). Act Dec. 23, 1944, added subsec. (n).

1943—Subsec. (b). Act June 17, 1943, extended provisions of first sentence to ownership in whole or in part and to persons who had acquired or were having constructed a vessel or vessels.

Subsec. (c). Act June 17, 1943, changed the dates of deposit in second sentence.

Subsec. (g). Act June 17, 1943, inserted ''(or in the discretion of the Commission, for a part interest therein)''.

Subsec. (h). Act June 17, 1943, substituted ''Commission'' for ''Commissioner of Internal Revenue'' at beginning of subsec. and inserted proviso.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–595 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1964, or on the date of enactment of this Act [Sept. 12, 1964], whichever date first occurs.''

EFFECTIVE DATE OF 1963 AMENDMENT

Section 2 of Pub. L. 88–227 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1963, or on the date of enactment of this Act [Dec. 23, 1963], whichever date first occurs.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–782 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1962, or on the date of enactment of this Act [Oct. 10, 1962], whichever date first occurs.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–237 provided that: ''The amendment made by the first section of this Act

[amending this section] shall take effect June 30, 1959, or on the date of enactment of this Act [Sept. 8, 1959], whichever date first occurs.''

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

TERMINATION OF WAR

Section 5 of act Aug. 8, 1947, ch. 515, 61 Stat. 917, as amended Apr. 20, 1949, ch. 82, 63 Stat. 56; Oct. 1, 1951, ch. 443, 65 Stat. 366; July 16, 1952, ch. 913, 66 Stat. 737, provided: ''For the purposes of the proviso of subsection (h) of section 511 of the Merchant Marine Act, 1936, as amended, added to such subsection by the Act of June 17, 1943 (57 Stat. 158) [subsec. (h) of this section], the present war shall be considered as having terminated on March 31, 1953.''

§ 1162. Limitation on restrictions

(a) Except as provided in subsection (b) of this section, notwithstanding any other provision of law or contract, all restrictions and requirements under sections 1153, 1156, and 1212 of this Appendix applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

(b)(1) Except as provided in paragraph (2), the restrictions and requirements of section 1156 of this Appendix shall terminate upon the expiration of the 20-year period beginning on the date of the original delivery of the vessel from the shipyard for operation of a vessel in any domestic trade in which it has operated at any time since 1996.

(2) Paragraph (1) shall not affect any requirement to make payments under section 1156 of this Appendix.

(June 29, 1936, ch. 858, title V, § 512, as added Pub. L. 104–239, § 7, Oct. 8, 1996, 110 Stat. 3133; amended Pub. L. 108–136, div. C, title XXXV, § 3532(b), Nov. 24, 2003, 117 Stat. 1818.)

AMENDMENTS

2003—Pub. L. 108–136 substituted ''(a) Except as provided in subsection (b) of this section, notwithstanding'' for ''Notwithstanding'' and added subsec. (b).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective Oct. 1, 2004, see section 3537(a) of Pub. L. 108–136, set out in an Effective Date note under section 53101 of Title 46, Shipping.

SUBCHAPTER VI—VESSEL OPERATING ASSISTANCE PROGRAMS

PART A—OPERATING-DIFFERENTIAL SUBSIDY PROGRAM

§ 1171. Subsidy authorized for operation of vessels in foreign trade or in off-season cruises

(a) Application for subsidy; conditions precedent to granting

The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 1183 of this Appendix. In this subchapter VI the term ''essential service'' means the operation of a vessel on a service, route, or line described in section 1121(a) of this Appendix or in bulk cargo carrying service described in section 1121(b) of this Appendix. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 1183 of this Appendix, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns, or leases or can and will build or purchase, or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this chapter. To the extent the application covers cruises, as authorized under section 1183 of this Appendix, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

(b) Statements as to financial interests to accompany application; penalty for false statements

Every application for an operating-differential subsidy under the provisions of this subchapter shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this subchapter or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.

(June 29, 1936, ch. 858, title VI, § 601, 49 Stat. 2001; Pub. L. 87–45, § 2, May 27, 1961, 75 Stat. 90; Pub.

L. 91–469, §§ 14, 35(a), (h), Oct. 21, 1970, 84 Stat. 1023, 1035, 1036; Pub. L. 91–603, § 4(c), (d), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, § 12(93), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' in two places and for ''Commission'' in one place. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1970—Subsec. (a). Pub. L. 91–603 included the leasing of vessels in cl. (2).

Pub. L. 91–469 inserted definition of ''essential service'', and substituted ''an essential service'' for ''such service, route, or line'' in cl. (1) and ''in an essential service'' for ''and maintain the service, route, or line'' in cl. (2); substituted ''Secretary of Commerce'' for ''Commission'' in two places; and substituted ''he'' for ''it'' in third sentence preceding ''determines that'', respectively.

1961—Subsec. (a). Pub. L. 87–45 required the Federal Maritime Board to consider applications for financial aid in the operation of vessels in cruises under section 1183 of this Appendix, and permitted the Board, to the extent the application covers such cruises, to make the portion of the determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1172. Determination of necessity of subsidy to meet competition

Except with respect to cruises authorized under section 1183 of this Appendix, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.

(June 29, 1936, ch. 858, title VI, § 602, 49 Stat. 2002; June 23, 1938, ch. 600, § 40(b), 52 Stat. 964; Pub. L. 87–45, § 3, May 27, 1961, 75 Stat. 91; Pub. L. 91–469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97–31, § 12(94), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469 substituted ''Secretary of Commerce'' for ''Commission'' in two places.

1961—Pub. L. 87–45 excepted cruises authorized under section 1183 of this Appendix.

1938—Act June 23, 1938, substituted ''operating-differential subsidy'' for ''operating subsidy''.

§ 1173. Contracts for payment of subsidy

(a) Authorization of contracts

If the Secretary of Transportation approves the application, he may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 1183 of this Appendix for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this chapter, as the Secretary of Transportation shall require to effectuate the purposes and policy of this chapter, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

(b) Amount of subsidy

Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 1183 of this Appendix, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 1151(b) of this Appendix) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: *Provided, however*, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 1121(b) of this Appendix, pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 1183 of this Appendix, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: *Provided, however*, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 1183 of this Appendix) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

(c) "Collective bargaining costs", "base period costs", "base period", and "subsidizable wage costs of United States officers and crews" defined; determination of collective bargaining costs and establishment of new base periods; wage change index

(1) When used in this section—

(A) The term ''collective bargaining costs'' means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 1183 of this Appendix and costs relating to:

(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: *Provided*, That the Secretary of Transportation shall afford representatives of the collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: *And provided further*, That in determining whether officers or members of the crew are necessary for the efficient and economical operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following October 21, 1970, to be unnecessary for the efficient and economical operation of the vessel.

(B) The term ''base period costs'' means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following October 21, 1970, and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term ''base period costs'' means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: *Provided*, That in no event shall the base period cost be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period.

(C) The term ''base period'' means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

(D) The term ''subsidizable wage costs of United States officers and crews'' in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

(d) Foreign wage computation; foreign manning

Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation, the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

(e) Monthly payment of wage subsidy; procedures for calculation and payment of subsidy on certain expenses

The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in ''collective-bargaining costs'' but are not included in the daily rate because they are unpredictably timed.

(f) Monthly percentage payment of other than wage subsidy; security for refund of overpayments; payment of remainder after audit of voyage accounts

Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.

(June 29, 1936, ch. 858, title VI, § 603, 49 Stat. 2002; Aug. 4, 1939, ch. 417, § 8, 53 Stat. 1185; Pub. L. 87–45, § 4, May 27, 1961, 75 Stat. 91; Pub. L. 87–243, Sept. 14, 1961, 75 Stat. 513; Pub. L. 91–469, §§ 15–17, 35(a), (i), Oct. 21, 1970, 84 Stat. 1023, 1024, 1035, 1036; Pub. L. 97–31, § 12(94), Aug. 6, 1981, 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Subsec. (a). Pub. L. 91–469, §§ 15, 35(a), (i), substituted ''an essential service'' for ''such service, route, or line,'' ''Secretary of Commerce'' for ''Commission'' in three places, and ''he'' for ''it'' before ''may enter'', respectively.

Subsec. (b). Pub. L. 91–469, § 16, in amending first sentence, inserted '', except as the parties should agree upon a lesser amount,'' after ''shall provide'', ''subsistence of officers and crews on passenger vessels, as defined in section 1183 of this Appendix,'' after ''cost of insurance,'' and proviso for payment of necessary sums to make operating costs of American-flag vessels providing bulk cargo carrying services competitive with operating costs of similar vessels under foreign registry, and substituted ''vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews,'' for ''vessels on a service, route, or line shall not exceed the excess of'', ''maintenance, and repairs not compensated by insurance'' for ''maintenance, repairs not compensated by insurance,'' and ''incurred'' for ''wages and subsistence of officers and crews, and any other items of expense in which the Commission shall find and determine that the applicant is at a substantial disadvantage in competition with vessels of the foreign country hereinafter referred to,''.

Subsecs. (c) to (e). Pub. L. 91–469, § 17(1), added subsecs. (c) to (e). Former subsec. (c) redesignated (f).

Subsec. (f). Pub. L. 91–469, § 17, redesignated former subsec. (c) as (f), substituted provision for monthly payment of ninety percent of subsidy (insurance and maintenance and repair and subsistence of officers and crews) on basis of estimated accrual of subsidy and payment of remaining ten percent after audit of voyage accounts for prior provisions for determination and payment of subsidy on basis of final accounting made annually or after some agreed fixed period and for payments on account limited to 75 per centum of estimated accrued amount and an additional 15 per centum for any particular voyage after an audit, substituted provision to ''assure'' rather than ''insure'' refund, and repealed second par. prohibition against payment of subsidy until contractor provided evidence that minimum wages prescribed by Secretary of Commerce under section 1131(a) of this Appendix had been paid to ships personnel.

1961—Subsec. (a). Pub. L. 87–45, § 4(a), inserted ''and in cruises authorized under section 1183 of this Appendix'' after ''in such service, route, or line''.

Subsec. (b). Pub. L. 87–45, § 4(b), inserted provisions for the computation of the subsidy for periods during which a vessel cruises as authorized by section 1183 of this Appendix.

Subsec. (c). Pub. L. 87–243 increased, effective on and after July 1, 1962, the amount payable on account from not more than 75 per centum to not more than 90 per centum of the amount estimated to have accrued on account of such subsidy, and reduced the amount payable to the contractor after the audit of the voyage from 15 to 5 per centum.

1939—Subsec. (c). Act Aug. 4, 1939, permitted payment to the contractor of an additional 15 per centum.

OPERATING-DIFFERENTIAL SUBSIDY CONTRACTS; AMENDMENT AND RECAPTURE PROVISIONS

Section 40 of Pub. L. 91–469 provided that:

''(a) The amendments made by this Act [see Short Title of 1970 Amendment note set out under section 1245 of this Appendix] shall not affect any contract with the Secretary of Commerce or his delegates that is in effect on the date of enactment of this Act [Oct. 21, 1970]. At the request of the other party to such operating-differential subsidy contract, the Secretary of Commerce shall amend such contract so as to be in accordance with all of the amendments made by this Act. No amendment made by this Act shall be incorporated in such contract unless all such amendments are incorporated in such contract, except that if the other party elects to continue under the ''old fund'' as provided in section 607 as amended by section 21 of this Act [section 1177 of this Appendix], such amendment need not be incorporated in such contract. Until such contract is amended or if such contract is not amended, it shall be administered in accordance with the provisions of the Merchant Marine Act, 1936 [this chapter] as they existed immediately prior to enactment of this Act. Nothing in section 16 of this Act amending section 603 of the Merchant Marine Act, 1936 [subsec. (b) of this section] or in the contracts made thereunder, shall be deemed to affect or to change existing law or contracts with respect to the proceedings now pending before the Secretary of Commerce relating to the payment of subsidy in respect of cargoes covered by section 901(b)(1) of the Merchant Marine Act, 1936 [section 1241(b)(1) of this Appendix], section 616(a) of Title 15, United States Code, or section 2631 of Title 10, United States Code.

''(b) If any operating-differential subsidy contract in existence on the date of enactment of this Act [Oct. 21, 1970] is amended by including all of the amendments made by this Act or all of the amendments made by this Act other than those made by section 21 [amending section 1177 of this Appendix], the operator may elect to terminate his recapture period as of the date of such contract amendment and have his recapture computed on the basis of the shortened period, or he may elect to continue his recapture period until the end of its ten-year term and continue his recapture obligations as provided by the Merchant Marine Act, 1936, prior to the enactment of this Act [see Short Title of 1970 Amendment note set out under section 1245 of this Appendix] until the end of such ten-year period. The amendments in either event shall provide that, with respect to seafaring personnel, in determining the rights and obligations of the contractor under such contract, the limitation of section 805(c) of the Merchant Marine Act, 1936 [section 1223(c) of this Appendix], as it existed immediately before the enactment of this Act [Oct. 21, 1970] shall not apply.''

§ 1174. Additional subsidy; when authorized

If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State,

that the subsidy provided for in this subchapter is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.

(June 29, 1936, ch. 858, title VI, § 604, 49 Stat. 2003; June 23, 1938, ch. 600, § 21, 52 Stat. 959; Aug. 4, 1939, ch. 417, § 9, 53 Stat. 1185; Pub. L. 97–31, § 12(95), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' and ''he'' for ''it'', and struck out provision relating to subsidy voting requirements. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note set out below.

1939—Act Aug. 4, 1939, reduced requirement in proviso from unanimous vote to vote of four commissioners.

1938—Act June 23, 1938, authorized additional subsidies only where the Commission (which had reference to United States Maritime Commission) by unanimous vote finds after consultation with the Secretary of State that the subsidy is inadequate.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1175. Vessels excluded from subsidy

(a) Vessels engaged in coastwise or intercoastal trade; vessels on inland waterways

No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however*, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this chapter to be operating in foreign trade.

(b) Vessels more than 25 years old

No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before October 8, 1996, that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) Vessels to be operated in an essential service served by citizens of United States

No contract shall be made under this subchapter with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this chapter additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.

(June 29, 1936, ch. 858, title VI, § 605, 49 Stat. 2003; July 17, 1952, ch. 939, § 15, 66 Stat. 764; Pub. L. 86–3, § 18(b)(2), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 89–348, § 1(9), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 91–469, §§ 18, 19, 26(b), 35(a), (j), Oct. 21, 1970, 84 Stat. 1025, 1026, 1034–1036; Pub. L. 97–31, § 12(96), Aug. 6, 1981, 95 Stat. 162; Pub. L. 104–239, § 3(a), Oct. 8, 1996, 110 Stat. 3126.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–239 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty-five years of age unless the Secretary of Transportation finds that it is to the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon.''

1981—Subsecs. (b), (c). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Subsec. (a). Pub. L. 91–469, § 26(b), struck out ''on the Great Lakes or'' after ''No vessel operating'' in last sentence.

Subsec. (b). Pub. L. 91–469, § 18, substituted ''unless the Secretary of Commerce'' for ''unless the Commission'' and deleted preceding such words ''except one whose life expectancy has been determined as provided in section 1177(b) of this Appendix for a period in no case to exceed the life expectancy determined thereunder,''.

Subsec. (c). Pub. L. 91–469, §§ 19, 35(a), (j), substituted ''in an essential service'' for ''on a service, route, or line'', ''an essential service'' for ''a service, route, or line'', and ''such essential service'' for ''competitive services, routes, or lines,'' and struck out ''in such service, route, or line'' before ''is inadequate'' in first sentence; substituted ''Secretary of Commerce'' for ''Commission'' in four places; and substituted ''he'' for ''it'' before ''may deem'' in last sentence, respectively.

1965—Subsec. (b). Pub. L. 89–348 struck out provisions which required an annual report covering each case and the reasons therefor in which an exception is made to the prohibition against payment of an operating-differential subsidy for the operation of a vessel beyond its economic life.

1960—Subsec. (b). Pub. L. 86–518 substituted ''twenty-five years'' for ''twenty years''.

1959—Subsec. (a). Pub. L. 86–3 included stops at the State of Hawaii.

1952—Subsec. (b). Act July 17, 1952, permitted the recomputation of the life-expectancy of a reconstructed or reconditioned vessel in use under an operating differential-subsidy contract, and provided for recomputation of depreciation changes.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACT, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1176. Readjustments; change in service; withdrawal from service; payment of excess profits; wages, etc.; American materials

Every contract for an operating-differential subsidy under this subchapter shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this subchapter, is necessary in the accomplishment of the purposes of this chapter, it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential services and any services authorized under section 1183 of this Appendix, covered by his contract in an economical and efficient manner, and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 1155 of this Appendix, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency.

(June 29, 1936, ch. 858, title VI, § 606, 49 Stat. 2004; June 23, 1938, ch. 600, § 22, 52 Stat. 960; July 17, 1952, ch. 939, § 16, 66 Stat. 764; May 10, 1956, ch. 247, § 1, 70 Stat. 148; Pub. L. 86–624, § 35(b), July 12, 1960, 74 Stat. 421; Pub. L. 87–45, § 5, May 27, 1961, 75 Stat. 91; Pub. L. 91–469, §§ 20, 35(a), (k), Oct. 21, 1970, 84 Stat. 1026, 1035, 1036; Pub. L. 97–31, § 12(96), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

1970—Pub. L. 91–469, § 35(a), substituted ''Secretary of Commerce'' for ''Commission'' wherever appearing.

Cl. (1). Pub. L. 91–469, § 35(k)(1)–(3), substituted ''his'' for ''its'' in two places, ''he'' for ''it'', and ''His'' for ''Its'', respectively.

Cl. (3). Pub. L. 91–469, §§ 20(1), 35(k)(2), substituted ''and essential service'' for ''the service, route, or line'' and ''he'' for ''it'', respectively.

Cl. (4). Pub. L. 91–469, § 20(2), (3), substituted ''in such an essential service'' for ''on such service, route, or line'' and ''essential service'' for ''service, route, or line'' in two places, respectively.

Cl. (5). Pub. L. 91–469, § 20(4), (5), (6)–(9), struck out cl. (5) providing that when at the end of any ten-year pe-

riod the contractor's net profit on his subsidized vessels has averaged more than 10 percent of his capital necessarily employed, he shall pay one-half of such net profit to the United States, but not exceeding the operating-differential subsidy paid to him during the period, as partial or complete reimbursement of the operating subsidy; redesignated cl. (6) as (5); and substituted therein ''essential services'', ''services'', and ''an economical'' for ''the vessel's services, routes, and lines'', ''cruises'', and ''the most economical'' and struck out therefrom ''but with due regard to the wage and manning scales and working conditions prescribed by the Commission as provided in subchapter III of this chapter'' after ''efficient manner,'', respectively.

Cls. (6), (7). Pub. L. 91–469, § 20(10), (11), redesignated cl. (7) as (6) and substituted ''an operator who received subsidy with respect to subsistence of officers and crews shall use as such subsistence items'' for ''the operator shall use'', ''1155'' for ''1155(a)'', and ''and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico,'' and struck out ''and equipment'' before ''outside the United States'' and definition of ''continental limits of the United States'' as including States of Alaska and Hawaii, respectively. Former cl. (6) redesignated (5).

1961—Cl. (6). Pub. L. 87–45 inserted '', and any cruises authorized under section 1183 of this Appendix,'' after ''services, routes, and lines''.

1960—Pub. L. 86–624 inserted definition of ''continental limits of the United States.''

1956—Cl. (5). Act May 10, 1956, provided that termination of subsidy contract shall not end the 10-year recapture period if subsidized operations continue under a new, or consecutive, contract.

1952—Cl. (5). Act July 17, 1952, substituted ''life expectancy of the subsidized vessel determined as provided in section 1177(b) of this Appendix'' for ''twenty-year life expectancy of the subsidized vessels''.

1938—Cl. (5). Act June 23, 1938, substituted ''ten-year period'' for ''five-year period'' in three places, and inserted provisions to permit computation of net profits without regard to capital gains and losses.

AMENDMENT OF CONTRACT

Section 2 of act May 10, 1956, provided that: ''Each operating-differential subsidy contract in force on the date of enactment of this act [May 10, 1956] shall, if the subsidized contractor consents, be amended to conform to the provisions of section 606 of the Merchant Marine Act, 1936 [this section], as amended by section 1 of this act.''

§ 1177. Capital construction fund

(a) Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1) of this section) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the ''fund'') with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f) of this section. The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A) of this section) which is attributable to the operation of the agreement vessels.

(b) Ceiling on deposits; lessees; "agreement vessel" defined

(1) The amount deposited under subsection (a) of this section in the fund for any taxable year shall not exceed the sum of:

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1986 [26 U.S.C. 167] for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term ''agreement vessel'' includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) Investment requirements; depositories; fiduciary requirements; interest-bearing securities; stock: percentage for domestic issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues

Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary;

except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability of deposits; eligible deposits

(1) For purposes of the Internal Revenue Code of 1986—

(A) taxable income (determined without regard to this section and section 7518 of such Code [26 U.S.C. 7518]) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A) of this section,

(B) gain from a transaction referred to in subsection (b)(1)(C) of this section, shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code [26 U.S.C. 316]) shall be determined without regard to this section and section 7518 of such Code [26 U.S.C. 7518], and

(E) in applying the tax imposed by section 531 of such Code [26 U.S.C. 531] (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses

For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) The capital account shall consist of—

(A) amounts referred to in subsection (b)(1)(B) of this section,

(B) amounts referred to in subsection (b)(1)(C) of this section other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B) of this section,

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 243(a)(1)] of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C) of this section) be allowed a deduction under section 243 of the Internal Revenue Code of 1986 [26 U.S.C. 243], and

(D) interest income exempt from taxation under section 103 of such Code [26 U.S.C. 103].

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A) of this section,

(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section, reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C) of this section, and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a

qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) Tax treatment of qualified withdrawals; basis: reduction

(1) Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied,in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) of this section which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate; amounts not withdrawn after 25 years; highest marginal rate of tax

(1) Except as provided in subsection (i) of this section, any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

(A) first as made out of the ordinary income account,

(B) second as made out of the capital gain account, and

(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4) of this section, shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1986—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 of such Code [26 U.S.C. 6601] and no addition to the tax shall be payable under section 6651 of such Code [26 U.S.C. 6651],

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 1176(5) of this Appendix as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) AMOUNT NOT WITHDRAWN FROM FUND AFTER 25 YEARS FROM DEPOSIT TAXED AS NONQUALIFIED WITHDRAWAL.—

(A) IN GENERAL.—The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) EARNINGS TREATED AS DEPOSITS.—The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) AMOUNTS COMMITTED TREATED AS WITHDRAWN.—For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) AUTHORITY TO TREAT EXCESS FUNDS AS WITHDRAWN.—If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) AMOUNTS IN FUND ON JANUARY 1, 1987.—For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) NONQUALIFIED WITHDRAWALS TAXED AT HIGHEST MARGINAL RATE.—

(A) IN GENERAL.—In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be determined—

(i) by excluding such withdrawal from gross income, and

(ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code [26 U.S.C. 1, 11].

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code [26 U.S.C. 1(h), 1201(a)] applies, the rate of tax taken into account under the preceding sentence shall not exceed 15 percent (34 percent in the case of a corporation).

(B) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 [26 U.S.C. 1 et seq.] for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code [26 U.S.C. 172] for the taxable year in which such withdrawal occurs.

(C) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 172(b)(2)].

(i) Corporate reorganizations and partnership changes

Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 [26 U.S.C. 381] applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K[1] of such Code [26 U.S.C. 701 et seq.]).

(j) Treatment of existing funds; relation of old to new fund

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as ''old fund'') under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) may not simultaneously maintain such old fund and a new fund established under this section, and

(C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C) of this section, the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) Definitions

For purposes of this section—

[1] So in original. Probably should be followed by ''of chapter 1''.

(1) The term ''eligible vessel'' means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

(2) The term ''qualified vessel'' means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) which the person maintaining the fund agrees with the Secretary will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term ''agreement vessel'' means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term ''United States'', when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term ''United States foreign trade'' includes (but is not limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 1156 of this Appendix.

(6) The term ''joint regulations'' means regulations prescribed under subsection (*l*) of this section.

(7) The term ''vessel'' includes cargo handling equipment which the Secretary determines is intended for use primarily on the vessel. The term ''vessel'' also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term ''noncontiguous trade'' means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term ''Secretary'' means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(*l*) Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) Departmental reports and certification

(1) In general

For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) Contents of reports

Each report shall set forth the name and taxpayer identification number of each person—

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

(June 29, 1936, ch. 858, title VI, § 607, 49 Stat. 2005; June 23, 1938, ch. 600, §§ 23–28, 52 Stat. 960, 961; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, §§ 17–19, 66 Stat. 764, 765; Pub. L. 85–637, Aug. 14, 1958, 72 Stat. 592; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87–45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87–271, Sept. 21, 1961, 75 Stat. 570; Pub. L. 91–469, § 21(a), Oct. 21, 1970, 84 Stat. 1026; Pub. L. 93–116, Oct. 1, 1973, 87 Stat. 421; Pub. L. 97–31, § 12(97), Aug. 6, 1981, 95 Stat. 162; Pub. L. 99–514, § 2, title II, § 261(d), (e), Oct. 22, 1986, 100 Stat. 2095, 2214; Pub. L. 100–647, title I, § 1002(m)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101–508, title XI, § 11101(d)(7)(B), Nov. 5, 1990, 104 Stat. 1388–405; Pub. L. 105–34, title III, § 311(c)(2), Aug. 5, 1997, 111 Stat. 835; Pub. L. 108–27, title III, § 301(a)(2)(E), May 28, 2003, 117 Stat. 758.)

AMENDMENT OF SECTION

For termination of amendment by section 303 of Pub. L. 108–27, see Effective and Termination Dates of 2003 Amendment note below.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (d)(1) and (h)(3), is classified generally to Title 26, Internal Revenue Code.

Section 103, referred to in subsec. (e)(2)(D), which related to interest on certain governmental obligations was amended generally by Pub. L. 99–514, title XIII, §1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds.

AMENDMENTS

2003—Subsec. (h)(6)(A). Pub. L. 108–27, §§301(a)(2)(E), 303, temporarily substituted ''15 percent'' for ''20 percent'' in concluding provisions. See Effective and Termination Dates of 2003 Amendment note below.

1997—Subsec. (h)(6)(A). Pub. L. 105–34 substituted ''20 percent'' for ''28 percent'' in concluding provisions.

1990—Subsec. (h)(6)(A). Pub. L. 101–508 substituted ''section 1(h)'' for ''section 1(j)''.

1988—Subsec. (h)(6)(A). Pub. L. 100–647 substituted ''section 1(j)'' for ''section 1(i)''.

1986—Subsec. (b)(1)(A), (B). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (d)(1). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (d)(1)(A), (D). Pub. L. 99–514, §261(e)(1), (2), inserted ''and section 7518 of such Code''.

Subsec. (e)(2)(C). Pub. L. 99–514, §261(e)(3), substituted ''the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986'' for ''85 percent''.

Pub. L. 99–514, §2, substituted ''section 243 of the Internal Revenue Code of 1986'' for ''section 243 of the Internal Revenue Code of 1954''.

Subsec. (e)(4)(E). Pub. L. 99–514, §261(e)(4), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''15 percent of any dividend referred to in paragraph (2)(C).''

Subsec. (g)(3). Pub. L. 99–514, §261(e)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to—

''(A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954, or

''(B) One-half of such portion, in the case of any other person.''

Subsec. (h)(3). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h)(5), (6). Pub. L. 99–514, §261(e)(6), added pars. (5) and (6).

Subsec. (i)(1). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (m). Pub. L. 99–514, §261(d), added subsec. (m).

1981—Subsecs. (a), (c), (f), (h)(4). Pub. L. 97–31, §12(97)(A), substituted ''Secretary'' for ''Secretary of Commerce'' wherever appearing.

Subsec. (k). Pub. L. 97–31, §12(97), substituted in pars. (2)(C) and (7) ''Secretary'' for ''Secretary of Commerce'' and added par. (9).

Subsec. (*l*). Pub. L. 97–31, §12(97)(A), substituted ''Secretary'' for ''Secretary of Commerce'' wherever appearing.

1973—Subsec. (k)(8). Pub. L. 93–116 substituted ''(ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.'' for ''(ii) trade between Alaska, Hawaii, and Puerto Rico and such territories and possessions and (iii) trade between the islands of Hawaii.''

1970—Pub. L. 91–469 revised tax deferred reserve fund provisions generally, extended tax deferral privilege to vessels operated in nonsubsidized foreign trade, noncontiguous domestic trade, Great Lakes trade, and in fisheries, built in the United States, and documented under her laws, and substituted a new statutory framework consisting of subsecs. (a) to (*l*) for determination of tax status of deposits into and withdrawals from the fund for former subsecs. (a) to (h) and providing as follows:

Subsec. (a), a capital construction fund, agreement rules, persons eligible, replacement, additional, or reconstructed vessels for prescribed trade and fishery operations, amount of deposits, annual limitation, and conditions and requirements for deposits and withdrawals, subsec. (a) formerly permitting a 10 percent distribution of net profits;

Subsec. (b), ceiling on deposits, deposits of lessees, and definition of ''agreement vessel'', subsec. (b) formerly providing for a capital reserve fund, deposits, and allowable disbursements;

Subsec. (c), investment requirements, depositories, fiduciary requirements, investment in interest-bearing certificates (formerly provided in former subsec. (d)(2) of this section), stock investments, including common stock treatment of preferred issues, percentage for domestic issues, listing and registration, prudent man acquisitions (provisions formerly covered in former subsec. (d)(3)(A) of this section), and value and percentage equilibrium, subsec. (c) formerly providing for creation of a special reserve fund, deposits, and allowable disbursements;

Subsec. (d), nontaxability of deposits and eligible deposits, subsec. (d) formerly providing rules and regulations for administration of reserve funds and investment of funds, now covered in subsec. (c) of this section;

Subsec. (e), capital account, capital gain account, and ordinary income account within the capital construction fund and limitation on losses, subsec. (e) formerly providing for withdrawals from capital reserve fund to meet needs due to operating losses;

Subsec. (f), purposes of qualified withdrawals and nonqualified withdrawal treatment for nonfulfillment of substantial obligations, subsec. (f) formerly providing for title to reserve funds on termination of contract;

Subsec. (g), tax treatment of qualified withdrawals and reduction of basis, subsec. (g) formerly providing for increase and transfer of reserve funds and interest on overpayment of taxes;

Subsec. (h), tax treatment of nonqualified withdrawals, FIFO and LIFO bases, and interest rate, subsec. (h) formerly providing for exemption of reserve funds from taxation, in effect a tax deferral;

Subsec. (i), corporate reorganizations and partnership changes;

Subsec. (j), treatment of existing funds and relation of old to new funds;

Subsec. (k), definitions; and

Subsec. (*l*), records, reports, rules, and regulations, and termination of agreement upon changes in regulations with substantial effect on rights or obligations.

1961—Subsec. (b). Pub. L. 87–271 authorized the contractor, upon consent of the Secretary of Commerce, to pay amounts from the capital reserve fund for research, development, and design expenses for new and advanced ship design machinery and equipment, purchase of cargo containers delivered after June 30, 1959, payment of principal on indebtedness incurred for containers, and for reimbursing the contractor's general funds for expenditures for such purchases or payments, and required such cargo containers, to the extent paid for out of the capital reserve fund, to be treated as vessels for purpose of deposits and withdrawals from the fund, except that depreciation thereon shall be based on life expectancy used for such containers in determination of ''net earnings'' in subsec. (d)(1) of this section.

Pub. L. 87–45 inserted ''and on cruises, if any, authorized under section 1183 of this Appendix'' after ''route or service approved by the Secretary'' in second par.

1960—Subsec. (b). Pub. L. 86–518 substituted ''twenty-five-year life expectancy'' for ''twenty-year life expectancy''.

1958—Subsec. (d). Pub. L. 85–637 designated first and second paragraphs as subdivisions (1) and (2), and added subdivision (3).

1952—Subsec. (b). Act July 17, 1952, § 17, permitted recomputation of life-expectancy of a reconstructed or reconditioned vessel in use under an operating-differential subsidy contract, and provided for recomputation of depreciation changes.

Subsec. (d). Act July 17, 1952, § 18, substituted ''as provided for in section 1177(b) of this Appendix'' after ''life of the vessel'' for ''being twenty years''.

Subsec. (g). Act July 17, 1952, § 19, barred payment of interest by Government on overpayment of taxes resulting from voluntary deposits of earnings.

1939—Subsec. (c)(3). Act Aug. 4, 1939, permitted payment from the capital reserve fund, and authorized payment from other assets of the contractor if assets have not been repaid to the reserve funds, or if prepayments of amounts not due before one year after the date of termination of the contract have been made from the capital reserve funds.

1938—Subsec. (b). Act June 23, 1938, §§ 23, 24, substituted ''insurance and indemnities'' for ''insurance indemnities'' in first par., and inserted provisions requiring deposit of proceeds of any sale or other disposition of a vessel in the capital reserve funds, and to permit the contractor to pay from the fund any sums owing but not yet due on notes secured by mortgages on subsidized vessels.

Subsec. (c). Act June 23, 1938, § 25, substituted ''If the profits, without regard to capital gains and capital losses, earned by the business of the subsidized vessels and services incident thereto exceed 10 per centum per annum and exceed the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section, the contractor shall deposit annually such excess profits in this reserve fund'' for ''In this reserve fund, the contractor shall deposit annually the profits earned by the business of the subsidized vessels and services incident thereto in excess of 10 per centum per annum and in excess of the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section'', in second par.

Subsec. (c)(2). Act June 23, 1938, § 26, substituted ''will be made up'' for ''will not be made up''.

Subsecs. (f), (g). Act June 23, 1938, § 27, added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Act June 23, 1938, § 28, redesignated former subsec. (f) as subsec. (h) and made earnings withdrawn from the special reserve fund taxable as if earned during the year of withdrawal from the fund.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to taxable years ending on or after May 6, 2003, see section 301(d) of Pub. L. 108–27, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 108–27 inapplicable to taxable years beginning after Dec. 31, 2008, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 303 of Pub. L. 108–27, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 261(d), (e) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub. L. 99–514, set out as an Effective Date note under section 7518 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 21(b) of Pub. L. 91–469 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS

For coordination of application of Internal Revenue Code of 1986 with capital construction program under this chapter, see section 261(a) of Pub. L. 99–514, set out as a note under section 7518 of Title 26, Internal Revenue Code.

DEPOSITS INTO CAPITAL RESERVE FUND

Pub. L. 92–507, § 6, Oct. 19, 1972, 86 Stat. 917, provided that: ''Nothing in this Act [enacting this note and amending subchapter XI of this chapter] shall limit or affect the right of an obligor who maintains a capital reserve fund under section 607 of the Merchant Marine Act, 1936 [this section] to make deposits of the proceeds of guaranteed obligations into such capital reserve fund as provided in subparagraph (c) of condition (6) of section 1107 of the Merchant Marine Act, 1936 [subparagraph (c) of condition (6) of section 1276a of former Title 46, Shipping], as in effect prior to the effective date of this Act [Oct. 9, 1972].''

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L.

86–518, set out as a note under section 1125 of this Appendix.

§ 1177–1. Small fishing vessel construction reserves

In addition to any other vessel which may be deemed an ''eligible vessel'' and a ''qualified vessel'' under section 1177 of this Appendix, a commercial fishing vessel under five net tons but not under two net tons—

(1) which is constructed in the United States and, if reconstructed, is reconstructed in the United States;

(2) which is owned by a citizen of the United States;

(3) which has a home port in the United States; and

(4) which is operated in the commercial fisheries of the United States,

shall be considered to be an ''eligible vessel'' and a ''qualified vessel'' for the purposes of such section 1177 of this Appendix.

(Pub. L. 94–455, title VIII, § 807, Oct. 4, 1976, 90 Stat. 1606.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1177a. Deposits in special reserve fund; excusal; tax treatment

On and after June 13, 1957, to the extent that the operating-differential subsidy accrual (computed on the basis of parity) is represented on the operator's books by a contingent accounts receivable item against the United States as a partial or complete offset to the recapture accrual, the operator (1) shall be excused from making deposits in the special reserve fund, and (2) as to the amount of such earnings the deposit of which is so excused shall be entitled to the same tax treatment as though it had been deposited in said special reserve fund. To the extent that any amount paid to the operator by the United States reduces the balance in the operator's contingent receivable account against the United States, such amount shall forthwith be deposited in the special reserve fund of the operator.

(Pub. L. 85–52, title I, § 101, June 13, 1957, 71 Stat. 73.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1178. Sale or assignment of contract; consent of Secretary; purchaser subject to terms of contract; rescinding contract on transfer without consent

No contract executed under this subchapter or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Secretary of Transportation. If he consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this chapter applicable thereto, and the rules and regulations prescribed pursuant to this chapter. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary of Transportation, or if the operation of the service, route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary of Transportation shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.

(June 29, 1936, ch. 858, title VI, § 608, 49 Stat. 2007; Pub. L. 97–31, § 12(98), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''he'' and ''him'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1179. Withholding payment to defaulting contractor

The Secretary of Transportation shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.

(June 29, 1936, ch. 858, title VI, § 609, 49 Stat. 2007; June 23, 1938, ch. 600, § 29, 52 Stat. 961; Pub. L. 97–31, § 12(99), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1938—Act June 23, 1938, repealed subsec. (b) which related to cancellation or modification of a contract where a contractor filed bankruptcy or was in default of payments.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1180. Vessels eligible to subsidy

An operating-differential subsidy shall not be paid under authority of this subchapter on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after June 29, 1936 it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

(June 29, 1936, ch. 858, title VI, § 610, 49 Stat. 2007; Pub. L. 97–31, § 12(99), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1181. Transfer of vessels to foreign registry on default of United States

(a) Application; hearing; grant or denial

The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancelation shall file an application in writing with the Secretary of Transportation setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancelation. The Secretary of Transportation shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary of Transportation, he shall, within a reasonable time, grant or deny the application by order.

(b) Appeal from denial of application

If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary of Transportation be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Transportation or any officer designated by him for that purpose, and thereupon the Secretary of Transportation shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancelation or default was without just cause, and to affirm or set aside such order. The judgment and decree of the court affirming or setting aside any such order of the Secretary of Transportation shall be final.

(c) Effectiveness of transfer

No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the Government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary of Transportation may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary of Transportation or the court to exist.

(June 29, 1936, ch. 858, title VI, § 611, as added June 23, 1938, ch. 600, § 30, 52 Stat. 961; amended Pub. L. 85–791, § 17, Aug. 28, 1958, 72 Stat. 947; Pub. L. 86–518, § 4, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(100), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31, § 12(100)(A), (B), substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''he'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31, § 12(100)(A), (C), substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''the Secretary of Transportation or any other officer designated by him for that purpose'' for ''any member of the Commission, or any officer thereof designated by the Commission for that purpose''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97–31, § 12(100)(A), substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Subsec. (c). Pub. L. 86–518 substituted ''4 per centum'' for ''5 per centum''.

1958—Subsec. (b). Pub. L. 85–791, in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', struck out ''upon'' before ''any officer'', substituted ''file in the court'' for ''certify and file in the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and which, in third sentence, substituted ''petition'' for ''transcript''.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1183. Off-season cruises by passenger vessels

(a) "Passenger vessel" defined

In this section, ''passenger vessel'' means a vessel which (1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

(b) Authorization for payment of subsidy

If the Secretary of Transportation finds that the operation of any passenger vessel with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 1173 of this Appendix effective before January 2, 1960, is not required for all of each year, in order to furnish adequate service on the service, route, or line covered by such contract, he may amend such contract to agree to pay an operating-differential subsidy for operation of the vessel (1) on such service, route, or line for some part or no part of each year, and (2) on cruises for all or part of each year if such specific cruise is approved by the Secretary of Transportation under subsection (e) of this section: *Provided*, *however*, That no such vessel may cruise for more than seven months of each year to ports which are regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

(c) Authorization for payment of subsidy to passenger vessels providing domestic service

The Secretary of Transportation may authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports while the vessels are on voyages in an essential service in the foreign commerce of the United States without reduction of operating-differential subsidy and the partial payback of construction-differential subsidy for operating in the domestic trades, if he finds that such domestic service will not result in a substantial deviation from the service, route, or line for which operating-differential subsidy is paid and will not adversely affect service on such service, route, or line.

(d) Conditions for cruises or domestic service while on voyages in an essential service in foreign commerce

When a vessel is being operated on cruises or has been authorized under this section to provide domestic passenger services while on voyages in an essential service in foreign commerce of the United States—

(1) except as provided in subdivision (4) of this subsection, it shall carry no mail unless required by law, or cargo except passengers' luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

(2) it may not carry one-way passengers between those ports served by another United States carrier on its regular service assigned by contract, without the consent of such carrier, except between those ports between which it may carry one-way passengers on its own regular service assigned by contract;

(3) it shall stop at other domestic ports only for the same time and the same purpose as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port, except that a cruise may end at a different port or coast from that where it began and may embark or disembark passengers at other domestic ports, either when not involving transportation in the domestic offshore trade in competition with a United States-flag passenger vessel offering berth service therein, or, if involving such transportation, with the consent of such carrier: *Provided*, *however*, That nothing herein shall be construed to repeal or modify section 1223(a) of this Appendix.

(4) Any other provisions of this chapter or of the Shipping Act, 1916 [46 App. U.S.C. 801 et seq.], to the contrary notwithstanding, with the approval of the Secretary of Transportation, it may carry cargo and mail between ports to the extent such carriage is not in direct competition with a carrier offering United States-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering United States-flag berth service between such ports, with the consent of the next scheduled United States-flag carrier, which consent shall not be unreasonably withheld in the judgment of the Maritime Administrator.

Section 1175(c) of this Appendix shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of sections 1175(a) and 1156 of this Appendix requiring the reduction of operating differential subsidy and the partial payback of construction dif-

ferential subsidy for operating in the domestic trades, such reduction of operating subsidy and partial payback of construction subsidy under sections 1175(a) and 1156, respectively, of this Appendix, shall not apply to cruises or domestic services authorized under this section.

(e) Application for approval of cruise; notice to other American flag operators

Upon the application of any operator for approval of a specific cruise, the Secretary of Transportation, after notice to all other American flag operators who may be affected and after affording all such operators an opportunity to submit written data, views or arguments, with or without opportunity to present the same orally in any manner, and after consideration of all relevant matter presented, shall approve the proposed cruise, if he determines that the proposed cruise will not substantially adversely affect an existing operator's service performed with passenger vessels of United States registry. Such approval shall not be given more than two years in advance of the beginning of the cruise.

(June 29, 1936, ch. 858, title VI, § 613, as added Pub. L. 87–45, § 1, May 27, 1961, 75 Stat. 89; amended Pub. L. 90–358, §§ 1, 2, June 22, 1968, 82 Stat. 248; Pub. L. 91–250, May 14, 1970, 84 Stat. 215; Pub. L. 92–323, June 30, 1972, 86 Stat. 389; Pub. L. 97–31, § 12(102), Aug. 6, 1981, 95 Stat. 162.)

REFERENCES IN TEXT

The Shipping Act, 1916, referred to in subsec. (d)(4), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified generally to chapter 23 (§ 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–31, § 12(102)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

Subsec. (c). Pub. L. 97–31, § 12(102)(A), (B), substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' and ''he'' for ''it''.

Subsec. (d)(4). Pub. L. 97–31, § 12(102)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

Subsec. (e). Pub. L. 97–31, § 12(102)(B), (C), substituted ''Secretary of Transportation'' for ''Board'' and ''he'' for ''it''. For prior transfers of functions of the Board, meaning the Federal Maritime Board, see Transfer of Functions note set out below.

1972—Subsec. (b). Pub. L. 92–323, § 1(a), substituted provisions authorizing the Secretary of Commerce to permit passenger vehicles with respect to which an operating differential subsidy contract was entered into prior to January 2, 1960, to cruise for the whole year, for provisions permitting such passenger vessels to cruise off their essential trade routes for two-thirds of each year.

Subsec. (d). Pub. L. 92–323, § 1(b), added subd. (4) and qualified subd. (1) by making it subject to the provisions in subd. (4).

Subsec. (e). Pub. L. 92–323, § 1(c), changed phraseology.

1970—Subsec. (b). Pub. L. 91–250, § 1(a), substituted ''(e)'' for ''(d)'' after ''under subsection''.

Subsec. (c). Pub. L. 91–250, § 1(b), substituted provision that Secretary of Commerce may authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports under stated conditions, for provision stating conditions for operating passenger vessels on cruises.

Subsec. (d). Pub. L. 91–250, § 1(c), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 91–250, § 1(c), (d), redesignated former subsec. (d) as (e). Former subsec. (e), which defined seacoasts of the United States, was struck out.

1968—Subsec. (b). Pub. L. 90–358, § 1, substituted reference to passenger vessels with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 1173 of this Appendix effective before January 2, 1960, for reference to passenger vessels with respect to which an application for operating-differential subsidy has been filed under section 1171 of this Appendix, increased from four to eight months of each year the length of the period during which vessels may engage in cruises, and limited the cruising period each year to seven months in the case of ports regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

Subsecs. (d) to (f). Pub. L. 90–358, § 2(a), (b), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), making provision for periodic review of operating differential subsidy contracts entered into under this subchapter and for amendment of such contracts, was repealed.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Maritime Board, see Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1183a. Off-season cruises additional to right of operator to make voyages on regular service, route, or line, including approved deviations

The cruises authorized by section 1183 of this Appendix shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service.

(Pub. L. 87–45, § 7, May 27, 1961, 75 Stat. 91.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1184. Suspension of operating differential subsidy contracts by operator recipients

(a) Any operator receiving operating differential subsidy funds may elect, for all or a portion of its ships, to suspend its operating differential subsidy contract with all attendant statutory and contractual restrictions, except as to those pertaining to the domestic intercoastal or coastwise service, including any agreement providing for the replacement of vessels, if—

(1) the vessel is less than ten years of age;

(2) the suspension period is not less than twelve months;

(3) the operator's financial condition is maintained at a level acceptable to the Secretary of Commerce; and

(4) the owner agrees to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction differential subsidy paid by the Secretary as the portion of the suspension period during which the vessel is operated in any preference trade from which a subsidized vessel would otherwise be excluded by law or contract bears to the entire economic life of the vessel.

(b) Any operator making an election under this section is entitled to full reinstatement of the suspended contract on request. The Secretary of Commerce may prescribe rules and regulations consistent with the purpose of this section.

(June 29, 1936, ch. 858, title VI, § 614, as added Pub. L. 97–35, title XVI, § 1603, Aug. 13, 1981, 95 Stat. 751.)

§ 1185. Construction, reconstruction, or acquisition of vessels over five thousand deadweight tons in foreign shipyards; preconditions

(a) The Secretary of Commerce may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this subchapter to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator's application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States built for the purposes of this subchapter, section 1241(b) of this Appendix, and sections 3704 to 3709 of title 46: *Provided*, That the provisions of section 1177 of this Appendix shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least $100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on the effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a) of this section.

(June 29, 1936, ch. 858, title VI, § 615, as added Pub. L. 97–35, title XVI, § 1610, Aug. 13, 1981, 95 Stat. 753.)

CODIFICATION

In subsec. (a), ''sections 3704 to 3709 of title 46'' substituted for ''section 5(7) of the Port and Tanker Safety Act of 1978 [46 U.S.C. 391a(7)]'' on authority of Pub. L. 98–89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 1185a. Wind-up of program

(a) In general

After October 8, 1996, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this part.

(b) Existing subsidy contracts

Notwithstanding any other provision of this chapter, any operating-differential subsidy contract in effect under this subchapter on the day before October 8, 1996, shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

(c) Essential service and port equity requirements

The essential service requirements of section[1] 1171(a) and 1173(b) of this Appendix, and the provisions of sections 1175(c) and 1213(a) of this Appendix, shall not apply to the operating-differential subsidy program under this part effective upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program established by part B of this subchapter to a contractor under that part who is not party to an operating-differential subsidy contract under this part, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by part B of this subchapter.

(d) Transfer and registration of vessel

(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this part which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

(B) the vessel is covered by an operating agreement under part B of this subchapter, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under part B of this subchapter.

(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 1242 of this Appendix.

(June 29, 1936, ch. 858, title VI, § 616, as added Pub. L. 104–239, § 3(b), Oct. 8, 1996, 110 Stat. 3127.)

PART B—MARITIME SECURITY FLEET PROGRAM

§§ 1187 to 1187e. Repealed. Pub. L. 108–136, div. C, title XXXV, § 3534(a)(1), Nov. 24, 2003, 117 Stat. 1818

Section 1187, act June 29, 1936, ch. 858, title VI, § 651, as added Pub. L. 104–239, § 2(2), Oct. 8, 1996, 110 Stat. 3118, related to establishment of fleet.

Section 1187a, act June 29, 1936, ch. 858, title VI, § 652, as added Pub. L. 104–239, § 2(2), Oct. 8, 1996, 110 Stat. 3119; amended Pub. L. 105–85, div. C, title XXXVI, § 3603(b), Nov. 18, 1997, 111 Stat. 2075, related to operating agreements.

Section 1187b, act June 29, 1936, ch. 858, title VI, § 653, as added Pub. L. 104–239, § 2(2), Oct. 8, 1996, 110 Stat. 3124; amended Pub. L. 105–85, div. C, title XXXVI, § 3604, Nov. 18, 1997, 111 Stat. 2076, related to national security requirements.

Section 1187c, act June 29, 1936, ch. 858, title VI, § 654, as added Pub. L. 104–239, § 2(2), Oct. 8, 1996, 110 Stat. 3126, set out definitions.

[1] So in original. Probably should be ''sections''.

Section 1187d, act June 29, 1936, ch. 858, title VI, § 655, as added Pub. L. 104–239, § 2(2), Oct. 8, 1996, 110 Stat. 3126, authorized appropriations.

Section 1187e, act June 29, 1936, ch. 858, title VI, § 656, as added Pub. L. 104–239, § 4(a), Oct. 8, 1996, 110 Stat. 3127; amended Pub. L. 105–85, div. C, title XXXVI, § 3603(a), Nov. 18, 1997, 111 Stat. 2075, related to noncontiguous domestic trades.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2005, see section 3537(b) of Pub. L. 108–136, set out as an Effective Date note under section 53101 of Title 46, Shipping.

SUBCHAPTER VII—PRIVATE CHARTER OPERATION

§ 1191. Additional powers of Secretary for completion of program

Whenever the Secretary of Transportation shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 1101 of this Appendix, and the objectives set forth in section 1120 of this Appendix, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of subchapters V and VI of this chapter, the Secretary of Transportation is authorized and directed to complete his long-range program previously adopted as provided in this subchapter.

(June 29, 1936, ch. 858, title VII, § 701, 49 Stat. 2008; Pub. L. 97–31, § 12(103), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

FINDING OF COMMISSION

Former United States Maritime Commission made findings and determinations on Apr. 28, 1938, which were approved by the President on Apr. 29, 1938, that the national policy declared in section 1101 of this Appendix and the objectives set forth in section 1120 of this Appendix could not with respect to construction of new vessels be fully realized within a reasonable time under the provisions of subchapters V and VI of this chapter.

§ 1192. Construction or reconditioning of vessels by Secretary

The Secretary of Transportation is authorized to have constructed in shipyards in the continental United States such new vessels as he shall determine may be required to carry out the objects of this chapter, and to have old vessels reconditioned or remodeled in such yards: *Provided*, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this chapter, cannot be obtained from private shipbuilders, the Secretary of Transportation is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards. For the purposes of this section, the term ''continental United States'' includes the States of Alaska and Hawaii.

(June 29, 1936, ch. 858, title VII, § 702, 49 Stat. 2008; Pub. L. 85–191, Aug. 28, 1957, 71 Stat. 471; Pub. L. 86–624, § 35(c), July 12, 1960, 74 Stat. 421; Pub. L. 97–31, § 12(104), Aug. 6, 1981, 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''he'' for ''it''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Pub. L. 86–624 inserted definition of ''continental United States''.

1957—Pub. L. 85–191 substituted ''in shipyards in the continental United States'' for ''in domestic yards, on the Atlantic and Gulf and Pacific coasts,''.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1193. Competitive bidding

(a) Construction, reconstruction, or reconditioning of vessels

No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Secretary of Transportation with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) Requirements

All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this subchapter shall be subject to all the provisions and requirements prescribed in subchapter V of this chapter with respect to contracts with a private shipbuilder for the construction of vessels under authority of said subchapter.

(c) Opening of bids

All bids required by the Secretary of Transportation for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the Secretary's vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

(June 29, 1936, ch. 858, title VII, § 703, 49 Stat. 2008; Pub. L. 97–31, § 12(105), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31, § 12(105)(A), substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97–31, § 12(105), substituted ''Secretary of Transportation'' for ''Commission'' and ''Secretary's'' for ''Commission's''. For prior transfers of functions of the Commission, meaning the United

States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1194. Charter or sale of vessels acquired by Department of Transportation

All vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation pursuant to the further provisions of this chapter.

(June 29, 1936, ch. 858, title VII, § 704, 49 Stat. 2008; Apr. 1, 1937, ch. 64, 50 Stat. 57; Pub. L. 97–31, § 12(106), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Department of Transportation'' for ''Commission'' the first place it appeared and ''Secretary of Transportation'' for ''Commission'' the second place it appeared, and struck out provisions relating to discontinuance of operation of Commission's vessels on lines in foreign commerce under operating agreements within one year after June 27, 1936. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1937—Act Apr. 1, 1937, substituted ''may be temporarily operated'' for ''shall be temporarily operated'', required preference to be given to present operators, permitted private operators to commence voyages prior to the expiration date and to complete them thereafter, and inserted provisions providing that nothing contained in this section should be construed as limiting the power of sale under section 1195 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

AUTHORITY FOR WARTIME SALE OR CHARTER REPEALED

Act May 14, 1940, ch. 201, § 2, 54 Stat. 216, as extended June 16, 1942, ch. 416, 56 Stat. 370, which related to sale or charter of vessels by United States Maritime Commission until six months after the end of World War II should have been proclaimed or such earlier time as the Congress by concurrent resolution or the President might designate, was repealed by act July 25, 1947, ch. 327, § 1, 61 Stat. 449.

§ 1195. Employment of vessels on foreign trade routes; selection of routes; encouraging private operation by sale or charter; selling price

As soon as practicable after June 29, 1936, and continuing thereafter, the Secretary of Transportation shall arrange for the employment of the Department of Transportation's vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary of Transportation shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: *Provided*, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States. It shall be the policy of the Secretary of Transportation to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920 [46 App. U.S.C. 866], and in strict accordance with the provisions of section 5 of said Act,[1] or by demising his vessels on bareboat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided. No vessel constructed under the provisions of this chapter, as amended, shall be sold by the Secretary of Transportation for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national defense features (determined as of the date the construction contract therefor is executed) less depreciation based on a twenty-five year life, nor shall any such vessel be sold by the Secretary of Transportation for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national defense features less depreciation based on a twenty-five year life.

(June 29, 1936, ch. 858, title VII, § 705, 49 Stat. 2009; Aug. 4, 1939, ch. 417, § 11(a), 53 Stat. 1185; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97–31, § 12(107), Aug. 6, 1981, 95 Stat. 163.)

REFERENCES IN TEXT

Section 5 of said Act, referred to in text, was classified to section 864 of former Title 46, Shipping, and was repealed by Pub. L. 100–710, title II, § 202(4), Nov. 23, 1988, 102 Stat. 4753.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in four places, ''the Department of Transportation's vessels'' for ''its vessels'', and ''his vessels'' for ''its vessels''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960—Pub. L. 86–518 substituted ''twenty-five-year life'' for ''twenty-year life'' in two places.

1939—Act Aug. 4, 1939, prohibited sale of any vessel constructed under this chapter for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national defense features less depreciation based on a 20 year life, nor for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national defense features less depreciation based on a 20 year life.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan

[1] See References in Text note below.

No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1196. Advertising for bids for charters; rejection of bids

(a) The Secretary of Transportation shall not charter the Department of Transportation's vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the Department of Transportation's vessels shall state the number, type, and tonnage of the vessels the Secretary of Transportation is offering for bareboat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Secretary of Transportation shall deem necessary for the information of prospective bidders.

(b) The Secretary of Transportation shall have authority to, and shall announce in his advertisements for bids that the Secretary of Transportation reserves the right to, reject any and all bids submitted. The Secretary of Transportation shall reject any bid for the charter (under sections 1191 to 1203 of this Appendix) of any vessel constructed under the provisions of this chapter, as amended, if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 1204 of this Appendix.

(June 29, 1936, ch. 858, title VII, § 706, 49 Stat. 2009; Aug. 4, 1939, ch. 417, § 11(b), 53 Stat. 1186; Pub. L. 97–31, § 12(108), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31, § 12(108)(A)–(C), substituted ''Secretary of Transportation'' for ''Commission'' in three places, ''the Department of Transportation's vessels'' for ''its vessels'', and ''the Department of Transportation's vessels'' for ''Commission's vessels''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31, § 12(108)(A), (D), substituted ''Secretary of Transportation'' for ''Commission'' in three places and ''his'' for ''its''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1939—Subsec. (b). Act Aug. 4, 1939, required rejection of any bids for charter if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 1204 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1197. Awarding charter on bids

(a) Highest bid

The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Secretary of Transportation shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) Rejection of highest bid

The Secretary of Transportation may reject the highest or most advantageous or any other bid, if, in the Secretary's discretion, the charter hire offered is deemed too low, or the Secretary of Transportation determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid, upon request of the bidder, shall be stated to such bidder in writing.

(c) Next highest bid; rejection of all bids and readvertisement

If the highest bid is rejected, the Secretary of Transportation may award the charter to the next highest bidder, or may reject all bids and readvertise the line: *Provided*, *however*, That the Secretary of Transportation may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

(June 29, 1936, ch. 858, title VII, § 707, 49 Stat. 2009; Pub. L. 97–31, § 12(109), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31, § 12(109)(A), substituted ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97–31, § 12(109), substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''Secretary's discretion'' for ''Commission's discretion''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97–31, § 12(109)(A), substituted ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan

No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1198. Payment of subsidies to charterers

The Secretary of Transportation may, if in his discretion financial aid is deemed necessary, enter into a contract with any charterer of his vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions, where applicable, as are elsewhere provided in this chapter with respect to payments of such subsidies to operators of privately owned vessels.

(June 29, 1936, ch. 858, title VII, § 708, 49 Stat. 2009; June 23, 1938, ch. 600, § 31, 52 Stat. 962; Pub. L. 97–31, § 12(110), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' and ''his'' for ''its'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1938—Act June 23, 1938, inserted '', where applicable,'' before ''as are elsewhere provided''.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1199. Excess profit; payment to Secretary; formula for determining profit

(a) Every charter made by the Secretary of Transportation pursuant to the provisions of this subchapter shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Secretary of Transportation, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms ''net voyage profit'' and ''fair and reasonable overhead expenses'', and ''capital necessarily employed'', as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Secretary of Transportation and published in the advertisement for bids for such charter.

(June 29, 1936, ch. 858, title VII, § 709, 49 Stat. 2010; Pub. L. 97–31, § 12(111), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places in subsec. (a) and once in subsec. (b). For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1200. Undertaking required of charterer

Every charterer of the Secretary of Transportation's vessels shall be required to deposit with the Secretary of Transportation an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Secretary of Transportation shall require.

(June 29, 1936, ch. 858, title VII, § 710, 49 Stat. 2010; Pub. L. 97–31, § 12(112), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation's vessels'' for ''Commission's vessels'' and ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1201. Terms and conditions of charters

The charters to be made by the Secretary of Transportation pursuant to the provisions of this subchapter shall demise the vessels to the charterer subject to all usual conditions contained in bareboat charters, and until January 1, 1940, shall be for terms of three years or less as the Secretary of Transportation may decide: *Provided*, That after January 1, 1940, charters may be executed by the Secretary of Transportation for such terms as the experience gained by the Secretary of Transportation shall indicate are to the best interests of the United States and the merchant marine.

(June 29, 1936, ch. 858, title VII, § 711, 49 Stat. 2010; Pub. L. 97–31, § 12(113), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in four places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1202. Insurance requirements; repairs; inspection by Secretary; termination of charter in national emergency

Every charter shall provide—

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Secretary of Transportation shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: *Provided*, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Secretary of Transportation himself as in his discretion he may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Secretary of Transportation.

(c) That the Secretary of Transportation shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary of Transportation may terminate the charter without cost to the United States, upon such notice to the charterers as the President shall determine.

(June 29, 1936, ch. 858, title VII, § 712, 49 Stat. 2010; Aug. 7, 1939, ch. 555, § 1, 53 Stat. 1254; Pub. L. 97–31, § 12(114), Aug. 6, 1981, 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places, and ''himself'', ''his'', and ''he'' for ''itself'', ''its'', and ''it'', respectively. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (b) to (d). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1939—Subsec. (d). Act Aug. 7, 1939, permitted termination of a charter whenever the President proclaims that the security of the national defense makes it advisable.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of subsec. (d) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 1203. Financial resources and other factors considered in awarding charters

In the awarding of charters, the Secretary of Transportation shall take in consideration the charterer's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Secretary of Transportation is directed to refrain from chartering the Department of Transportation's vessels to any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

(June 29, 1936, ch. 858, title VII, § 713, 49 Stat. 2010; Pub. L. 97–31, § 12(115), Aug. 6, 1981, 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places and ''the Department of Transportation's vessels'' for ''its vessels''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1204. Construction and chartering of vessels for unsuccessful routes; purchase of vessel by charterer; purchase price; operation of vessel in foreign trade

If the Secretary of Transportation shall find that any trade route (determined by the Secretary of Transportation to be an essential trade route as provided in section 1121 of this Appendix) cannot be successfully developed and maintained and the Secretary of Transportation's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under subchapters V and VI of this chapter, the Secretary of Transportation is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels, or bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 4 per centum of the price (herein referred to as the ''foreign cost'') at which such vessel or vessels would be sold if constructed under subchapter V of this chapter plus an amount equal to (i) the sum of a percentage of the depreciated foreign cost computed annually upon the basis of a twenty-five year life of the vessel determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Secretary of Transportation within five years after delivery thereof under the charter, upon the same terms and conditions

as are provided in subchapter V of this chapter for the purchase of new vessels from the Secretary of Transportation, except that (a) the purchase price shall be the foreign cost less depreciation to the date of purchase based upon a twenty-five year life; (b) the required cash payment payable at the time of such purchase shall be 25 per centum of the purchase price as so determined; (c) the charter may provide that all or any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of such purchase; (d) the balance of the purchase price shall be paid within the years remaining of the twenty-five years after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first of said installments, which shall be payable upon the next ensuing anniversary date of such delivery under the charter, shall be a proportionate part of the annual installment, interest to be payable upon the unpaid balances from the date of purchase, at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

Such charter shall provide for operation of the vessel exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island Territory of the United States, and if the vessel is operated in the domestic trade on any of the above-enumerated services the charterer will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the difference between the domestic and foreign cost of such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

(June 29, 1936, ch. 858, title VII, § 714, 49 Stat. 2011; June 23, 1938, ch. 600, § 32, 52 Stat. 962; Aug. 4, 1939, ch. 417, § 12, 53 Stat. 1186; Pub. L. 86–3, § 18(b)(3), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86–518, § 5, June 12, 1960, 74 Stat. 216; Pub. L. 91–469, § 22, Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97–31, § 12(116), Aug. 6, 1981, 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' and ''Secretary of Transportation's'' for ''Secretary of Commerce's''.

1970—Pub. L. 91–469 substituted: ''Secretary of Commerce'' and ''Secretary of Commerce's'' for ''Commission'' and ''Commission's'' wherever appearing; provision for an additional amount for charter hire equal to sum of depreciated foreign cost computed annually upon basis of a twenty-five year life of vessel determined by the Secretary of the Treasury, taking into consideration the current average market yield or outstanding marketable obligations of the United States with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior provision for 3½ per centum of depreciated foreign cost computed annually upon the basis of a twenty-five year life of vessel; and provision for interest upon unpaid balances of purchase price payable in annual installments from date of purchase, at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior interest upon unpaid balances of 3½ per centum per annum from date of purchase.

1960—Pub. L. 86–518 substituted ''4 per centum'' for ''5 per centum'', ''twenty-five-year life'' for ''twenty-year life'' in two places, ''twenty-five years'' for ''twenty years'', and ''one-twenty-fifth'' for ''one-twentieth''.

1959—Pub. L. 86–3 included stops at the State of Hawaii for vessels operated on voyages in foreign trade.

1939—Act Aug. 4, 1939, amended section generally, and among other changes, substituted ''price (herein referred to as the 'foreign cost') at which such vessel or vessels would be sold if constructed under sections 1151–1161 of this Appendix plus 3½ per centum of the depreciated foreign cost computed annually upon the basis of a twenty-year life of the vessel'' for ''construction cost of such new vessel or vessels'', and added second paragraph relating to mixed foreign and domestic trade.

1938—Act June 23, 1938, required the charter to contain an agreement of the purchaser to pay interest at the rate of 3½ per centum per annum upon all unpaid portions of the purchase price from the date of the delivery of the vessel to the purchaser under the charter agreement, and provided that if the option to purchase is exercised, the deferred payments shall not be extended beyond the life of the vessel computed on a 20 year expectancy.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commer-

cial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1205. Experimental operation and testing of United States vessels; number; bareboat charters; review of charters and agency agreements; provisions applicable to charters and agreements

The Secretary of Transportation, for the purpose of practical development, trial, and testing, is authorized without regard to other provisions of this subchapter or other laws relating to chartering and general agency operations, to operate, under general agency agreements, or bareboat charter, vessels owned by the United States (including any national defense reserve vessel) which have been constructed, reconditioned, or remodeled for experimental or testing purposes, in the foreign or domestic trade of the United States or for use for the account of any agency or department of the United States, under such reasonable terms or conditions as the Secretary of Transportation determines to be necessary to carry out the objects of this chapter: *Provided, however*, That not in excess of ten such vessels shall be operated and tested under the authority of this section in any one year. Bareboat charters entered into under this section shall be made at reasonable rates of charter and shall include such restrictions and conditions as the Secretary of Transportation determines to be necessary or appropriate to protect the public interest, including provisions for recapture of profits as provided for in section 1199 of this Appendix. Charters and general agency agreements entered into under this section shall be reviewed annually for the purpose of determining whether conditions exist which would justify continuance of the charter or agreement. Those provisions of law prescribed or incorporated under section 1241a of this Appendix, which relate to vessel operating activities of the Secretary of Transportation and to employment of seamen through general agents, shall be applicable in connection with charters and agreements entered into under this section.

(June 29, 1936, ch. 858, title VII, § 715, as added July 11, 1956, ch. 574, 70 Stat. 531; amended Pub. L. 97–31, § 12(117), Aug. 6, 1981, 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' wherever appearing.

SUBCHAPTER VIII—CONTRACT PROVISIONS

§ 1211. Provision for books and records; filing balance sheets; inspection and auditing by Secretary; rescission of contract on failure to comply with provisions

Every contract executed by the Secretary of Transportation under the provisions of subchapters VI or VII of this chapter shall contain provisions requiring (1) that, the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission, the United States shall be relieved of all further liability on such contract.

(June 29, 1936, ch. 858, title VIII, § 801, 49 Stat. 2011; Pub. L. 97–31, § 12(119), Aug. 6, 1981, 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in six places and in cl. (3) ''he may deem'' for ''it may deem''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

§ 1212. Purchase or requisition of vessels by United States; amount of payment

Every contract executed by the Secretary of Transportation under authority of subchapter V of this chapter shall provide that—

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be

paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Secretary of Transportation, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Internal Revenue Service for income-tax purposes.

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

(June 29, 1936, ch. 858, title VIII, § 802, 49 Stat. 2011; June 23, 1938, ch. 600, § 33, 52 Stat. 962; Aug. 7, 1939, ch. 555, § 2, 53 Stat. 1254; Pub. L. 97–31, § 12(120), Aug. 6, 1981, 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1939—Act Aug. 7, 1939, struck out ''fair actual'' after ''owner shall be paid therefor the'' in first sentence.

1938—Act June 23, 1938, inserted '', or the fair and reasonable scrap value of such vessel as determined by the Commission, whichever is the greater. Such determination shall be final.'' at end of first sentence, and ''depreciated'' after ''In computing the'' in second sentence.

CHANGE OF NAME

The official title of the Bureau of Internal Revenue was changed to the Internal Revenue Service by Treas. Dept. Order 150–29, eff. July 9, 1953.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1213. Contracts designed equitably for all ports; minimum allocation of funds; report to Congress; preference to citizens of United States; regional offices for Maritime Administration

(a) Contracts under this chapter shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this chapter or any law authorizing funds for the purposes of this chapter shall be allocated to each such port range: *Provided, however*, That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section and section 1121(a) of this Appendix, the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purposes of section 1175(c) of this Appendix, such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 1118 of this Appendix a detailed report (1) describing the actions that have been taken pursuant to this chapter to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this chapter, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

(b) There shall be established and maintained within the Maritime Administration such regional offices as may be necessary, including, but not limited to, one such office for each of the four port ranges specified in subsection (a) of this section. The Secretary of Transportation shall appoint a qualified individual to be the Director of each such regional office and shall carry out appropriate functions, activities, and programs of the Maritime Administration through such regional offices.

(June 29, 1936, ch. 858, title VIII, § 809, 49 Stat. 2015; Pub. L. 91–469, § 26(a), Oct. 21, 1970, 84 Stat. 1034; Pub. L. 94–10, § 3, Mar. 23, 1975, 89 Stat. 16; Pub. L. 94–127, § 4, Nov. 13, 1975, 89 Stat. 680; Pub. L. 96–470, title II, § 201(a), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 97–31, § 12(121), Aug. 6, 1981, 95 Stat. 164; Pub. L. 97–35, title XVI, § 1604, Aug. 13, 1981, 95 Stat. 751.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35 inserted provisions respecting the establishment of trade routes, services or lines taking into consideration the seasonal closure of the Saint Lawrence Seaway, and alternate routing of ships.

Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

Subsec. (b). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1980—Subsec. (a). Pub. L. 96–470 substituted ''The Secretary shall include in the annual report pursuant to section 1118 of this Appendix'' for ''Not later than March 1, 1976, and annually thereafter, the Secretary shall submit to Congress''.

1975—Subsec. (a). Pub. L. 94–127 required minimum allocation of funds for each range of ports and submission of an annual report to Congress.

Pub. L. 94–10 designated existing provisions as subsec. (a) and added subsec. (b).

1970—Pub. L. 91–469 included ports on the Great Lakes.

SUBCHAPTER VIII–A—OFFENSES AND PENALTIES

§ 1222. Repealed. Pub. L. 108–136, div. C, title XXXV, § 3534(a)(2), Nov. 24, 2003, 117 Stat. 1818

Section, acts June 29, 1936, ch. 858, title VIII, § 804, 49 Stat. 2012; June 23, 1938, ch. 600, § 35, 52 Stat. 963; Pub. L. 91–469, § 24, Oct. 21, 1970, 84 Stat. 1033; Pub. L. 96–470, title II, § 201(b), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 97–31, § 12(121), Aug. 6, 1981, 95 Stat. 164; Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925; Pub. L. 104–239, § 5(a), Oct. 8, 1996, 110 Stat. 3131, prohibited the operation of a competing foreign-flag vessel.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 2005, see section 3537(b) of Pub. L. 108–136, set out as an Effective Date note under section 53101 of Title 46, Shipping.

§ 1223. Forbidden practices relating to coastwise service, salaries, officers, and employees

(a) Foreign trade subsidy contractor engaging in coastwise or intercoastal trade

It shall be unlawful to award or pay any subsidy to any contractor under authority of part A of subchapter VI of this chapter, or to charter any vessel to any person under subchapter VII of this chapter if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this chapter: *Provided*, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) Contractor in default paying more than specified salary

Whenever any contractor under part A of subchapter VI of this chapter or subchapter VII of this chapter receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Secretary of Transportation, or has not maintained, in a manner satisfactory to the Secretary of Transportation, all of the reserves provided for in this chapter, the Secretary of Transportation shall have the right to supervise the number and compensation of all officers and employees of the contractor.

(c) Repealed. Pub. L. 91–469, § 25, Oct. 21, 1970, 84 Stat. 1034

(d) Employing other persons or concerns as managing or operating agent

It shall be unlawful, without express written consent of the Secretary of Transportation, for any contractor holding a contract authorized under part A of subchapter VI or[1] VII of this chapter to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this chapter, including limitations of profits and salaries.

(e) Repealed. Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925

(f) Penalty

Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this chapter, and upon determining that such a violation has occurred the Secretary of Transportation may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

(June 29, 1936, ch. 858, title VIII, § 805, 49 Stat. 2012; June 23, 1938, ch. 600, §§ 36, 37, 52 Stat. 963; July 17, 1952, ch. 939, § 20, 66 Stat. 765; Pub. L. 91–469, § 25, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 91–603, § 4(e), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97–31, § 12(122), Aug. 6, 1981, 95 Stat. 164; Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925; Pub. L. 104–239, § 4(b), Oct. 8, 1996, 110 Stat. 3131.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–239, § 4(b)(1), substituted ''part A of subchapter VI of this chapter'' for ''subchapter VI of this chapter''.

Subsecs. (b), (d). Pub. L. 104–239, § 4(b)(2), substituted ''under part A of subchapter VI'' for ''under subchapter VI''.

[1] So in original. Probably should be followed by ''subchapter''.

1989—Subsec. (e). Pub. L. 101–225 struck out subsec. (e) which provided that it was unlawful for any contractor or charterer who holds any contract made under authority of this chapter to employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director of such person.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1970—Subsec. (c). Pub. L. 91–469 struck out restriction against taking into account for subsidy accounting purposes any salary for personal services in excess of $25,000 paid by the contractor and definition of terms ''director'', ''officer'', ''employee'', and ''salary''.

Subsec. (d). Pub. L. 91–603 struck out provisions which prohibited a contractor from receiving an operating-differential subsidy for the operation of any chartered vessel save and except during a period of actual emergency determined by the Secretary, or except as provided in section 1198 of this Appendix.

1952—Subsec. (c). Act July 17, 1952, removed limitation of amount of salaries paid to employers, and defined director, officer, or employee.

1938—Subsec. (d). Act June 23, 1938, substituted ''contractor. (c) No director'' for ''contractor (c) no director'', and inserted ''or except as provided in section 1198 of this Appendix''.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1226. Discrimination in respect to cargo

It shall be unlawful for any contractor receiving an operating-differential subsidy under subchapter VI of this chapter or for any charterer under subchapter VII of this chapter unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(June 29, 1936, ch. 858, title VIII, § 808, 49 Stat. 2015.)

§ 1227. Agreements with other carriers forbidden; withholding subsidies; actions by injured persons for damages

It shall be unlawful for any contractor receiving an operating-differential subsidy under subchapter VI of this chapter or for any charterer of vessels under subchapter VII of this chapter to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(June 29, 1936, ch. 858, title VIII, § 810, 49 Stat. 2015.)

§ 1228. Fines and penalties; conviction as rendering persons ineligible to receive benefits of law

Whenever any natural person is found guilty in any district court of the United States of any act or acts declared in this chapter to constitute a misdemeanor, he shall be punished by a fine of not more than $10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this chapter to be unlawful, such corporation shall be punished by a fine of not more than $25,000.

In addition to the punishment prescribed in section 1224[1] of this Appendix, any person or corporation convicted of a misdemeanor under the provisions of this chapter shall be ineligible, at the discretion of the Commission or the Secretary of Transportation, to receive any benefits under subchapters V and VI of this chapter, or to receive a charter under subchapter VII of this chapter for a period of five years after conviction.

Whoever knowingly and willfully violates any order, rule, or regulation of the Federal Maritime Commission or the Secretary of Transportation made or issued in the exercise of the powers, duties, or functions transferred to it or him or vested in it or him by this chapter, as amended, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than $500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

(June 29, 1936, ch. 858, title VIII, § 806(b)–(d), 49 Stat. 2014; Aug. 4, 1939, ch. 417, § 13, 53 Stat. 1187; Pub. L. 97–31, § 12(125), Aug. 6, 1981, 95 Stat. 164.)

REFERENCES IN TEXT

Section 1224 of this Appendix, referred to in text, was repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

CODIFICATION

Section is comprised of subsecs. (b) to (d) of section 806 of act June 29, 1936. Subsec. (a) of section 806 is classified to section 1224 of this Appendix.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Commission or the Secretary of Transportation'' for ''Commission'', ''Federal Maritime Commission or the Secretary of Transportation'' for ''United States Maritime Commission'', and ''it or him'' for ''it'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1939—Act Aug. 4, 1939, added third par.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan

[1] See References in Text note below.

No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

§ 1241. Transportation in American vessels of Government personnel and certain cargoes

(a) Requirement that officers and employees travel on American ships

Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag. The Administrator of General Services shall prescribe regulations under which agencies shall not pay for or reimburse officers or employees for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

(b) Cargoes procured, furnished or financed by United States; waiver in emergencies; exceptions; definition

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of this paragraph and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of section 1241–1 of this Appendix. For purposes of this section, the term ''privately owned United States-flag commercial vessels'' shall not be deemed to include any vessel which, subsequent to September 21, 1961, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to September 21, 1961, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to September 21, 1961, or (2) where prior to September 21, 1961, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to September 21, 1961.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.

(c) Motor vehicle owned by Government personnel

Notwithstanding any other provision of law, privately owned American shipping services may be utilized for the transportation of motor vehicles owned by Government personnel whenever transportation of such vehicles at Government expense is otherwise authorized by law.

(June 29, 1936, ch. 858, title IX, § 901, 49 Stat. 2015; Aug. 26, 1954, ch. 936, 68 Stat. 832; May 28, 1956, ch. 325, 70 Stat. 187; Pub. L. 87–266, Sept. 21, 1961, 75 Stat. 565; Pub. L. 91–469, § 27, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 97–31, § 12(126), Aug. 6, 1981, 95 Stat. 165; Pub. L. 104–316, title I, § 125, Oct. 19, 1996, 110 Stat. 3839.)

REFERENCES IN TEXT

Panama Canal Company, referred to in subsec. (b)(1), deemed to refer to Panama Canal Commission, see section 3602(b)(5) of Title 22, Foreign Relations and Intercourse.

This amendment, referred to in subsec. (b)(1), means the amendment to this section by Pub. L. 87–266. See 1961 Amendment note below.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 substituted ''flag. The Administrator of General Services shall prescribe regulations under which agencies'' for ''flag: *Provided*, That the Comptroller General of the United States'' and substituted ''pay for or reimburse officers or employees'' for ''credit any allowance''.

1981—Subsec. (b)(2). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' in two places.

1970—Subsec. (b). Pub. L. 91–469 redesignated subsec. (b) as (b)(1), substituted ''this paragraph'' for ''this subsection'' after ''temporary waiver of the provisions of'' therein, and added subsec. (b)(2).

1961—Subsec. (b). Pub. L. 87–266 excluded from term ''privately owned United States-flag commercial vehicles'' those vessels which, subsequent to Sept. 21, 1961,

have been either built outside the United States, rebuilt outside the United States, or documented under foreign registry, until such vessels have been documented under the laws of the United States for 3 years.

1956—Subsec. (c). Act May 28, 1956, added subsec. (c).

1954—Act Aug. 26, 1954, designated existing provisions as subsec. (a) and added subsec. (b).

EXEMPTIONS

Export sales of certain agricultural commodities, see section 1707a of Title 7, Agriculture.

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22, Foreign Relations and Intercourse.

Act Aug. 3, 1956, ch. 933, § 3, 70 Stat. 988, provided that sales of fresh fruit and the products thereof under sections 1701 to 1709 of Title 7, Agriculture, should be exempt from the requirements of this section.

§ 1241–1. Shipment of exports financed by Government in United States vessels

It is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

(Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, § 204, 49 Stat. 1987; 1957 Reorg. Plan No. 1, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647; Pub. L. 97–31, § 12(127), Aug. 6, 1981, 95 Stat. 165.)

CODIFICATION

Provisions of this section reading ''any loans made by any instrumentality of the Government'' and ''shall certify to the instrumentality of the Government'' were substituted for ''any loans made by the Reconstruction Finance Corporation or any other instrumentality of the Government'' and ''shall certify to the Reconstruction Finance Corporation or any other instrumentality of the Government'' in view of the abolition of the Reconstruction Finance Corporation and transfer of its remaining functions to Housing and Home Finance Agency, Administrator of General Services, Administrator of Small Business Administration, and Secretary of the Treasury pursuant to Reorg. Plan No. 1 of 1957, set out in Appendix of Title 5, Government Organization and Employees.

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

Section was formerly classified to section 616a of Title 15, Commerce and Trade.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

Functions of Shipping Board Bureau assumed by United States Maritime Commission on Oct. 26, 1936, under provisions of act June 29, 1936, set out as section 1114 of this Appendix. For subsequent transfers of functions, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

EXEMPTIONS

Export sales of certain agricultural commodities, see section 1707a of Title 7, Agriculture.

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out under section 2393 of Title 22, Foreign Relations and Intercourse.

Act Aug. 3, 1956, ch. 933, § 3, 70 Stat. 988, provided that sales of fresh fruit and the products thereof under sections 1701 to 1709 of Title 7, Agriculture, should be exempt from the requirements of this section.

Section not affected by other requirements regarding transportation of certain cargoes in American vessels, see section 1241 of this Appendix.

§ 1241a. Vessel operations revolving fund; establishment; uses; limitation

There is established a working capital of $20,000,000 to remain available until expended, for the ''Vessel Operations Revolving Fund'', which is created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation.

Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: *Provided*, That the provisions of sections 1291(a), (c), 1293(c), and 1294 of Appendix to title 50 shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: *Provided further*, That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Office of Management and Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation ''Salaries and expenses'' for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: *Provided further*, That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts.

No money made available to the Department of Transportation, for Maritime Activities, by this section or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 1212 of this Appendix is applicable) is computed in accordance with

subsection (a) of section 1242 of this Appendix, as that subsection is interpreted by the Government Accountability Office.

(June 2, 1951, ch. 121, Ch. VIII, 65 Stat. 59; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 97–31, § 12(128), Aug. 6, 1981, 95 Stat. 165; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in last par.

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' in four places and ''Department of Transportation'' for ''Department of Commerce''.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of Budget or Director of Bureau of the Budget transferred to President of United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970, redesignated Bureau of the Budget as Office of Management and Budget.

AUTHORIZATION FOR PAYMENTS OUT OF FUND

Pub. L. 85–721, Aug. 21, 1958, 72 Stat. 710, as authorizing Secretary of Commerce to make certain payments out of Vessels Operations Revolving Fund to persons to whom he chartered vessel, see note set out under section 1738 of Appendix to Title 50, War and National Defense.

§ 1241b. Availability of vessel operations revolving fund; vessels involved in mortgage-foreclosure or forfeiture proceedings; redelivery and layup of chartered ships; custody and husbanding of Government-owned ships

On and after June 20, 1956, the vessel operations revolving fund shall be available for necessary expenses incurred, in connection with protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage-foreclosure or forfeiture proceedings instituted by the United States, including payment of prior claims and liens, expenses of sale, or other charges incident thereto; for necessary expenses incident to the redelivery and lay-up, in the United States, of ships now chartered under agreements which do not call for their return to the United States; for activation, repair and deactivation of merchant ships chartered for limited emergency purposes during the fiscal year 1957 under the jurisdiction of the Secretary of Transportation; and for payment of expenses of custody and husbanding of Government-owned ships other than those within reserve fleets.

(June 20, 1956, ch. 415, title I, § 101, 70 Stat. 319; Pub. L. 97–31, § 12(129), Aug. 6, 1981, 95 Stat. 165.)

CODIFICATION

Section was not enacted as part of the Merchant Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the appropriation act of June 30, 1955, ch. 253, title I, § 101, 69 Stat. 231, as amended by act May 19, 1956, ch. 313, Ch. II, § 201, 70 Stat. 162.

LIMITATION ON FUNDS FOR FISCAL YEAR 1957

Act June 20, 1956, ch. 415, title I, § 101, 70 Stat. 319, provided in part that not to exceed $5,000,000 of the funds of the vessel operations revolving fund were to be used in fiscal year 1957 for the purposes set forth in this section.

Similar provisions on limitation on funds were contained in act June 30, 1955, ch. 253, title I, § 101, 69 Stat. 231.

§ 1241c. Expenses for activation, repair and deactivation of merchant ships; receipts

The vessel operations revolving fund created by section 1241a of this Appendix, shall, beginning July 1, 1956, be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary of Transportation. There shall be credited to such fund all receipts on account of operations after July 1, 1956, under charters of Government-owned ships under the jurisdiction of the Secretary of Transportation.

(Aug. 1, 1956, ch. 846, 70 Stat. 897; Pub. L. 97–31, § 12(130), Aug. 6, 1981, 95 Stat. 165.)

CODIFICATION

Section was not enacted as part of the Merchant Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce'' in two places.

§ 1241d. Findings and declarations with respect to export transportation of agricultural commodities

(a) The Congress finds and declares—

(1) that a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and national security objectives of our Nation;

(2) that both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) that increased agricultural exports and the utilization of United States merchant vessels contribute positively to the United States balance of trade and generate employment opportunities in the United States.

(b) It is therefore declared to be the purpose and policy of the Congress in sections 1241d to 1241p of this Appendix—

(1) to enable the Department of Agriculture to plan its export programs effectively, by clarifying the ocean transportation requirements applicable to such programs;

(2) to take immediate and positive steps to promote the growth of the cargo carrying capacity of the United States merchant marine;

(3) to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports;

(4) to improve the efficiency of administration of both the commodity purchasing and selling and the ocean transportation activities associated with export programs sponsored by the Department of Agriculture;

(5) to stimulate and promote both the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

(6) to provide in this chapter for the appropriate disposition of these findings and purposes.

(Pub. L. 99–198, title XI, § 1141, Dec. 23, 1985, 99 Stat. 1490.)

REFERENCES IN TEXT

Sections 1241d to 1241p of this Appendix, referred to in subsec. (b), was in the original ''this subtitle'', meaning subtitle C (§§ 1141–1143) of title XI of Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1490, which enacted sections 1241d to 1241p of this Appendix.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241e. Exemption of certain agricultural exports from requirements of cargo preference laws

The requirements of sections 1241(b)(1) and 1241–1 of this Appendix, shall not apply to any export activities of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) under which agricultural commodities or the products thereof acquired by the Commodity Credit Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or the products thereof at prevailing world market prices;

(2) under which payments are made available to United States exporters, users, or processors or, except as provided in section 1241f of this Appendix, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) under which commercial credit guarantees are blended with direct credits from the Commodity Credit Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or the products thereof;

(4) under which credit or credit guarantees for not to exceed 3 years are extended by the Commodity Credit Corporation to finance or guarantee export sales of United States agricultural commodities or the products thereof; or

(5) under which agricultural commodities or the products thereof owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services, but only if such materials, goods, equipment, or services are of a value at least equivalent to the value of the agricultural commodities or products exchanged or bartered therefor (determined on the basis of prevailing world market prices at the time of the exchange or barter), but nothing in this subsection shall be construed to exempt from the cargo preference provisions referred to in section 1241f of this Appendix any requirement otherwise applicable to the materials, goods, equipment, or services imported under any such transaction.

(June 29, 1936, ch. 858, title IX, § 901a, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1490.)

§ 1241f. Shipment requirements for certain exports sponsored by Department of Agriculture

(a) Minimum requirement respecting gross tonnage transported in United States-flag commercial vessels; implementation

(1) In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 1241(b)(1) of this Appendix, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) of this section shall be transported on United States-flag commercial vessels.

(2) In order to achieve an orderly and efficient implementation of the requirement of paragraph (1)—

(A) an additional quantity equal to 10 percent of the gross tonnage referred to in paragraph (1) shall be transported in United States-flag vessels in calendar year 1986;

(B) an additional quantity equal to 20 percent of the gross tonnage shall be transported in such vessels in calendar year 1987; and

(C) an additional quantity equal to 25 percent of the gross tonnage shall be transported in such vessels in calendar year 1988 and in each calendar year thereafter.

(b) Covered export activity

This section shall apply to any export activity of the Commodity Credit Corporation or the Secretary of Agriculture—

(1) carried out under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

(2) carried out under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(3) carried out under the Bill Emerson Humanitarian Trust Act [7 U.S.C. 1736f–1];

(4) under which agricultural commodities or the products thereof are—

(A) donated through foreign governments or agencies, private or public, including intergovernmental organizations; or

(B) sold for foreign currencies or for dollars on credit terms of more than ten years;

(5) under which agricultural commodities or the products thereof are made available for emergency food relief at less than prevailing world market prices;

(6) under which a cash grant is made directly or through an intermediary to a foreign purchaser for the purpose of enabling the purchaser to obtain United States agricultural commodities or the products thereof in an amount greater than the difference between the prevailing world market price and the

United States market price, free along side vessel at United States port; or

(7) under which agricultural commodities owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, other than export activities described in section 1241e(5) of this Appendix.

(c) Terms and conditions

(1) The requirement for United States-flag transportation imposed by subsection (a) of this section shall be subject to the same terms and conditions as provided in section 1241(b) of this Appendix.

(2) In order to provide for effective and equitable administration of the cargo preference laws the calendar year for the purpose of compliance with minimum percentage requirements shall be for 12 month periods commencing April 1, 1986, the 18-month period beginning April 1, 2002, and the 12-month period beginning October 1, 2003, and each year thereafter.

(3)(A) Subject to subparagraph (B), in administering sections 1241(b) and 1241f of this Appendix, and, subject to subparagraph (B) of this paragraph, consistent with those sections, the Commodity Credit Corporation shall take such steps as may be necessary and practicable without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of documentation of the vessel, 25 percent of the bagged, processed, or fortified commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1721 et seq.].

(B) In carrying out this paragraph, there shall first be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of documentation of the vessel and there shall be allocated to the Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation. The requirements for United States-flag transportation under section 1241(b) of this Appendix and this section shall not apply to commodities allocated under subparagraph (A) to the Great Lakes port range, and commodities allocated under subparagraph (A) to that port range may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which subparagraph (A) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of such commodities furnished.

(C) In awarding any contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b) of this section, each agency or instrumentality—

(i) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and

(ii) may not deny award of the contract to a person based on the type of vessel on which the transportation would be provided (including on the basis that the transportation would not be provided on a liner vessel (as that term is used in the Shipping Act of 1984 [46 App. U.S.C. 1701 et seq.], as in effect on November 14, 1995)), if the person otherwise satisfies reasonable requirements for financial and operational integrity.

(4) Any determination of nonavailability of United States-flag vessels resulting from the application of this subsection shall not reduce the gross tonnage of commodities required by sections 1241(b) and 1241f of this Appendix to be transported on United States-flag vessels.

(d) "Export activity" defined

As used in subsection (b) of this section, the term ''export activity'' does not include inspection or weighing activities, other activities carried out for health or safety purposes, or technical assistance provided in the handling of commercial transactions.

(e) Prevailing world market price

(1) The prevailing world market price as to agricultural commodities or the products thereof shall be determined under sections 1241e through 1241h of this Appendix in accordance with procedures established by the Secretary of Agriculture. The Secretary shall prescribe such procedures by regulation, with notice and opportunity for public comment, pursuant to section 553 of title 5.

(2) In the event that a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required in order to determine whether a barter or exchange transaction is subject to subsection (b)(6) or (b)(7) of this section, such determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate Federal agencies.

(June 29, 1936, ch. 858, title IX, § 901b, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1491; amended Pub. L. 101–624, title XV, § 1525, Nov. 28, 1990, 104 Stat. 3667; Pub. L. 104–239, § 17, Oct. 8, 1996, 110 Stat. 3138; Pub. L. 105–385, title II, § 212(b)(5), Nov. 13, 1998, 112 Stat. 3467; Pub. L. 108–136, div. C, title XXXV, § 3514, Nov. 24, 2003, 117 Stat. 1792.)

REFERENCES IN TEXT

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsecs. (b)(1) and (c)(3)(A), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended, which is classified generally to chapter 41 (§ 1691 et seq.) of Title 7, Agriculture. Title II of the Act is classified generally to subchapter III (§ 1721 et seq.) of chapter 41 of Title 7. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The cargo preference laws, referred to in subsec. (c)(2), include act Mar. 26, 1934, ch. 90, 48 Stat. 500, and act Aug. 26, 1954, ch. 936, 68 Stat. 832, which are classified to sections 1241–1 and 1241, respectively, of this Appendix.

The Shipping Act of 1984, referred to in subsec. (c)(3)(C)(ii), is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to chapter 36 (§ 1701 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

AMENDMENTS

2003—Subsec. (c)(2). Pub. L. 108–136 substituted ''1986, the 18-month period beginning April 1, 2002, and the 12-

month period beginning October 1, 2003, and each year thereafter'' for ''1986''.

1998—Subsec. (b)(3). Pub. L. 105–385 substituted ''Bill Emerson Humanitarian Trust Act'' for ''Food Security Wheat Reserve Act of 1980 (7 U.S.C. 1736f–1)''.

1996—Subsec. (c)(3)(A). Pub. L. 104–239, § 17(a)(1), substituted ''and, subject to subparagraph (B) of this paragraph, consistent with those sections,'' for ''and consistent with those sections,'' and ''25 percent'' for ''50 percent''.

Subsec. (c)(3)(B), (C). Pub. L. 104–239, § 17(a)(2), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''In carrying out this paragraph, the Commodity Credit Corporation shall not allocate to the Great Lakes port range in any year a percentage share of commodities referred to in subparagraph (A) that is greater than the share experienced by that port range in 1984, as determined by the Secretary of Agriculture.''

Subsec. (c)(4), (5). Pub. L. 104–239, § 17(b), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''Amounts of cargo allocated to ports in the Great Lakes port range pursuant to paragraph (3) shall not be exported from a different port range except as necessary to meet United States-flag transportation requirements of sections 1241(b) and 1241f of this Appendix, in which case within the same year the Commodity Credit Corporation shall take such steps as are necessary and practicable without detriment to any port range to ensure the export from the Great Lakes port range of an amount of tonnage of commodities referred to in paragraph (3)(A) that is not required to be transported on United States-flag vessels, that is equal to the amount of tonnage diverted for export from other port ranges.''

1990—Subsec. (c)(2). Pub. L. 101–624, § 1525(1), (2), struck out ''(A)'' before ''In order to provide'' and struck out subpar. (B) which read as follows: ''In addition, the Secretary of Transportation, in administering this subsection and section 1241(b) of this Appendix, and consistent with these sections, shall take such steps as may be necessary and practicable without detriment to any port range to preserve during calendar years 1986, 1987, 1988, and 1989 the percentage share, or metric tonnage of bagged, processed, or fortified commodities, whichever is lower, experienced in calendar year 1984 as determined by the Secretary of Agriculture, of waterborne cargoes exported from Great Lake ports pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.).''

Subsec. (c)(3) to (5). Pub. L. 101–624, § 1525(3), added pars. (3) to (5).

§ 1241g. Minimum tonnage

(a)(1) For fiscal year 1986 and each fiscal year thereafter, the minimum quantity of agricultural commodities to be exported under programs subject to section 1241f of this Appendix shall be the average of the tonnage exported under such programs during the base period defined in subsection (b) of this section, discarding the high and low years.

(2) The President may waive the minimum quantity for any fiscal year required under paragraph (1) if he determines and reports to the Congress, together with his reasons, that such quantity cannot be effectively used for the purposes of such programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons which include the unavailability of funds.

(b) The base period utilized for computing the minimum tonnage quantity referred to in subsection (a) of this section for any fiscal year shall be the five fiscal years beginning with the sixth fiscal year preceding such fiscal year and ending with the second fiscal year preceding such fiscal year.

(June 29, 1936, ch. 858, title IX, § 901c, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1493.)

§ 1241h. Financing of shipment of agricultural commodities in United States-flag vessels

(a) Financing by Secretary of Transportation of increased ocean freight charges

The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year which result from the application of section 1241f of this Appendix.

(b) Reimbursement of Secretary of Agriculture and Commodity Credit Corporation; computations

If in any fiscal year the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Department of Agriculture and the Commodity Credit Corporation on exports of agricultural commodities and products thereof under the agricultural export programs specified in section 1241f(b) of this Appendix exceeds 20 percent of the value of such commodities and products and the cost of such ocean freight and ocean freight differential on which obligations are incurred by such Department and Corporation during such year, the Secretary of Transportation shall reimburse the Department of Agriculture and the Commodity Credit Corporation for the amount of such excess. For the purpose of this subsection, commodities shipped from the inventory of the Commodity Credit Corporation shall be valued as provided in section 1733(b)[1] of title 7.

(c) Issuance, etc., of obligations for financing

For the purpose of meeting those expenses required to be assumed under subsections (a) and (b) of this section, the Secretary of Transportation shall issue to the Secretary of the Treasury such obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of Transportation with the approval of the Secretary of the Treasury. Such obligations shall be at a rate of interest as determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such obligations during the month preceding the issuance of such obligations of the Secretary of Transportation. The Secretary of the Treasury shall purchase any obligations of the Secretary of Transportation issued under this subsection and, for the purpose of purchasing such obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31 after December 23, 1985, and the purposes for which securities may be issued under such chapter are extended to include any purchases of the obligations of the Secretary of Transportation under this subsection. All redemptions

[1] See References in Text note below.

and purchases by the Secretary of the Treasury of the obligations of the Secretary of Transportation shall be treated as public-debt transactions of the United States.

(d) Authorization of appropriations

There is authorized to be appropriated annually for each fiscal year, commencing with the fiscal year beginning October 1, 1986, an amount sufficient to reimburse the Secretary of Transportation for the costs, including administrative expenses and the principal and interest due on the obligations to the Secretary of the Treasury incurred under this section. Reimbursement of any such costs shall be made with appropriated funds, as provided in this section, rather than through cancellation of notes.

(e) Notification of Congress respecting failure to obtain funds necessary for financing

Notwithstanding the provisions of this section, in the event that the Secretary of Transportation is unable to obtain the funds necessary to finance the increased ocean freight charges resulting from the requirements of subsections (a) and (b) of this section and section 1241f(a) of this Appendix, the Secretary of Transportation shall so notify the Congress within 10 working days of the discovery of such insufficiency.

(June 29, 1936, ch. 858, title IX, § 901d, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1493.)

REFERENCES IN TEXT

Section 1733 of title 7, referred to in subsec. (b), was amended generally by Pub. L. 101–624, title XV, § 1512, Nov. 28, 1990, 104 Stat. 3646, and, as so amended, no longer contains provisions relating to valuation of commodities shipped from the inventory of the Commodity Credit Corporation. See section 1736f(e) of Title 7, Agriculture.

CODIFICATION

''December 23, 1985,'' substituted in subsec. (c) for ''the date of the enactment of this Act'', meaning the date of the enactment of Pub. L. 99–198 which enacted this section, as the probable intent of Congress.

APPROPRIATION FOR PAYMENTS OF OCEAN FREIGHT DIFFERENTIALS

Pub. L. 100–202, § 101(a) [title V, § 501], Dec. 22, 1987, 101 Stat. 1329, 1329–27, provided that: ''Such sums as may be necessary for fiscal year 1988 and thereafter are hereby appropriated to liquidate debt and pay interest due to the Secretary of the Treasury, as required by section 901d, Merchant Marine Act, 1936 [46 App. U.S.C. 1241h].''

§ 1241i. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 1241e through 1241*o* of this Appendix.

(June 29, 1936, ch. 858, title IX, § 901e, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1494.)

§ 1241j. Termination of sections 1241e through 1241*o* of this Appendix

The operation of sections 1241e through 1241*o* of this Appendix shall terminate 90 days after the date on which a notification is made pursuant to section 1241h(e) of this Appendix, except with respect to shipments of agricultural commodities and products subject to contracts entered into before the expiration of such 90-day period, unless within such 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 1241f(a) and 1241h(a) and (b) of this Appendix. In the event of termination under this section, nothing in sections 1241e through 1241h of this Appendix shall be construed as exempting export activities from or subjecting export activities to the cargo preference laws except to the extent those activities are exempt under section 1707a(b)[1] of title 7. In the event of termination under this section, the 50 percent requirement in section 1241(b) of this Appendix shall be in full effect.

(June 29, 1936, ch. 858, title IX, § 901f, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1494.)

REFERENCES IN TEXT

The cargo preference laws, referred to in text, include act Mar. 26, 1934, ch. 90, 48 Stat. 500, and act Aug. 26, 1954, ch. 936, 68 Stat. 832, which are classified to sections 1241–1 and 1241, respectively, of this Appendix.

Section 1707a of title 7, referred to in text, was repealed by Pub. L. 101–624, title XV, § 1574, Nov. 28, 1990, 104 Stat. 3702.

§ 1241k. National Advisory Commission on Agricultural Export Transportation Policy

(a) Establishment

There is hereby established an advisory commission to be known as the National Advisory Commission on Agricultural Export Transportation Policy (hereafter in this section through section 1241n of this Appendix referred to as the ''Commission'').

(b) Membership; composition, appointment, etc.

(1) The Commission shall be composed of 16 members.

(2) Eight members of the Commission shall be appointed by the President.

(3) The chairman and ranking minority members of the Senate Committee on Agriculture, Nutrition, and Forestry, of the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science, and Transportation, of the House Committee on Agriculture, and of the House Committee on Transportation and Infrastructure shall serve as members of the Commission.

(4)(A) Four of the members appointed by the President shall be representatives of agricultural producers, cooperatives, merchandisers, and processors of agricultural commodities.

(B) The remaining four members appointed by the President shall be representatives of the United States-flag maritime industry, two of whom shall represent labor and two of whom shall represent management.

(c) Chairman; vacancy

(1) The members of the Commission shall elect a Chairman from among its members.

[1] See References in Text note below.

(2) Any vacancy in the Commission does not affect its powers but shall be filled in the same manner in which the original appointment was made.

(June 29, 1936, ch. 858, title IX, § 901g, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1494; Pub. L. 107–295, title IV, § 408(c)(2), Nov. 25, 2002, 116 Stat. 2117.)

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107–295 substituted ''Transportation and Infrastructure'' for ''Merchant Marine and Fisheries''.

§ 1241*l*. Duties of Commission

(a) Study and review of ocean transportation of agricultural exports subject to cargo preference laws; recommendations, scope, etc.

It shall be the duty of the Commission to conduct a comprehensive study and review of the ocean transportation of agricultural exports subject to the cargo preference laws referred to in section 1241f of this Appendix and to make recommendations to the President and the Congress for improving the efficiency of such transportation on United States-flag vessels in order to reduce the costs incurred by the United States in connection with such transportation. In carrying out such study and review, the Commission shall consider the extent to which any unfair or discriminatory practices of foreign governments increase the cost to the United States of transporting agricultural commodities subject to such cargo preference laws.

(b) Reporting requirements; termination of Commission

(1) The Commission shall submit an interim report to the President and the Congress not later than one year after December 23, 1985, and such other interim reports as the Commission considers advisable.

(2) The Commission shall submit a final report containing its findings and recommendations to the President and the Congress not later than two years after December 23, 1985. The report shall include recommendations for any changes in the provisions of paragraph (1) that would help assure that the cost of ocean freight and ocean freight differential incurred by the Department of Agriculture and the Commodity Credit Corporation on the agricultural export programs specified in section 1241f of this Appendix, is not increased above historical levels as a result of the extra demand for United States-flag vessels caused by section 1241f of this Appendix.

(3) Sixty days after the submission of the final report, the Commission shall cease to exist.

(c) Contents of reports

The Commission shall include in its reports submitted pursuant to subsection (b) of this section recommendations concerning the feasibility and desirability of achieving the following goals with respect to the ocean transportation of agricultural commodities subject to the cargo preference laws referred to in section 1241f of this Appendix:

(1) Ensuring that the timing of commodity purchase agreements entered into by the United States in connection with the export of such commodities, and the methods of implementing such agreements, will minimize cost to the United States.

(2) Ensuring that shipments of such commodities are made on the most modern and efficient United States-flag vessels available.

(3) Ensuring that shipments of such commodities are made under the most advantageous terms available, including—

(A) charters for full shiploads;

(B) charters for intermediate or long term;

(C) charters for consecutive voyages and contracts of affreightment; and

(D) adjustment of rates in the event that vessels used for shipments of such commodities also carry cargoes on return voyages.

(4) Reduction and elimination of impediments, including delays in port, to the efficient loading and operation of the vessels employed for shipment of such commodities.

(5) Utilization of open and competitive bidding for the ocean transportation of such commodities.

(June 29, 1936, ch. 858, title IX, § 901h, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1495.)

REFERENCES IN TEXT

The cargo preference laws, referred to in subsecs. (a) and (c), include act Mar. 26, 1934, ch. 90, 48 Stat. 500, and act Aug. 26, 1954, ch. 936, 68 Stat. 832, which are classified to sections 1241–1 and 1241, respectively, of this Appendix.

§ 1241m. Information and assistance to be furnished to Commission

(a) Each department, agency, and instrumentality of the United States, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission considers necessary to carry out its functions.

(b) The Secretary of Agriculture and the Secretary of Transportation shall make available to the Commission such staff, personnel, and administrative services as may reasonably be required to carry out the Commission's duties.

(June 29, 1936, ch. 858, title IX, § 901i, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1496.)

§ 1241n. Compensation and travel and subsistence expenses of Commission members

Members of the Commission shall serve without compensation in addition to compensation they may otherwise be entitled to receive as employees of the United States or as Members of Congress, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(June 29, 1936, ch. 858, title IX, § 901j, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1496.)

§ 1241*o*. Definition of United States-flag vessel eligible to carry cargoes under sections 1241f through 1241h of this Appendix

A United States flag[1] vessel eligible to carry cargoes under sections 1241f through 1241h of this Appendix means a vessel, as defined in section 3 of title 1, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

(June 29, 1936, ch. 858, title IX, § 901k, as added Pub. L. 99–198, title XI, § 1142, Dec. 23, 1985, 99 Stat. 1496.)

§ 1241p. Effect on other laws

Sections 1241d to 1241p of this Appendix shall not be construed as modifying in any manner the provisions of section 1707a(b)(8)[1] of title 7 or chapter 5 of title 5.

(Pub. L. 99–198, title XI, § 1143, Dec. 23, 1985, 99 Stat. 1496.)

REFERENCES IN TEXT

Sections 1241d to 1241p of this Appendix, referred to in text, was in the original ''this subtitle'', meaning subtitle C (§§ 1141–1143) of title XI of Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1490, which enacted sections 1241d to 1241p of this Appendix.

Section 1707a of title 7, referred to in text, was repealed by Pub. L. 101–624, title XV, § 1574, Nov. 28, 1990, 104 Stat. 3702.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241q. Exemption of American Great Lakes vessels from restriction on carriage of preference cargoes

(a) Exemption from restriction

The restriction described in subsection (b) of this section shall not apply to an American Great Lakes vessel while it is so designated.

(b) Restriction described

The restriction referred to in subsection (a) of this section is the restriction in section 1241(b)(1) of this Appendix, that a vessel that is—

(1) built outside the United States;

(2) rebuilt outside the United States; or

(3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) Subsequent application of restriction

Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) of this section shall apply as if the vessel had never been a vessel documented under the laws of the United States.

(Pub. L. 101–624, title XV, § 1521, Nov. 28, 1990, 104 Stat. 3665.)

[1] So in original. Probably should be ''United States-flag''.

[1] See References in Text note below.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241r. Designation of American Great Lakes vessels

(a) In general

The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of sections 1241q to 1241v of this Appendix if—

(1) the vessel is documented under the laws of the United States;

(2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d) of this section;

(3) the owner of the vessel enters into an agreement in accordance with subsection (b) of this section;

(4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

(5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) Construction and purchase agreement

As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120-day period following the date of any revocation of such designation under section 1241t of this Appendix, an exclusive right to purchase the vessel for a price equal to—

(1) the approximate world market value of the vessel; or

(2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel;

whichever is greater.

(c) Certain foreign registry and sale not prohibited

Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b) of this section, the owner of the vessel shall not be prohibited from—

(1) transferring the vessel to a foreign registry; or

(2) selling the vessel to a person who is not a citizen of the United States.

(d) Issuance of regulations

Not later than 60 days after November 28, 1990, the Secretary shall issue regulations estab-

lishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

(Pub. L. 101–624, title XV, § 1522, Nov. 28, 1990, 104 Stat. 3665.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsec. (a), was in the original ''this subtitle'', meaning subtitle B (§§ 1521–1527) of title XV of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241s. Restrictions on operations of American Great Lakes vessels

(a) In general

Subject to subsection (b) of this section, an American Great Lakes vessel shall not be used—

(1) to engage in trade—

(A) from a port in the United States that is not located on the Great Lakes; or

(B) between ports in the United States;

(2) to carry bulk cargo (as that term is defined in section 1702 of this Appendix[1] which is subject to section 1241(b) or 1241f of this Appendix, or section 2631 of title 10; or

(3) to provide any service other than ocean freight service—

(A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) Off-season carriage exception

(1) In general

Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) of this section for not more than 90 days during any 12-month period.

(2) Limitation

An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

(Pub. L. 101–624, title XV, § 1523, Nov. 28, 1990, 104 Stat. 3666.)

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241t. Revocation and termination of designation

(a) Revocation

The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1241r of this Appendix as an American Great Lakes vessel if the Secretary determines that—

(1) the vessel does not meet a requirement for such designation;

(2) the vessel has been operated in violation of sections 1241q to 1241v of this Appendix; or

(3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1241r(b) of this Appendix.

(b) Civil penalty

The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than $1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a) of this section.

(c) Termination of designation

The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under sections 1241q to 1241v of this Appendix upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

(Pub. L. 101–624, title XV, § 1524, Nov. 28, 1990, 104 Stat. 3667.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsecs. (a)(2) and (c), was in the original ''this subtitle'', meaning subtitle B (§§ 1521–1527) of title XV of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241u. Study and report

(a) Study

The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of sections 1241q to 1241v of this Appendix. The study shall include analysis of—

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1721 et seq.]; and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) Report

Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a) of this section.

[1] So in original. Probably should be followed by a closing parenthesis.

(Pub. L. 101–624, title XV, § 1526, Nov. 28, 1990, 104 Stat. 3668.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsec. (a), was in the original ''this subtitle'', meaning subtitle B (§§ 1521–1527) of title XV of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a)(1), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended. Title II of the Act is classified generally to subchapter III (§ 1721 et seq.) of chapter 41 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1241v. Definitions

As used in sections 1241q to 1241v of this Appendix—

(1) American Great Lakes vessel

The term ''American Great Lakes vessel'' means a vessel which is so designated by the Secretary in accordance with section 1241r of this Appendix.

(2) Great Lakes

The term ''Great Lakes'' means Lake Superior; Lake Michigan; Lake Huron; Lake Erie; Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) Great Lakes shipping season

The term ''Great Lakes shipping season'' means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) Secretary

The term ''Secretary'' means the Secretary of Transportation.

(Pub. L. 101–624, title XV, § 1527, Nov. 28, 1990, 104 Stat. 3668.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in text, was in the original ''this subtitle'', meaning subtitle B (§§ 1521–1527) of title XV of Pub. L. 101–624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

Act of May 13, 1954, referred to in par. (3), is act May 13, 1954, ch. 201, 68 Stat. 93, as amended, which is classified generally to chapter 19 (§ 981 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1242. Requisition or purchase of vessels in time of emergency

(a) Compensation; restoration; consequential damages

Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Transportation to requisition or purchase any vessel or other watercraft owned by citizens of the United States, a documented vessel, or a vessel under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, such property shall be restored to the owner in a condition at least as good as when taken, less ordinary wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the property in such condition. The owner shall not be paid for any consequential damages arising from a taking or use of property under authority of this section.

(b) Determination of value of vessel

When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 1212 of this Appendix, and in determining the value of any vessel taken or used, on which a construction-differential subsidy has not been paid, the value of any national defense features previously paid for by the United States shall be excluded.

(c) Charter of vessels; compensation; reimbursement for loss or damage

If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, the Secretary of Transportation, at the time of the taking or as soon thereafter as the exigencies of the situation may permit, shall transmit to the person entitled to the possession of such property a charter setting forth the terms which, in the Secretary's judgment, should govern the relationships between the United States and such person and a statement of the rate of hire which, in the Secretary's judgment, will be just compensation for the use of such property and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rate of hire, the Secretary of Transportation shall pay to such person as a tentative advance only, on account of such just compensation a sum equal to 75 per centum of such rate of hire as the same may from time to time be due under the terms

of the charter so tendered, and such person shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: *Provided, however*, That in the event of an election by such person to reject the rate of hire fixed by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of loss or damage to such property, due to operation of a risk assumed by the United States under the terms of a charter prescribed in this subsection, but no valuation of such vessel or other property or mode of compensation has been agreed to, the United States shall pay just compensation for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage.

(d) Determination of amount of compensation

In all cases, the just compensation authorized by this section shall be determined and paid by the Secretary of Transportation as soon as practicable, but if the amount of just compensation determined by the Secretary is unsatisfactory to the person entitled thereto; such person shall be paid, as a tentative advance only, 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such amount as would equal just compensation therefor, in the manner provided for by sections 1346 and 1491 of title 28: *Provided, however*, That in that event of an election to reject the amount determined by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.

The existence of any valid claim by way of mortgage or maritime claim or attachment lien upon such vessel shall not prevent the taking thereof pursuant to this section: *Provided, however*, That in the event any such claim exists the Secretary of Transportation may in his discretion deposit such portion of the compensation hereunder, or advances on account thereof, as may equal but not exceed the amount of such claims in respect of the vessel, with the Treasurer of the United States, and the fund so deposited shall be available for the payment of such compensation, and shall be subject to be applied to the payment of the amount of any valid claim by way of mortgage or maritime lien or attachment lien upon such vessel, or of any stipulation therefor in a court of the United States, or of any State, subsisting at the time of such requisition or taking of title or possession; the holder of any such claim may commence prior to June 30, 1943, or within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, whichever date is later, and maintain in the United States district court from whose custody such vessel has been or may be taken or in whose territorial jurisdiction the vessel was lying at the time of requisitioning or taking of title or possession, a suit in admiralty according to the principles of libels in rem against the fund, which shall proceed and be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties, and any decree in said suit shall be paid out of the first and all subsequent deposits of compensation; and such suit shall be commenced in the manner provided by section 742 of this Appendix and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary of Transportation and due notice shall under order of the court be given to all interested persons, and any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction.

(e) Use of vessels by Secretary; transfer to other departments or agencies; reimbursement of Secretary

The Secretary of Transportation is authorized to repair, recondition, reconstruct, and operate, or charter for operation, any property acquired under authority of this section. The Secretary of Transportation is further authorized to transfer the possession or control of any such property to any department or agency of the Government of the United States upon such terms and conditions as may be approved by the President. In case of any such transfer the department or agency to which the transfer is made shall promptly reimburse the Secretary of Transportation for the Department of Transportation's expenditures on account of just compensation, purchase price, repairs, reconditioning, reconstruction, or charter hire for the property transferred. Such reimbursements shall be deposited in the construction fund established by section 1116 of this Appendix.

(June 29, 1936, ch. 858, title IX, §902, 49 Stat. 2015; Aug. 7, 1939, ch. 555, §3, 53 Stat. 1255; Mar. 24, 1943, ch. 26, §3(d), 57 Stat. 49; Aug. 3, 1956, ch. 929, §§2, 3, 70 Stat. 985; Pub. L. 97–31, §12(131), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100–710, title I, §104(c), Nov. 23, 1988, 102 Stat. 4750.)

CODIFICATION

In subsec. (d), ''sections 1346 and 1491 of title 28'' substituted for ''section 24, paragraph 20, and section 145 of the Judicial Code (U.S.C., 1946 edition, title 28, secs. 41(20) and 250)'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure. Section 1346 of Title 28 sets forth the basic jurisdiction of the district courts in cases in which the United States is defendant. Section 1491 of Title 28 sets forth the basic jurisdiction of the United States Court of Claims. Sections 24(20) and 145 of the Judicial Code were also restated in sections 1496, 1501, 1503, 2401, 2402, and 2501 of Title 28.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–710 substituted ''a documented vessel, or a vessel under construction'' for ''or under construction''.

1981—Subsec. (a). Pub. L. 97–31, §12(131)(A), substituted ''Secretary of Transportation'' for ''Commission''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97–31, §12(131)(A), (B), substituted ''Secretary of Transportation'' for ''Commission'' in

three places and ''Secretary's'' for ''Commission's'' in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (d). Pub. L. 97–31, § 12(131)(A), (C), (D), substituted ''Secretary of Transportation'' for ''Commission'' and ''United States Maritime Commission'' and ''his discretion'' for ''its discretion''. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

Subsec. (e). Pub. L. 97–31, § 12(131)(A), (E), substituted ''Secretary of Transportation'' for ''Commission'' and ''the Department of Transportation's expenditures'' for ''its expenditures''. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1956—Subsec. (c). Act Aug. 3, 1956, § 2, inserted ''as a tentative advance only,'' in second sentence, and substituted ''in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: *Provided, however*, That in the event of an election by such person to reject the rate of hire fixed by the Commission and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.'' for ''to recover such further sum as added to such 75 per centum will make up such amount as will be just compensation for the use of the property and for the services required in connection with such use.''.

Subsec. (d). Act Aug. 3, 1956, § 3, inserted ''as a tentative advance only'', substituted ''such amount as would equal'' for ''such further sum as, added to said 75 per centum will make up such amount as will be'', and inserted proviso.

1943—Subsec. (d). Act Mar. 24, 1943, added second par.

1939—Subsecs. (c) to (e). Act Aug. 7, 1939, added subsecs. (c) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Treasurer of the United States, referred to in this section, is an officer of Department of the Treasury.

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of subsec. (a) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 1242a. Maintenance of and adjustment of obligations with respect to essential vessels affected by Neutrality Act

(a) "Essential vessel" defined

When used in this section the term ''essential vessel'' means any vessel (1) which is (A) security for any mortgage indebtedness to the United States or (B) constructed under this chapter, or required by the terms of a contract under this chapter to be operated on a certain essential foreign trade route, and (2) which it is necessary in the interests of commerce and national defense to maintain in condition for prompt use.

(b) Adjustment of obligations and arrangements for maintenance of essential vessels

For the purposes of preserving in the national interest the full availability and usefulness of essential vessels, which, under the provisions of the Neutrality Act of 1939 [22 U.S.C. 441 et seq.] (or any proclamation issued thereunder), or compatibly with the national interest, cannot be operated in the service, route, or line to which such vessels are assigned pursuant to this chapter, or in which they would otherwise be operated, the Secretary of Transportation is authorized to make adjustments of obligations in respect to such vessels and to make arrangements for the maintenance of such vessels, subject to the provisions of this section and to such rules and regulations as the Secretary of Transportation shall prescribe as necessary or appropriate for carrying out the purposes and provisions of this section. If the Secretary of Transportation, upon written application in respect of any essential vessel, determines after such examination, investigation, and proceedings as he deems desirable, that (1) the operation of such vessel in the service, route, or line to which such vessel is assigned pursuant to this chapter, or in which it would otherwise be operated, is either (A) not lawful under the Neutrality Act of 1939 (or any proclamation issued thereunder), or (B) not compatible with the maintenance of availability of such vessel for purposes of national defense and commerce, (2) it is not feasible under existing law to employ such vessel in any other service or operation in either the foreign or domestic trades (except temporary or emergency operation under subsection (c)(5) hereof), and (3) the applicant, by reason of the restrictions of the Neutrality Act of 1939, or the withdrawal of vessels for national-defense purposes under clause (1) hereof, is not earning or will not earn a fair and reasonable return on the capital necessarily employed in its business, the Secretary of Transportation may make adjustments and arrangements with the applicant as provided in subsection (c) of this section, which shall continue in effect only during the circumstances above described.

(c) Provisions included within adjustments and arrangements

Such adjustments and arrangements shall include suspension of the requirement to operate such vessel in foreign trade under the applicable operating-differential or construction-differential subsidy contract or mortgage or other agreement, and of the right to operating-differential subsidy in respect of such vessel, and may include any one or more of the following provisions, in whole or in part, as, and to the extent that, the Secretary of Transportation may deem to be necessary or appropriate to carry out the purposes of this chapter, or the purposes and provisions of this section:

(1) Lay-up of the vessel by the owner or, at the option of the Secretary of Transportation,

in the custody of the Secretary of Transportation, with payment or reimbursement by the Secretary of Transportation of necessary and proper expenses thereof (including reasonable overhead and insurance), or in lieu of such payment or reimbursement, a fixed periodic allowance therefor;

(2) Postponement, for a period not in excess of the period or periods of lay-up, of the maturity date of each installment on account of the principal of obligations to the United States in respect of the vessel (whether or not such maturity date shall fall within such period or periods), or rearrangement of such maturities;

(3) Postponement or cancellation of interest accruing on such obligations during such period or periods of lay-up;

(4) Extension for a period not in excess of the period or periods of lay-up, of the twenty-year life limitation in respect of the vessel, and of the period or periods of other limitations and provisions of this chapter, insofar as they are based upon a twenty-year life;

(5) Provisions for such temporary or emergency employment of the vessel in lieu of lay-up as may be practicable, with such arrangements for management of the vessel, payment of expenses, and application of the proceeds of such employment, as the Secretary of Transportation may approve, the period or periods of such operation being included as part of the period or periods of lay-up;

(6) The payment to the Secretary of Transportation, upon termination of the arrangements with the applicant hereunder, out of the applicant's net profits, earned while such arrangements were in effect, in excess of 10 per centum per annum on the capital necessarily employed in the applicant's business, in reimbursement, to the extent that the Secretary of Transportation shall deem it necessary to carry out the purposes of this section, on account of obligations postponed or canceled and expenses incurred or paid by the Secretary of Transportation under this subsection. For the purposes of this paragraph capital of the applicant represented by vessels of the applicant laid up or operated under this section shall not be excluded from capital necessarily employed in the applicant's business. The Secretary of Transportation may require that the vessels so laid up or operated be security for reimbursement hereunder.

(d) Readjustment or modification of adjustments and arrangements

The adjustments and arrangements made under subsection (c) of this section in respect of any vessel shall be subject to such readjustment or modification from time to time as may be deemed necessary by the Secretary of Transportation to carry out the purposes and provisions of this section.

(e) Expenses incurred in adjustments and arrangements

Moneys in the construction fund of the Secretary of Transportation shall be available for expenses of the Secretary of Transportation incurred in adjustments or arrangements made under this section.

(June 29, 1940, ch. 442, 54 Stat. 684; Pub. L. 97–31, § 12(132), Aug. 6, 1981, 95 Stat. 165.)

REFERENCES IN TEXT

The Neutrality Act of 1939, referred to in subsec. (b), is act Nov. 4, 1939, ch. 2, 54 Stat. 4, as amended, which is classified generally to subchapter II (§ 441 et seq.) of chapter 9 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 441 of Title 22 and Tables.

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''United States Maritime Commission'' and ''Commission'' wherever appearing and ''he deems'' for ''it deems''. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (c) to (e). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Commission'' wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

§ 1244. Definitions

When used in this chapter—

(a) The words ''foreign commerce'' or ''foreign trade'' mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 1177 of this Appendix concerning capital construction funds and in the context of subchapter V of this chapter concerning construction-differential subsidy, the said words ''foreign commerce'' or ''foreign trade'' shall also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 1114(b) of this Appendix.

(b) The term ''person'' includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

(c) The words ''citizen of the United States'' include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of sections 802 and 803 of this Appendix, and with respect to a corporation under subchapter VI of this chapter, all directors of the corporation are citizens of the United States and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

(d) The word ''construction'' includes outfitting and equipping.

(e) Repealed. Pub. L. 97–31, § 12(133)(B), Aug. 6, 1981, 95 Stat. 165.

(f) The terms ''Representative'' and ''Member of the Congress'' include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from the Commonwealth of Puerto Rico.

(g) The term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

(June 29, 1936, ch. 858, title IX, § 905, 49 Stat. 2016; June 23, 1938, ch. 600, § 39, 52 Stat. 964; July 17, 1952, ch. 939, § 21, 66 Stat. 765; Pub. L. 86–327, § 4, Sept. 21, 1959, 73 Stat. 597; Pub. L. 91–469, § 28, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 92–402, § 2, Aug. 22, 1972, 86 Stat. 617; Pub. L. 96–453, § 3(b), Oct. 15, 1980, 94 Stat. 2008; Pub. L. 97–31, § 12(133), Aug. 6, 1981, 95 Stat. 165.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31, § 12(133)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

Subsec. (e). Pub. L. 97–31, § 12(133)(B), struck out subsec. (e) which defined ''United States Maritime Commission'' and ''Commission'' to mean the Secretary of Commerce, the Maritime Administrator, or the Federal Maritime Commission as the context required.

1980—Subsecs. (f), (g). Pub. L. 96–453 added subsecs. (f) and (g).

1972—Subsec. (a). Pub. L. 92–402 made definition of ''foreign commerce'' or ''foreign trade'' in context of subchapter V of this chapter concerning construction-differential subsidy applicable in context of section 1177 of this Appendix concerning capital construction funds, made such definition subject to rules and regulations promulgated by the Secretary of Commerce pursuant to section 1114(b) of this Appendix rather than only to uniform regulations promulgated by the Secretary and also applicable, in the case of bulk cargo carrying services, to trading between foreign ports in such manner as will permit U.S.-flag bulk carrying vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters.

1970—Subsec. (a). Pub. L. 91–469 expanded definition of ''foreign commerce'' or ''foreign trade'' to permit United States operators of dry and liquid bulk ships built with construction subsidy to engage in foreign-to-foreign carriage to the extent permitted by regulations issued by the Secretary of Commerce.

1959—Subsec. (c). Pub. L. 86–327 inserted requirement that all the directors of a corporation under subchapter VI of this chapter be United States citizens.

1952—Subsec. (e). Act July 17, 1952, added subsec. (e) which defined ''United States Maritime Commission'' and ''Commission''.

1938—Subsec. (a). Act June 23, 1938, inserted reference to ''foreign commerce''.

Subsec. (c). Act June 23, 1938, inserted provisions relating to interest of citizens of the United States in vessels operated on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–453 effective Oct. 1, 1981, see section 4 of Pub. L. 96–453, set out as an Effective Date note under section 1295 of this Appendix.

§ 1245. Separability; short title of chapter

If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. This chapter may be cited as the Merchant Marine Act, 1936.

(June 29, 1936, ch. 858, title IX, § 906, 49 Stat. 2016.)

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–65, div. C, title XXXVI, § 3601, Oct. 5, 1999, 113 Stat. 975, provided that: ''This title [amending section 1294 of this Appendix and section 3302 of this title] may be cited as the 'Maritime Administration Authorization Act for Fiscal Year 2000'.''

SHORT TITLE OF 1996 AMENDMENTS

Pub. L. 104–297, title III, § 301, Oct. 11, 1996, 110 Stat. 3615, provided that: ''This title [enacting sections 1279f and 1279g of this Appendix, amending section 1274 of this Appendix, and enacting provisions set out as a note under section 1274 of this Appendix] may be cited as the 'Fisheries Financing Act'.''

Pub. L. 104–239, § 1, Oct. 8, 1996, 110 Stat. 3118, provided that: ''This Act [enacting sections 1132, 1162, 1185a, and 1187 to 1187e of this Appendix, amending sections 808, 1175, 1222, 1223, 1241f, 1271, 1273 to 1274a, 1279c, and 1294 of this Appendix and section 1744 of Title 50, Appendix, War and National Defense, and enacting provisions set out as notes under sections 1132, 1187, 1222, 1273 of this Appendix and section 1744 of Title 50, Appendix] may be cited as the 'Maritime Security Act of 1996'.''

SHORT TITLE OF 1980 AMENDMENT

For short title of Pub. L. 96–453, Oct. 15, 1980, 94 Stat. 1997, which enacted subchapter XIII of this chapter as the Maritime Education and Training Act of 1980, see Short Title note set out under section 1295 of this Appendix.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–372, § 1, July 31, 1976, 90 Stat. 1042, provided: ''That this Act [amending section 1152 of this Appendix] may be cited as the 'Negotiated Shipbuilding Contracting Act of 1976'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–507, § 8, Oct. 19, 1972, 86 Stat. 917, provided that: ''This Act [amending sections 1271 to 1276, 1279a, and 1279b of this Appendix, repealing sections 1276a, 1277, and 1278 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1177 and 1273 of this Appendix] may be cited as the 'Federal Ship Financing Act of 1972'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–469, § 44, Oct. 21, 1970, 84 Stat. 1039, provided that: ''This Act [enacting section 1507a of Title 15, Commerce and Trade, and section 270f of former Title 40, Public Buildings, Property, and Works, amending section 5315 of Title 5, Government Organization and Employees, sections 985 and 988 of Title 33, Navigation and Navigable Waters, sections 1101, 1111, 1119 to 1121, 1151 to 1155, 1159, 1160, 1171 to 1173, 1175 to 1177, 1204, 1213, 1222, 1223, 1241, 1244, 1271, 1273 to 1275, and 1294 of this Appendix, repealing section 1221 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1151, 1173, and 1177 of this Appendix] may be cited as the 'Merchant Marine Act of 1970'.''

§ 1247. Appointment of Secretary as trustee or receiver; operation of vessels under court orders; payment of operating costs; claims against corporation

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this chapter, may constitute and appoint the Secretary of Transportation as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this chapter, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act [46 App. U.S.C. 741 et seq.]. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

(June 29, 1936, ch. 858, title IX, § 908, as added Pub. L. 95–598, title III, § 334, Nov. 6, 1978, 92 Stat. 2680; amended Pub. L. 97–31, § 12(134), Aug. 6, 1981, 95 Stat. 165.)

REFERENCES IN TEXT

The Suits in Admiralty Act, referred to in subsec. (b), is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this Appendix and Tables.

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 1248. Enrollment in a sealift readiness program

No vessel may receive construction differential subsidy or operating differential subsidy if it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense.

(June 29, 1936, ch. 858, title IX, § 909, as added Pub. L. 97–35, title XVI, § 1605, Aug. 13, 1981, 95 Stat. 752.)

§ 1249. Assistance for small shipyards and maritime communities

(a) Establishment of program

Subject to the availability of appropriations, the Administrator of the Maritime Administration shall establish a program to provide assistance to State and local governments—

(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

(b) Awards

In providing assistance under the program, the Administrator shall—

(1) take into account—

(A) the economic circumstances and conditions of maritime communities; and

(B) the local, State, and regional economy in which the communities are located; and

(2) strongly encourage State, local, and regional efforts to promote economic development and training that will enhance the economic viability of and quality of life in maritime communities.

(c) Use of funds

Assistance provided under this section may be used—

(1) to make capital and related improvements in small shipyards located in or near maritime communities;

(2) to encourage, assist in, or provide training for residents of maritime communities that will enhance the economic viability of those communities; and

(3) for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.

(d) Prohibited uses

Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator in support of subsection (c)(3) of this section.

(e) Matching requirements

(1) Federal funding

Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) Exceptions

(A) Small projects

Paragraph (1) shall not apply to grants under this section for stand alone projects costing not more than $25,000. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.

(B) Reduction in matching requirement

If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).

(f) Application

(1) In general

The Administrator shall determine who, as an eligible applicant, may submit an application, at such time, in such form, and containing such information and assurances as the Administrator may require.

(2) Minimum standards for payment or reimbursement

Each application submitted under paragraph (1) shall include—

(A) a comprehensive description of—

(i) the need for the project;

(ii) the methodology for implementing the project; and

(iii) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.

(3) Procedural safeguards

The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

(A) grant funds are used for the purposes for which they were made available;

(B) grantees have properly accounted for all expenditures of grant funds; and

(C) grant funds not used for such purposes and amounts not obligated or expended are returned.

(4) Project approval required

The Administrator may not award a grant under this section unless the Administrator determines that—

(A) sufficient funding is available to meet the matching requirements of subsection (e) of this section;

(B) the project will be completed without unreasonable delay; and

(C) the recipient has authority to carry out the proposed project.

(g) Audits and examinations

All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

(h) Small shipyard defined

In this section, the term ''small shipyard'' means a shipyard that—

(1) is a small business concern (within the meaning of section 632 of title 15); and

(2) does not have more than 600 employees.

(i) Authorization of appropriations

There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—

(1) $5,000,000 for training grants; and

(2) $25,000,000 for capital and related improvement grants.

(Pub. L. 109–163, div. C, title XXXV, § 3506, Jan. 6, 2006, 119 Stat. 3553.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2006, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE

§ 1271. Definitions

As used in this subchapter—

(a) The term ''mortgage'' includes—

(1) a preferred mortgage as defined in section 31301 of title 46; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46.[1]

(b) The term ''vessel'' includes all types, whether in existence or under construction, of passenger cargo and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of sections 802 and 803 of this Appendix, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;

(c) The term ''obligation'' shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary or Administrator pursuant to section 1275(d) of this Appendix and obligations eligible for investment of funds under sections 1272 and 1279a(d) of this Appendix), issued for one of the purposes specified in section 1274(a)[2] of this Appendix;

(d) The term ''obligor'' shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term ''obligee'' shall mean the holder of an obligation;

[1] So in original. The period probably should be a semicolon.

[2] See References in Text note below.

(f) ACTUAL COST DEFINED.—The term ''actual cost'' means the sum of—

(1) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 1279a(g)(1) of this Appendix; and

(2) all amounts that the Secretary or Administrator reasonably estimates that the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 1274(e) of this Appendix in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.[1]

(g) The term ''depreciated actual cost'' of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary or Administrator, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary or Administrator, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary or Administrator.[1]

(h) The terms ''construction,'' ''reconstruction,'' or ''reconditioning'' shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term ''ocean thermal energy conversion facility or plantship'' means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term ''citizen of the Northern Mariana Islands'' means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which ''owned'' is used in the same sense as in sections 802 and 803 of this Appendix;

(k) The term ''fishery facility'' means—

(1) for operations on land—

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of sections 802 and 803 of this Appendix, and for purposes of applying such sections 802 and 803 of this Appendix with respect to this section—

(i) the term ''State'' as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(*l*) The term ''fishing vessel'' has the meaning given such term by section 1802(11)[3] of title 16; and any reference in this subchapter to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term ''United States'' when used in a geographical context with respect to fishing ves-

[3] See References in Text note below.

sels or fishery facilities includes all States referred to in subsection (k)(i) of this section.[1]

(n) The term ''Secretary'' means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this subchapter.[1]

(*o*) The term ''eligible export vessel'' means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(p) The term ''Administrator'' means the Administrator of the Maritime Administration.

(June 29, 1936, ch. 858, title XI, § 1101, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, § 1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, § 1(a), (b), 70 Stat. 1087; Pub. L. 86–127, § 1(1), July 31, 1959, 73 Stat. 272; Pub. L. 86–685, § 1, Sept. 2, 1960, 74 Stat. 733; Pub. L. 87–303, § 2, Sept. 26, 1961, 75 Stat. 661; Pub. L. 91–469, § 29, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, § 1, Oct. 19, 1972, 86 Stat. 909; Pub. L. 96–320, title II, § 202(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, §§ 220(1), 238(b), Dec. 22, 1980, 94 Stat. 3291, 3300; Pub. L. 97–31, § 12(135), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100–710, title I, § 104(d), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 102–567, title III, § 304, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103–160, div. A, title XIII, §§ 1356(1), 1357(b), Nov. 30, 1993, 107 Stat. 1812, 1815; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–239, § 11(1), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, div. C, title XXXV, § 3521(b), Nov. 24, 2003, 117 Stat. 1799; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(A), (b)(1), Jan. 6, 2006, 119 Stat. 3555.)

REFERENCES IN TEXT

Section 1274(a) of this Appendix, referred to in subsec. (c), was in the original a reference to subsection (a) of section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Section 1802 of title 16, referred to in subsec. (*l*), was subsequently amended, and section 1802(11) no longer defines the term ''fishing vessel''. However, such term is defined elsewhere in that section.

AMENDMENTS

2006—Subsecs. (c), (f)(2), (g). Pub. L. 109–163, § 3507(a)(1)(A), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (n). Pub. L. 109–163, § 3507(b)(1)(A), substituted ''subchapter.'' for ''subchapter, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix).''

Subsec. (p). Pub. L. 109–163, § 3507(b)(1)(B), added subsec. (p).

2003—Subsec. (f). Pub. L. 108–136 inserted heading and amended text generally. Prior to amendment, text read as follows: ''The term 'actual cost' of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;''.

1996—Subsec. (b). Pub. L. 104–239 struck out ''owned by citizens of the United States'' before semicolon at end.

Subsec. (*l*). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

1993—Subsec. (n). Pub. L. 103–160, § 1357(b), substituted ''vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix)'' for ''vessels''.

Subsec. (*o*). Pub. L. 103–160, § 1356(1), added subsec. (*o*).

1992—Subsec. (k)(3). Pub. L. 102–567 added par. (3).

1988—Subsec. (a). Pub. L. 100–710 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The term 'mortgage' includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended;''.

1981—Subsecs. (c), (f), (g). Pub. L. 97–31, § 12(135)(A), struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (n). Pub. L. 97–31, § 12(135)(B), added subsec. (n).

1980—Subsec. (b). Pub. L. 96–320, § 202(a)(1), inserted reference to ocean thermal energy conversion facilities or plantships.

Subsec. (i). Pub. L. 96–320, § 202(a)(2)–(4), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96–561, § 220(1), added subsecs. (j) and (k).

Subsec. (*l*). Pub. L. 96–561, § 238(b), made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

Pub. L. 96–561, § 220(1), added subsec. (*l*).

Subsec. (m). Pub. L. 96–561, § 220(1), added subsec. (m).

1972—Subsec. (a). Pub. L. 92–507 reduced the minimum size requirement for certain vessels from 200 gross tons to 25 gross tons.

Subsec. (b). Pub. L. 92–507 substituted definition of ''vessel'' for definition of ''loan''.

Subsec. (c). Pub. L. 92–507 substituted definition of ''obligation'' for definition of ''vessel''.

Subsec. (d). Pub. L. 92–507 substituted definition of ''obligor'' for definition of ''mortgagee''.

Subsec. (e). Pub. L. 92–507 substituted definition of ''obligee'' for definition of ''mortgagor''.

Subsec. (f). Pub. L. 92–507 struck out proviso and substituted obligor for mortgagor or borrower.

Subsecs. (g), (h). Pub. L. 92–507 added subsecs. (g) and (h).

1970—Subsec. (c). Pub. L. 91–469 included oceanographic research or instruction vessels in definition of term ''vessel''.

1961—Subsec. (a). Pub. L. 87–303 excluded towboats, barges, scows, lighters, car floats, canal boats or tank vessels of less than two hundred gross tons.

1960—Subsec. (c). Pub. L. 86–685 included floating drydocks which have a capacity of 35,000 or more lifting tons and a beam of 125 feet or more between the wing walls.

1959—Subsec. (f). Pub. L. 86–127 inserted in proviso ''in respect of the unpaid balance of the principal of a mortgage or loan'' and exception clause.

1956—Subsec. (f). Act Aug. 7, 1956, struck out '', except for certain special purpose vessels as provided for in subsections (a) and (b) of section 1273 of this Appendix,'' in proviso following ''That in no event'', and struck out ''90 per centum of'' both before and after ''75 per centum, or''.

1954—Act Sept. 3, 1954, defined ''loan'' and ''actual cost'' and redefined ''mortgagee''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section

107 of Pub. L. 100–710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96–561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

REGULATIONS

Pub. L. 103–160, div. A, title XIII, § 1362, Nov. 30, 1993, 107 Stat. 1817, provided that:

''(a) IN GENERAL.—Within 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Transportation shall prescribe regulations as necessary to carry out the Secretary's responsibilities under this title [probably should be ''subtitle'' meaning subtitle D (§§ 1351–1363) of title XIII of div. A of Pub. L. 103–160, see Tables for classification] (including the amendments made by this title [subtitle]).

''(b) INTERIM REGULATIONS.—The Secretary of Transportation may prescribe interim regulations necessary to carry out this title [subtitle] and for accepting applications under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], as amended by this title [subtitle]. For that purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All regulations prescribed under this subsection that are not earlier superseded by final rules shall expire 270 days after the date of the enactment of this Act.''

SECRETARY OF COMMERCE: FISHING VESSEL INSURANCE

Secretary of Commerce authorized to exercise authority in relation to issuance of insurance on fishing vessels comparable to authority of Secretary of Commerce under this subchapter, see note set out under section 1275 of this Appendix.

REVIEW OF PROGRAM

Pub. L. 108–136, div. C, title XXXV, § 3528(a), Nov. 24, 2003, 117 Stat. 1802, which provided that the Secretary of Transportation was to conduct a comprehensive assessment of the human capital and other resource needs in connection with the loan guarantee program under this subchapter and develop an organizational framework for the program offices to ensure a clear separation of duties established among the loan application, project monitoring, and default management functions, was repealed by Pub. L. 109–163, div. C, title XXXV, § 3507(c)(4), Jan. 6, 2006, 119 Stat. 3557.

§ 1272. Federal Ship Financing Fund

There is created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary or Administrator as a revolving fund for the purpose of carrying out the provisions of this subchapter, and there shall be allocated to such fund the sum of $1,000,000 out of funds made available to the Secretary or Administrator under the appropriation authorized by section 1279[1] of this Appendix. Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

(June 29, 1936, ch. 858, title XI, § 1102, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, § 2, 68 Stat. 1268; Pub. L. 86–123, § 1(2), July 31, 1959, 73 Stat. 269; Pub. L. 92–507, § 2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(B), Jan. 6, 2006, 119 Stat. 3555.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 1279 of this Appendix, referred to in text, was repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Secretary or Administrator'' for ''Secretary'' in two places.

1981—Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' in two places.

1972—Pub. L. 92–507 substituted ''Federal Ship Financing Fund'' for ''Federal Ship Mortgage Insurance Fund'', and ''Fund'' for ''fund'' in four places.

1959—Pub. L. 86–123 substituted ''section 1110'' for ''section 1109'' of act June 29, 1936, which for purposes of codification has been changed to ''section 1279 of this Appendix''.

1954—Act Sept. 3, 1954, omitted provisions relating to the purchase of debentures and substituted ''Secretary of Commerce'' for ''Commission''.

§ 1273. Authorization of Secretary or Administrator to guarantee obligations

(a) Principal and interest

The Secretary or Administrator is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this subchapter. A guarantee, or commitment to guarantee, made by the Secretary or Administrator under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) Security interest

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary or Administrator such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary or Administrator may reasonably require to protect the interest of the United States.

(c) Amount of guarantee; percentage limitation; determination of actual cost of vessel

The Secretary or Administrator shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87½ per centum, whichever is applicable under section 1274[1] of this Appendix, of the amount, as determined by the Secretary or Administrator which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary or Administrator, unless the obligor creates an escrow fund as authorized by section 1279a of this Appendix, in which case the Secretary or Administrator may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this Appendix, of the actual cost of such vessel or vessels.

(d) Pledge of United States

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter with respect to both principal and interest, including interest, as

[1] See References in Text note below.

may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) Proof of obligations

Any guarantee, or commitment to guarantee, made by the Secretary or Administrator under this subchapter shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary or Administrator under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary or Administrator under this subchapter is unaffected and the guarantee remains in full force and effect.

(f) Limitation on outstanding amount

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $12,000,000,000, of which (1) $850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter, and (2) $3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

(g) Restrictions on commitments to guarantee obligations on eligible export vessels

(1) The Secretary or Administrator may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available,

the Secretary or Administrator determines, in the sole discretion of the Secretary or Administrator, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary or Administrator may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the Secretary or Administrator publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of those obligations.

(h) Risk categories

(1) The Secretary or Administrator shall—

(A) establish in accordance with this subsection, and update annually, a system of risk categories for obligations guaranteed under this subchapter, that categorizes the relative risk of guarantees made under this subchapter with respect to the risk factors set forth in paragraph (3);

(B) annually determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this subchapter for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that expected to be associated with the loans in the category.

(2)(A) Before making a guarantee under this section for an obligation, and annually for projects subject to a guarantee, the Secretary or Administrator shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).

(B) The Secretary or Administrator shall consider the aggregate amount available to the Secretary or Administrator for making guarantees under this subchapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this subchapter for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the Secretary or Administrator under this subchapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary or Administrator may not guarantee obligations under this subchapter after the aggregate amount available to the Secretary or Administrator under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, any guarantee related to the project, other than the guarantee under this subchapter for which the risk factor is applied.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this subchapter is or will be in effect during the construction period of the project.

(K) A risk factor for concentration risk reflecting the risk presented by an unduly large percentage of loans outstanding by any 1 borrower or group of affiliated borrowers.

(4) In this subsection, the term ''cost'' has the meaning given that term in section 661a of title 2.

(i) Priority for national defense tank vessels

In guaranteeing and entering commitments to guarantee under this section, the Administrator shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle D of the Maritime Security Act of 2003.

(j) Priority for other vessels suitable for service as a naval auxiliary

In guaranteeing and entering commitments to guarantee under this section, the Administrator shall, after applying subsection (i) of this section, give priority to a guarantee or commitment for a vessel that is otherwise eligible for a guarantee under this section and that the Secretary of Defense determines—

(1) is suitable for service as a naval auxiliary in time of war or national emergency; and

(2) meets a shortfall in sealift capacity or capability.

The Secretary of Defense shall determine whether a vessel satisfies paragraphs (1) and (2) by not later than 30 days after receipt of a request from the Administrator for such a determination.

(June 29, 1936, ch. 858, title XI, §1103, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; amended Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91–469, §30, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 93–70, §3, July 10, 1973, 87 Stat. 168; Pub. L. 94–127, §5, Nov. 13, 1975, 89 Stat. 681; Pub. L. 95–298, §5, June 26, 1978, 92 Stat. 340; Pub. L. 96–320, title II, §203(b)(1), Aug. 3, 1980, 94 Stat. 994; Pub. L. 96–561, title II, §220(2), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, §1606(a), (b), Aug. 13, 1981, 95 Stat. 752; Pub. L. 97–424, title IV, §425, Jan. 6, 1983, 96 Stat. 2167; Pub. L. 98–595, §1(1), Oct. 30, 1984, 98 Stat. 3130; Pub. L. 99–509, title V, §5002, Oct. 21, 1986, 100 Stat. 1912; Pub. L. 103–160, div. A, title XIII, §1356(2), (5), Nov. 30, 1993, 107 Stat. 1812, 1814; Pub. L. 104–239, §13(a), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 108–136, div. A, title X, §1014(a), div. C, title XXXV, §§3528(b), 3544, Nov. 24, 2003, 117 Stat. 1591, 1802, 1822; Pub. L. 109–163, div. C, title XXXV, §3507(a)(1)(C), (2)(A), (B), (b)(2), Jan. 6, 2006, 119 Stat. 3555, 3556.)

REFERENCES IN TEXT

Section 1274 of this Appendix, referred to in subsec. (c), was in the original a reference to title XI of section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101–380, title IV, §4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

The Maritime Security Act of 2003, referred to in subsec. (i), is title XXXV of div. C of Pub. L. 108–136, Nov. 24, 2003, 117 Stat. 1788. Subtitle D of the Act amended this section and enacted provisions set out as notes under section 53101 of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title of 2003 Amendment note set out under section 53101 of Title 46 and Tables.

AMENDMENTS

2006—Subsecs. (a) to (c), (e), (g), (h). Pub. L. 109–163, §3507(a)(1)(C), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 109–163, §3507(a)(2)(A), substituted ''Administrator'' for ''Secretary''.

Subsec. (j). Pub. L. 109–163, §3507(a)(2)(B), (b)(2), substituted ''Administrator shall'' for ''Secretary shall'' in introductory provisions and inserted concluding provisions.

2003—Subsec. (h)(1)(A). Pub. L. 108–136, §3528(b)(1)(A), (C), substituted ''subsection, and update annually,'' for ''subsection'' and struck out ''and'' after semicolon.

Subsec. (h)(1)(B). Pub. L. 108–136, §3528(b)(1)(B), (D), inserted ''annually'' before ''determine'' and substituted ''category; and'' for ''category.''

Subsec. (h)(1)(C). Pub. L. 108–136, §3528(b)(1)(E), added subpar. (C).

Subsec. (h)(2)(A). Pub. L. 108–136, §3528(b)(2), inserted ''and annually for projects subject to a guarantee,'' after ''obligation,''.

Subsec. (h)(3)(K). Pub. L. 108–136, §3528(b)(3), added subpar. (K).

Subsec. (i). Pub. L. 108–136, §1014(a)(1), substituted ''Priority for national defense tank vessels'' for ''Priority'' in heading.

Pub. L. 108–136, §3544, added subsec. (i).

Subsec. (j). Pub. L. 108–136, §1014(a)(2), added subsec. (j).

1996—Subsec. (h). Pub. L. 104–239 added subsec. (h).

1993—Subsec. (a). Pub. L. 103–160, §1356(5), substituted ''The Secretary is authorized'' for ''The Secretary, upon application by a citizen of the United States, is authorized''.

Subsec. (f). Pub. L. 103–160, §1356(2)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: ''The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $12,000,000,000, of which $1,650,000,000 shall be limited to obligations pertaining to commerical [sic] demonstration ocean thermal energy conversion facilities or plantships guaranteed under section 1279c of this Appendix, and of which $850,000,000 shall be limited to ob-

ligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter.''

Subsec. (g). Pub. L. 103–160, § 1356(2)(B), added subsec. (g).

1986—Subsec. (a). Pub. L. 99–509 inserted at end ''A guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation.''

1984—Subsec. (e). Pub. L. 98–595 inserted ''Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect.''

1983—Subsec. (f). Pub. L. 97–424 inserted provision that no additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts, and that no vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

1981—Subsecs. (a) to (c), (e). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 97–35, § 1606(b), increased maximum amount from $10,000,000,000 to $12,000,000,000, and substituted provisions relating to monetary limitations and criteria for obligations, for former pars. (1) and (2) relating to percentage limitations and criteria for obligations, and required aggregate amount.

1980—Subsec. (f). Pub. L. 96–561 added pars. (1) and (2) and provision that the aggregate amount reserved for the purposes set forth in pars. (1) and (2) equal 10 percent of such sum.

Pub. L. 96–320, § 203(b), which, effective Oct. 1, 1981, substituted ''$12,000,000,000, of which $2,000,000,000 shall be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix'' for ''$10,000,000,000'' was later repealed by Pub. L. 97–35. See Repeals note set out below.

1978—Subsec. (f). Pub. L. 95–298 increased limitation on amount of outstanding obligations from $7,000,000,000 to $10,000,000,000.

1975—Subsec. (f). Pub. L. 94–127 increased limitation on amount of outstanding obligations from $5,000,000,000 to $7,000,000,000.

1973—Subsec. (f). Pub. L. 93–70 increased limitation on amount of outstanding obligations from $3,000,000,000 to $5,000,000,000.

1972—Subsec. (a). Pub. L. 92–507 incorporated provisions of former subsecs. (a) and (b) into subsec. (a) and substituted provisions authorizing the Secretary to guarantee the payment of principal and interest on the obligation for provisions authorizing the Secretary to insure a mortgage or a loan.

Subsec. (b). Pub. L. 92–507 added subsec. (b). Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsec. (c). Pub. L. 92–507 substituted provisions making the Secretary's determination of actual cost of the vessel conclusive for the purposes of determining the maximum amount which may be guaranteed, for provisions making the mortgagee or lender the beneficiary of insurance contracts.

Subsec. (d). Pub. L. 92–507 substituted provisions pledging the full faith and credit of the United States for payment of all guarantees with interest, for provisions pledging the faith of the United States to the payment of principal and interest of each mortgage and loan.

Subsec. (e). Pub. L. 92–507 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 92–507 redesignated former subsec. (e) as subsec. (f), and in subsec. (f) as so redesignated, substituted ''obligations guaranteed'' for ''mortgages and loans insured''.

1970—Subsec. (e). Pub. L. 91–469 increased limitation on outstanding amount of mortgages and loans insured under this section from one to three billion dollars.

1956—Subsec. (a). Act Aug. 7, 1956, § 1(a), (c), struck out ''90 per centum of'' before ''the unpaid balance'' and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible mortgages.

Subsec. (b). Act Aug. 7, 1956, § 1(a), (c), struck out ''90 per centum of'' before ''the unpaid balance'' and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible loans.

Subsec. (d). Act Aug. 7, 1956, § 1(d), struck out ''the'' before ''interest on and'' and ''90 per centum of'' after such words.

Act June 25, 1956, pledged the faith of the United States, in the case of special-purpose vessels, to the payment of the interest on and 100 per centum of the unpaid balance of the principal amount of each mortgage and loan insured under this subchapter.

1954—Act Sept. 3, 1954, provided for the insurance of mortgages by Secretary up to 90 per centum of unpaid balance except that vessels essential to national defense may be insured up to 100 per centum, to provide for insurance contracts, pledged the United States as security, and limited aggregate unpaid principal to $1,000,000,000.

1953—Act Aug. 15, 1953, designated existing provisions as subsec. (a), inserted ''90 per centum of the unpaid balance'' after ''provided'' and struck out last sentence relating to aggregate amount of mortgage obligations, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 13(b) of Pub. L. 104–239 provided that: ''Subsection (h)(2) of section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), as amended by subsection (a) of this section, shall apply to guarantees that the Secretary of Transportation makes or commits to make with any amounts that are unobligated on or after the date of enactment of this Act [Oct. 8, 1996].''

EFFECTIVE DATE OF 1956 AMENDMENT

Act June 25, 1956, provided that the amendment made by that act is effective Sept. 3, 1954.

REPEALS

Pub. L. 96–320, title II, § 203(b), Aug. 3, 1980, 94 Stat. 994, cited as a credit to this section, which amended subsec. (f) of this section, effective Oct. 1, 1981, by increasing the aggregate unpaid principal amount of obligations guaranteed under this section to $12,000,000,000 of which $2,000,000,000 was to be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix, was repealed by Pub. L. 97–35, title XVI, § 1606(a), Aug. 13, 1981, 95 Stat. 752.

REACTIVATION OF CLOSED SHIPYARDS

Pub. L. 104–324, title XI, § 1139, Oct. 19, 1996, 110 Stat. 3989, provided that:

''(a) IN GENERAL.—The Secretary may issue a guarantee or a commitment to guarantee obligations under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), upon such terms as the Secretary may prescribe, to assist in the reactivation and modernization of any shipyard in the United States that is closed on the date of the enactment of this Act [Oct. 19, 1996], if the Secretary finds that—

''(1) the closed shipyard historically built military vessels and responsible entities now seek to reopen it as an internationally competitive commercial shipyard;

''(2)(A) the closed shipyard has been designated by the President as a public-private partnership project; or

''(B) has a reuse plan approved by the Navy in which commercial shipbuilding and repair are pri-

mary activities and has a revolving economic conversion fund approved by the Department of Defense; and

''(3) the State in which the shipyard is located, and each other involved State, or a State-chartered agency, is making a significant financial investment in the overall cost of reactivation and modernization as its contribution to the reactivation and modernization project, in addition to the funds required by subsection (d)(2) of this section.

''(b) WAIVERS.—Notwithstanding any other provision of title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), the Secretary shall not apply the requirements of section 1104A(d) of that Act [46 App. U.S.C. 1274(d)] when issuing a guarantee or a commitment to guarantee an obligation under this section.

''(c) CONDITIONS.—The Secretary shall impose such conditions on the issuance of a guarantee or a commitment to guarantee under this section as are necessary to protect the interests of the United States from the risk of a default. The Secretary shall consider the interdependency of such shipyard modernization and reactivation projects and related vessel loan guarantee requests pending under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.) before issuing a guarantee or a commitment to guarantee under this section.

''(d) FUNDING PROVISIONS.—

''(1) The Secretary may not guarantee or commit to guarantee obligations under this section that exceed $100,000,000 in the aggregate.

''(2) The amount of appropriated funds required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) [2 U.S.C. 661 et seq.] in advance of the Secretary's issuance of a guarantee or a commitment to guarantee under this section shall be provided by the State in which the shipyard is located, and other involved States, or by a State-chartered agency, and deposited by the Secretary in the financing account established under the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) for loan guarantees issued by the Secretary under title XI of the Merchant Marine Act of 1936 (46 App. U.S.C. 1271 et seq.). No federally appropriated funds shall be available for this purpose. The funds deposited into that financing account shall be held and applied by the Secretary in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.), except that, unless the Secretary shall have earlier paid an obligee or been required to pay an obligee pursuant to the terms of a loan guarantee, the funds deposited in that financing account shall be returned, upon the expiration of the Secretary's loan guarantee, to the State, States, or State-chartered agency which originally provided the funds to the Secretary.

''(3) Notwithstanding the provisions of any other law or regulation, the cost (as that term is defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.)) of a guarantee or commitment to guarantee issued under this section—

''(A) may only be determined with reference to the merits of the specific closed shipyard reactivation project which is the subject of that guarantee or commitment to guarantee, without reference to any other project, type of project, or averaged risk; and

''(B) may not be used in determining the cost of any other project, type of project, or averaged risk applicable to guarantees or commitments to guarantee issued under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.).

''(e) SUNSET.—No commitment to guarantee obligations under this section shall be issued by the Secretary after one year after the date of enactment of this section [Oct. 19, 1996].

''(f) DEFINITION.—As used in this section, the term 'Secretary' means the Secretary of Transportation.''

Similar provisions were contained in the following prior appropriation Act:

Pub. L. 104–208, div. A, title I, § 101(a) [title VI, § 618], Sept. 30, 1996, 110 Stat. 3009, 3009–68.

ELECTION OF COVERAGE

Section 7 of Pub. L. 92–507 provided that: ''Any citizen of the United States to whom the Secretary of Commerce issued an approval in principle of an application for loan or mortgage insurance or a commitment with respect to such insurance under the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], prior to the effective date of this Act [Oct. 19, 1972] may elect, with respect to the vessels covered by such approval or commitment, to be bound either by the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], as in effect prior to the effective date of this Act [Oct. 19, 1972] or by the provisions of this Act [see Short Title of 1972 Amendment note under section 1245 of this Appendix].''

§ 1273a. Certain loan guarantees and commitments

(a) The Administrator of the Maritime Administration may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after October 14, 1998, unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel—

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 [46 App. U.S.C. 1710a], within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been—

(1) held liable or liable in rem for a civil penalty pursuant to section 1858 of title 16 and not paid the penalty;

(2) found guilty of an offense pursuant to section 1859 of title 16 and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 1375 of title 16 and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46 and not paid the assessed fine.

(Pub. L. 105–258, title IV, § 401, Oct. 14, 1998, 112 Stat. 1916; Pub. L. 109–163, div. C, title XXXV, § 3507(c)(1), Jan. 6, 2006, 119 Stat. 3556.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to this subchapter (§ 1271 et seq.). For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

The Foreign Shipping Practices Act of 1988, referred to in subsec. (a)(1), is subtitle A (§§ 10001–10003) of Pub. L. 100–418, title X, Aug. 23, 1988, 102 Stat. 1570, which enacted section 1710a of this Appendix, amended section 1122b of this Appendix, and enacted provisions set out as a note under section 3302 of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1701 of this Appendix and Tables.

The Shipping Act of 1984, referred to in subsec. (a)(2), is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to chapter 36 (§ 1701 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

CODIFICATION

Section was enacted as part of the Ocean Shipping Reform Act of 1998, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''Administrator of the Maritime Administration'' for ''Secretary of Transportation'' in introductory provisions.

EFFECTIVE DATE

Section effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as an Effective Date of 1998 Amendment note under section 1701 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1274. Eligibility for guarantee

(a) Purpose of obligations

Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary or Administrator, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this Appendix for purposes of subchapter V of this chapter; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade;[1] *Provided, however*, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this subchapter that, under the provisions of section 1275 of this Appendix:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary or Administrator;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to subchapter V of this chapter;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this subchapter, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 1853(d)(4) of title 16.

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this subchapter in the same manner and to the same extent as an obligation guaranteed under this subchapter which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this subchapter that by their nature can only be applied to vessels.

(b) Contents of obligations

Obligations guaranteed under this subchapter—

(1) shall have an obligor approved by the Secretary or Administrator as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary or Administrator;

(2) subject to the provisions of subsection (c)(1) of this section and subsection (i) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum

[1] So in original. The semicolon probably should be a colon.

of the actual cost or depreciated actual cost, as determined by the Secretary or Administrator, of the vessel which is used as security for the guarantee of the Secretary or Administrator: *Provided, however*, That in the case of a vessel, the size and speed of which are approved by the Secretary or Administrator; and which is or would have been eligible for mortgage aid for construction under section 1159 of this Appendix (or would have been eligible for mortgage aid under section 1159 of this Appendix except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87½ per centum of such actual cost or depreciated actual cost: *Provided, further*, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost thereof: *Provided further*, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: *Provided further*, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the facility or plantship: *Provided further*, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary or Administrator but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or Administrator or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary or Administrator;

(4) shall provide for payments by the obligor satisfactory to the Secretary or Administrator;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary or Administrator determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary or Administrator;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary or Administrator is a delivered vessel, the vessel shall be in class A–1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary or Administrator, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary or Administrator permits a deferment of such repairs, and shall be tight, stanch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Administrator is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in subchapter V of this chapter, and if the Administrator approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: *Provided*, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Administrator under this subchapter, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Administrator of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this subchapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this subchapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair of maintenance of the vessel or facility.

(c) Security

(1) The security for the guarantee of an obligation by the Secretary or Administrator under this subchapter may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the

Secretary or Administrator under this subchapter may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary or Administrator under this subchapter relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: *Provided*, That the Secretary or Administrator may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) Restrictions

(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Administrator unless the Administrator finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Administrator shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this subchapter is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this subchapter for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1271(k) of this Appendix with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Administrator or Administrator[2] under this subchapter for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Administrator or Administrator[2] finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Administrator that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(4) The Secretary shall promulgate regulations concerning circumstances under which waivers of or exceptions to otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(A) the economic soundness requirements set forth in paragraph (1)(A) of this subsection are met after the waiver of the financial condition requirement; and

(B) if deemed necessary by the Secretary or Administrator, the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for any significant increase in risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(e) Guarantee fees

(1) Except as otherwise provided in this subsection, the Secretary or Administrator shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this subchapter.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary or Administrator for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or recondi-

[2] So in original. See 2006 Amendment notes.

tioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary or Administrator for the obligation under the formula established under subparagraph (D).

(D) The Secretary or Administrator shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this subchapter for the obligation; and

(iii) uses—

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C)(i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C)(i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1279a of this Appendix.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary or Administrator shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation is refinanced and guaranteed under this subchapter after such refinancing.

(5) A fee paid under subsection (e) of this section shall be included in the amount of the actual cost of the obligation guaranteed under this subchapter and is eligible to be financed under this subchapter.

(f) Investigation of applications

(1) The Secretary or Administrator shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1279a of this Appendix and for the inspection of such properties during construction, reconstruction, or reconditioning: *Provided*, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(2) The Secretary or Administrator may make a determination that aspects of an application under this subchapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, or financial structures. Any independent analysis conducted pursuant to this provision shall be performed by a party chosen by the Secretary or Administrator.

(3) Notwithstanding any other provision of this subchapter, the Secretary or Administrator may make a determination that an application under this subchapter requires additional equity because of increased risk factors associated with markets, technology, or financial structures.

(4) The Secretary or Administrator may charge and collect fees to cover the costs of independent analysis under paragraph (2). Notwithstanding section 3302 of title 31, any fee collected under this paragraph shall—

(A) be credit as an offsetting collection to the account that finances the administration of the loan guarantee program;

(B) shall[3] be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(C) shall[3] remain available until expended.

(5) A third party independent analysis conducted under paragraph (2) shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator.

(g) Disposition of moneys

All moneys received by the Secretary or Administrator under the provisions of sections 1271 to 1276 and 1279[4] of this Appendix shall be deposited in the Fund.

(h) Additional requirements

Obligations guaranteed under this subchapter and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary or Administrator), liens and releases of liens, payments of taxes, and such other matters as the Secretary or Administrator may, in his discretion, prescribe.

(i) Limitation on authority to establish uniform percentage limitations

The Secretary or Administrator may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2) of this section;

(2) the 87½ percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) of this section or section 1279e(b) of this Appendix; or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) Guarantees for eligible export vessels

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Ad-

[3] So in original. The word ''shall'' probably should not appear.

[4] See References in Text note below.

ministrator shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Administrator of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Administrator to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Administrator may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

(k) Monitoring

The Secretary or Administrator shall monitor the financial conditions and operations of the obligor on a regular basis during the term of the guarantee. The Secretary or Administrator shall document the results of the monitoring on an annual or quarterly basis depending upon the condition of the obligor. If the Secretary or Administrator determines that the financial condition of the obligor warrants additional protections to the Secretary or Administrator, then the Secretary or Administrator shall take appropriate action under subsection (m) of this section. If the Secretary or Administrator determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of obligations by the Secretary or Administrator, the Secretary or Administrator shall make an immediate determination whether default should take place and whether further measures described in subsection (m) of this section should be taken to protect the interests of the Secretary or Administrator while insuring that program objectives are met.

(*l*) Review of applications

No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary or Administrator unless the Secretary or Administrator certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to obligors and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application has been made.

(m) Agreement with obligor

The Secretary or Administrator shall include provisions in loan agreements with obligors that provide additional authority to the Secretary or Administrator to take action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors. If the Secretary or Administrator has waived a requirement under subsection (d) of this section, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.

(n) Decision period

(1) In general

The Administrator shall approve or deny an application for a loan guarantee under this subchapter within 270 days after the date on which the signed application is received by the Administrator or Administrator.[2]

(2) Extension

Upon request by an applicant, the Administrator or Administrator[2] may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application for the loan guarantee was received by the Administrator or Administrator.[2]

(June 29, 1936, ch. 858, title XI, § 1104A, formerly § 1104, as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; amended Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86–123, §§ 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86–127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86–518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86–685, §§ 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90–341, June 15, 1968, 82 Stat. 180; Pub. L. 91–469, §§ 31, 32, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 95–257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96–320, title II, § 202(b), (c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96–561, title II, § 220(3), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(c), (d), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98–595, § 1(2)–(7), (12), Oct. 30, 1984, 98 Stat. 3130, 3131; Pub. L. 99–509, title V, § 5003, Oct. 21, 1986, 100 Stat. 1912; renumbered § 1104A, Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103–160, div. A, title XIII, § 1356(3), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–239, § 13(c), Oct. 8, 1996, 110 Stat. 3136; Pub. L. 104–297, title III, § 302(a), Oct. 11, 1996, 110 Stat. 3615; Pub. L. 107–314, div. C, title XXXV, § 3503, Dec. 2, 2002, 116 Stat. 2753; Pub. L. 108–136, div. C, title XXXV, §§ 3522, 3523, 3525, 3526, Nov. 24, 2003, 117 Stat. 1800, 1801; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(D), (2)(C)–(G), (b)(3)–(7), Jan. 6, 2006, 119 Stat. 3555, 3556.)

REFERENCES IN TEXT

Sections 1276 and 1279 of this Appendix, referred to in subsec. (g), were repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, § 3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' in introductory provisions and in par. (3)(C).

Subsec. (b)(1) to (6). Pub. L. 109–163, § 3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (b)(7). Pub. L. 109–163, § 3507(a)(2)(C), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d)(1)(A). Pub. L. 109–163, §3507(a)(2)(D), (b)(3)(A), in introductory provisions, substituted ''made by the Administrator'' for ''made by the Secretary of Transportation'', ''unless the Administrator'' for ''unless the Secretary'', and ''Administrator shall'' for ''Secretary shall''.

Subsec. (d)(3). Pub. L. 109–163, §3507(a)(2)(E), substituted ''Administrator'' for ''Secretary'' in introductory provisions and in subpar. (A).

Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' in introductory provisions and in subpar. (A).

Subsec. (d)(3)(B). Pub. L. 109–163, §3507(b)(3)(A), substituted ''Administrator'' for ''Secretary of Transportation''.

Subsec. (d)(4)(B). Pub. L. 109–163, §3507(b)(3)(B), (C), substituted ''if deemed necessary by the Secretary or Administrator, the waiver'' for ''the waiver'' and ''any significant increase in'' for ''the increased''.

Subsec. (e)(1). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary''.

Subsec. (e)(2). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' in subpars. (C)(i), (ii) and (D) and ''Secretary or Administrator shall'' for ''Secretary shall'' in subpar. (F).

Subsec. (f). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (f)(2). Pub. L. 109–163, §3507(b)(4)(A), substituted ''or financial structures'' for ''financial structures, or other risk factors identified by the Secretary or Administrator''.

Subsec. (f)(3). Pub. L. 109–163, §3507(b)(4)(B), substituted ''or financial structures'' for ''financial structures, or other risk factors identified by the Secretary or Administrator''.

Subsec. (f)(5). Pub. L. 109–163, §3507(b)(4)(C), added par. (5).

Subsecs. (g) to (i). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (j)(1). Pub. L. 109–163, §3507(a)(2)(F), substituted ''Administrator shall promptly provide'' for ''Secretary shall promptly provide'', ''Administrator of the potential use'' for ''Secretary of the potential use'', and ''authority of the Administrator to disapprove a loan'' for ''authority of the Secretary to disapprove a loan'.

Subsec. (j)(2). Pub. L. 109–163, §3507(b)(5), substituted ''The Administrator'' for ''The Secretary of Transportation''.

Subsecs. (k), (*l*). Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (m). Pub. L. 109–163, §3507(b)(6), substituted ''If the Secretary or Administrator has waived a requirement under subsection (d) of this section, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.'' for ''Provisions that the Secretary or Administrator shall include in loan agreements include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligors financial condition or the status of the vessel or shipyard project.''

Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (n)(1). Pub. L. 109–163, §3507(b)(7), substituted ''The Administrator'' for ''The Secretary of Transportation''.

Pub. L. 109–163, §3507(a)(2)(G), substituted ''received by the Administrator'' for ''received by the Secretary''.

Pub. L. 109–163, §3507(a)(1)(D), substituted ''received by the Secretary or Administrator'' for ''received by the Secretary''.

Subsec. (n)(2). Pub. L. 109–163, §3507(a)(2)(G), substituted ''Administrator'' for ''Secretary'' in two places.

Pub. L. 109–163, §3507(a)(1)(D), substituted ''Secretary or Administrator'' for ''Secretary'' in two places.

2003—Subsec. (d)(4). Pub. L. 108–136, §3522, added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 108–136, §3526(1), struck out par. (5) which read as follows: ''The Secretary may obtain independent analysis of an application for a guarantee or commitment to guarantee under this subchapter.''

Pub. L. 108–136, §3522, redesignated par. (4) as (5).

Subsec. (f). Pub. L. 108–136, §3526(2), designated existing provisions as par. (1), struck out ''(including for obtaining independent analysis under subsection (d)(4) of this section)'' after ''applications for a guarantee'', and added pars. (2) to (4).

Subsec. (k). Pub. L. 108–136, §3523(a), added subsec. (k).

Subsecs. (*l*), (m). Pub. L. 108–136, §3523(b), added subsecs. (*l*) and (m).

Subsec. (n). Pub. L. 108–136, §3525, added subsec. (n).

2002—Subsec. (d)(4). Pub. L. 107–314, §3503(1), added par. (4).

Subsec. (f). Pub. L. 107–314, §3503(2), inserted ''(including for obtaining independent analysis under subsection (d)(4) of this section)'' after ''applications for a guarantee''.

1996—Subsec. (a). Pub. L. 104–297, §302(a)(4), substituted ''paragraphs (6) and (7)'' for ''paragraph (6)'' in concluding provisions.

Subsec. (a)(7). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1853(d)(4) of title 16.

Pub. L. 104–297, §302(a)(1)–(3), added par. (7).

Subsec. (b)(2). Pub. L. 104–297, §302(a)(5), substituted ''not to exceed'' for ''equal to'' in third proviso.

Subsec. (e). Pub. L. 104–239 amended subsec. (e) generally. Prior to amendment, subsec. (e) authorized Secretary to fix fees, calculate fee amount, prorate principal amount of obligation in certain cases, and compute and pay fees under regulations prescribed by Secretary, which regulations were to provide a formula to determine creditworthiness of obligors.

1993—Subsec. (a)(1). Pub. L. 103–160, §1356(3)(A), amended provisions before proviso generally. Prior to amendment, such provisions read as follows: ''financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel or vessels owned by citizens of the United States which are designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this Appendix for purposes of subchapter V of this chapter;; or (D) as an ocean thermal energy conversion facility or plantship; or (E) with respect to floating drydocks, in the construction, reconstruction, reconditioning, or repair of vessels:''.

Subsec. (b)(2). Pub. L. 103–160, §1356(3)(B), substituted ''subject to the provisions of subsection (c)(1) of this section and subsection (i) of this section,'' for ''subject to the provisions of paragraph (1) of subsection (c) of this section,'' and inserted before semicolon at end '': *Provided further*, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87½ of the actual cost or depreciated actual cost of the eligible export vessel''.

Subsec. (b)(6). Pub. L. 103–160, §1356(3)(C), inserted ''or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party'' after ''United States Coast Guard''.

Subsec. (d)(3). Pub. L. 103–160, §1356(3)(D), added par. (3).

Subsecs. (i), (j). Pub. L. 103–160, §1356(3)(E), added subsecs. (i) and (j).

1986—Subsec. (b)(2). Pub. L. 99–509 substituted ''That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank'' for ''That in the case of any vessel to be used in the fishing trade or industry, such obligations may be in an aggregate principal amount which does not exceed 87½ per centum of the actual cost or depreciated actual cost of the vessel''.

1984—Subsec. (a)(3). Pub. L. 98–595, §1(2), substituted provisions relating to financing of purchase, reconstruction or reconditioning of designated vessels or fishery facilities for former provisions relating to financing of vessels acquired by the Federal Ship Financing Fund pursuant to section 1275 of this Appendix.

Subsec. (a)(5). Pub. L. 98–595, §1(3), inserted ''or'' after ''time''.

Subsec. (a)(6). Pub. L. 98–595, §1(4), substituted a period for ''; or'' after ''facilities''.

Subsec. (a)(7). Pub. L. 98–595, §1(5), struck out par. (7) which related to the financing of the purchase of fishing vessels or fishery facilities sold at foreclosure instituted by the Secretary.

Subsec. (d)(1). Pub. L. 98–595, §1(6), substituted provisions establishing economical soundness as a requirement for a commitment by the Secretary and detailing factors for evaluation for former provisions which established the general criteria of economical soundness and wise use of fishery resources.

Subsec. (e). Pub. L. 98–595, §1(12), inserted ''Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations).''

Subsec. (h). Pub. L. 98–595, §1(7), inserted '', assumption,'' after ''acceleration''.

1981—Subsecs. (a) to (c). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 97–35, §1606(c), in par. (1) substituted ''No'' for ''Except as provided in paragraph (2), no'', struck out par. (2) which related to application of par. (1), and redesignated par. (3) as (2).

Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsecs. (e), (f). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (g). Pub. L. 97–35, §1606(d), designated par. (1) as entire provision, and struck out par. (2) which required the Secretary to establish subfunds within the Fund.

Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary''.

Subsec. (h). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' in two places.

1980—Subsec. (a). Pub. L. 96–561, §220(3)(A)(vi), inserted provision after par. (7) that any obligation guaranteed under par. (6) be treated, for purposes of this subchapter, in the same manner and to the same extent as an obligation guaranteed under this subchapter which aids in the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions of this subchapter that by their nature can only be applied to vessels.

Subsec. (a)(1). Pub. L. 96–561, §220(3)(A)(i), (ii), substituted ''; or (D)'' for ''(D) in the fishing trade or industry; (E)'' and redesignated cl. (F) as (E).

Pub. L. 96–320, §202(b), redesignated cl. (E), relating to floating drydocks, as cl. (F) and added cl. (E) relating to ocean thermal energy conversion facilities or plantships.

Subsec. (a)(2). Pub. L. 96–561, §220(3)(A)(iii), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3). Pub. L. 96–561, §220(3)(A)(iii), redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96–561, §220(3)(A)(iii), (iv), redesignated former par. (3) as (4) and substituted ''this chapter;'' for ''this chapter; or''. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 96–561, §220(3)(A)(iii), (v), redesignated former par. (4) as (5) and substituted ''(3), or (4)'' for ''or (3)'' and a semicolon for the period at end.

Subsec. (a)(6), (7). Pub. L. 96–561, §220(3)(A)(vi), added pars. (6) and (7).

Subsec. (b). Pub. L. 96–561, §220(3)(B), inserted provision after par. (7) prohibiting the Secretary from establishing, as a condition of eligibility for guarantee, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility, which reconstruction or reconditioning does not include the routine minor repair or maintenance of the vessel or facility.

Subsec. (b)(2). Pub. L. 96–320, §202(c), inserted proviso that in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, the obligations may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the facility or plantship.

Subsec. (d). Pub. L. 96–561, §220(3)(C), designated existing provision as par. (1), substituted ''Except as provided in paragraph (2), no'' for ''No'', and added pars. (2) and (3).

Subsec. (g). Pub. L. 96–561, §220(3)(D), designated existing provision as par. (1) and added par. (2).

1978—Subsec. (b)(2). Pub. L. 95–257 inserted proviso relating to vessels to be used in the fishing trade or industry.

1972—Subsec. (a). Pub. L. 92–507 substituted provisions relating to the purposes for which guarantees may be made, for provisions relating to the eligibility of mortgages for insurance.

Subsec. (b). Pub. L. 92–507 substituted provisions relating to the eligibility requirements of obligations for guarantee, for provisions relating to the eligibility of loans for insurance.

Subsec. (c). Pub. L. 92–507 substituted provisions that security for guarantee may relate to more than one vessel, that security may consist of any combination of types of security, and that an obligation may have the latest maturity date permissible for any vessel which serves as security for the government guarantee of the related obligations, for provisions relating to the prior determination of the soundness of the property or project for mortgage or loan.

Subsec. (d). Pub. L. 92–507 incorporated provisions of former subsec. (c) into subsec. (d) and extended provisions of this subchapter to commercial fishing vessels. Provisions of former subsec. (d) were incorporated into subsec. (e).

Subsec. (e). Pub. L. 92–507 incorporated provisions of former subsec. (d) into subsec. (e) and substituted therein provisions authorizing the Secretary to fix a fee for the guarantee of obligations and providing separate formulae for delivered vessels and vessels under construction, for provisions authorizing the Secretary to fix a premium charge for the insurance of mortgages and loans and providing separate formulae for mortgages and loans by reference to section 1273 of this Appendix. Provisions of former subsec. (e) were incorporated into subsec. (f).

Subsec. (f). Pub. L. 92–507 incorporated provisions of former subsec. (e), relating to the collection of investigation fees from applicants for insurance into subsec. (f), and substituted therefor provisions relating to the collection of investigation fees from applicants for guarantee. Provisions of former subsec. (f) incorporated into subsec. (g).

Subsec. (g). Pub. L. 92–507 incorporated provisions of former subsec. (f) into subsec. (g).

Subsec. (h). Pub. L. 92–507 added subsec. (h).

1970—Subsec. (a)(8). Pub. L. 91–469, §31, inserted ''research, or for'' before ''commercial use''.

Subsec. (b). Pub. L. 91–469, §32, inserted in par. (2) ''research, or for'' before ''commercial use'', sub-

stituted in par. (4) ''not exceed'' for ''be less than'', and inserted in par. (4) restriction that advance and principal amount of other advances under insured loans outstanding at time of advance shall not exceed 87½ per centum of actual cost of vessel where in the case of the approved vessel the minimum downpayment by the mortgagor required by section 1159 of this Appendix would be 12½ per centum of cost of vessel.

1968—Subsec. (a)(5). Pub. L. 90–341 substituted provision that the maximum interest rates allowed on ship mortgages eligible for insurance coverage be at such rates on the outstanding principle obligation as determined by the Secretary of Commerce to be reasonable, taking into account the prevailing rates and the risks assumed by the Department of Commerce, for provision setting a maximum of 5 per centum per annum, or 6 per centum per annum when the Secretary determined that in certain areas or under special circumstances the mortgage or lending market demanded it.

1960—Subsec. (a)(3). Pub. L. 86–518 substituted ''twenty-five years'' for ''twenty years''.

Subsec. (a)(8). Pub. L. 86–685, § 2, inserted cl. (e).

Subsec. (b)(2). Pub. L. 86–685, § 3, inserted cl. (e).

1959—Subsec. (a)(2). Pub. L. 86–123, § 2, substituted ''and which is, or in the case of a vessel to be reconstructed or reconditioned would have been, eligible for mortgage aid for construction'' for ''which is eligible for mortgage aid'' in proviso.

Subsec. (d). Pub. L. 86–127, § 1(3), inserted ''excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this Appendix'' in two places.

Subsec. (e). Pub. L. 86–127, § 1(4), inserted ''for services in connection with the escrow fund authorized by section 1279a of this Appendix'' after ''commitments'' .

Subsec. (f). Pub. L. 86–123, § 1(3), substituted ''sections 1101 to 1110'' for ''sections 1101 to 1109'' of Act June 29, 1936, which, for purposes of codification, has been changed to ''sections 1271 to 1279 of this Appendix''.

1954—Act Sept. 3, 1954, provided standards of eligibility for both mortgages and loans, set up restrictions, and provided for premium charges.

1953—Subsec. (a)(2). Act Aug. 15, 1953, § 2(1), inserted ''or, in the case of vessels, constructed under subchapter V of this title, involved in an obligation in a principal amount which does not exceed 75 per centum of the cost of the vessel (exclusive of construction-differential subsidy and cost of national-defense features)''.

Subsec. (a)(8). Act Aug. 15, 1953, § 2(2), (3), inserted ''construction of vessels under subchapter V of this chapter'' in introductory provisions, and in cl. (c) substituted ''in foreign trade'' for provisions relating to specified trade.

1950—Subsec. (a)(2), (7), (8). Act Sept. 28, 1950, inserted provisions concerning purchase of vessels for use on the Great Lakes pursuant to the Merchant Ship Sales Act of 1946.

1939—Subsec. (a)(8). Act Aug. 4, 1939, included mortgages to secure new loans or advances made to aid financing of vessels designed for use in the fishing trade or industry.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PROHIBITION OF NEW LOANS FOR CONSTRUCTION OF FISHING VESSELS UNDER CERTAIN CONDITIONS

Pub. L. 104–297, title III, § 302(b), Oct. 11, 1996, 110 Stat. 3615, as amended by Pub. L. 105–277, div. C, title II, § 212, Oct. 21, 1998, 112 Stat. 2681–635; Pub. L. 107–206, title I, § 1103, Aug. 2, 2002, 116 Stat. 884, provided that:

''(1) Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

''(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons [(]as measured under chapter 143 of that title), or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty.''

[Pub. L. 107–206, title I, § 1103, Aug. 2, 2002, 116 Stat. 884, which directed the amendment of title II of division C of Public Law 105–277 by substituting ''of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title)'' for ''of more than 750 gross registered tons'', was executed to section 302(b) of Pub. L. 104–297, set out above, as amended by section 212 of Pub. L. 105–277, to reflect the probable intent of Congress.]

REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86–518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86–518, set out as a note under section 1125 of this Appendix.

§ 1274a. Authorization of Secretary or Administrator to guarantee obligations arising from statutorily mandated change in standards for operation of vessels

(a) Purpose of obligations; principal and interest

Notwithstanding the provisions of this subchapter, except as provided in subsection (d) of this section, the Secretary or Administrator, upon the terms the Secretary or Administrator may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously

made, of a contract for construction or reconstruction of a vessel or vessels which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 1244 of this Appendix if—

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this subchapter will not increase the cargo carrying capacity of the vessels being replaced;

(4) the Secretary or Administrator has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiduciarily imprudent; and

(5) the Secretary or Administrator has considered the provisions of section 1274(d)(1)(A)(iii), (iv), and (v) of this Appendix.

(b) Limitations on length and amount of guaranteed obligations; useful life of vessel

For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87½ percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary or Administrator may not by rule, regulation, or procedure establish any percentage within the 87½ percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) Security against default; fees; Vessel Replacement Guarantee Fund

(1) The Secretary or Administrator shall by rule require that the applicant provide adequate security against default. The Secretary or Administrator may, in addition to any fees assessed under section 1274(e) of this Appendix, establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—

(A) annual fees which may be an additional amount on the loan guarantee fee in section 1274(e) of this Appendix not to exceed an additional 1 percent; or

(B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

(2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall—

(A) be the depository for all moneys received by the Secretary or Administrator under sections 1271 through 1276 and 1279[1] of this Appendix with respect to guarantee or commitments to guarantee made under this section;

(B) not include investigation fees payable under section 1274(f) of this Appendix which shall be paid to the Federal Ship Financing Fund; and

(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary or Administrator under section 1275(d) of this Appendix with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary or Administrator under sections 1271 through 1276 and 1279[1] of this Appendix from applicants under this section.

(d) Additional requirements

The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1271 through 1273; 1274(b)(1), (4), (5), (6); 1274(e); 1274(f); 1274(h); and 1275, 1276, and 1279[1] of this Appendix; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

(June 29, 1936, ch. 858, title XI, § 1104B, as added Pub. L. 101–380, title IV, § 4115(f)(2), Aug. 18, 1990, 104 Stat. 521; amended Pub. L. 102–587, title VI, § 6204, Nov. 4, 1992, 106 Stat. 5094; Pub. L. 103–160, div. A, title XIII, § 1356(4), Nov. 30, 1993, 107 Stat. 1814; Pub. L. 104–239, § 11(2), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(E), Jan. 6, 2006, 119 Stat. 3555.)

REFERENCES IN TEXT

Sections 1276 and 1279 of this Appendix, referred to in subsecs. (c)(2) and (d), were repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

2006—Subsecs. (a) to (c). Pub. L. 109–163 substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

1996—Subsec. (a). Pub. L. 104–239 struck out ''owned by citizens of the United States'' after ''vessel or vessels'' in introductory provisions.

1993—Subsec. (b). Pub. L. 103–160 inserted at end ''The Secretary may not by rule, regulation, or procedure establish any percentage within the 87½ percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.''

1992—Subsec. (b)(2). Pub. L. 102–587, which directed the amendment of par. (2) by substituting ''87½ percent'' for ''73 percent'', was executed by making the substitution for ''75 percent'', to reflect the probable intent of Congress.

[1] See References in Text note below.

EFFECTIVE DATE

Section applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as a note under section 2701 of Title 33, Navigation and Navigable Waters.

§ 1275. Defaults

(a) Rights of obligee

In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this subchapter, the obligee or his agent shall have the right to demand (unless the Secretary or Administrator shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default), at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary or Administrator of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary or Administrator shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided*, That the Secretary or Administrator shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) Notice of default

In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary or Administrator, the Secretary or Administrator may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the assumption by the Secretary or Administrator; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary or Administrator of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary or Administrator shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) Secretary or Administrator to complete, sell or operate property

In the event of any payment or assumption by the Secretary or Administrator under subsection (a) or (b) of this section, the Secretary or Administrator shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary or Administrator shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary or Administrator.

(d) Cash payments; issuance of notes or obligations

Any amount required to be paid by the Secretary or Administrator pursuant to subsection (a) or (b) of this section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1272 of this Appendix are not sufficient to pay any amount the Secretary or Administrator is required to pay by subsection (a) or (b) of this section, the Secretary or Administrator is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary or Administrator, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the Secretary or Administrator from such Fund.

(e) Actions against obligor

In the event of a default under any guaranteed obligation or any related agreement, the Secretary or Administrator shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be re-

quired to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary or Administrator shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary or Administrator, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event that the Secretary or Administrator shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary or Administrator shall pay the excess to the obligor.

(f) Default response

In the event of default on an obligation, the Secretary shall conduct operations under this subchapter in a manner which—

(1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;

(2) minimizes the amount of any loss realized in the resolution of the guarantee;

(3) ensures adequate competition and fair and consistent treatment of offerors; and

(4) requires appraisal of assets by an independent appraiser.

(June 29, 1936, ch. 858, title XI, § 1105, as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; amended Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)–(g), 70 Stat. 1087; Pub. L. 85–520, July 15, 1958, 72 Stat. 358; Pub. L. 91–469, § 33, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92–507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96–561, title II, § 220(4), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(e), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98–595, § 1(8)–(11), Oct. 30, 1984, 98 Stat. 3131; Pub. L. 108–136, div. C, title XXXV, § 3524, Nov. 24, 2003, 117 Stat. 1801; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(F), (G), Jan. 6, 2006, 119 Stat. 3555.)

CODIFICATION

In subsec. (d), ''chapter 31 of title 31'' and ''such chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''such Act, as amended,'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2006—Subsecs. (a) to (c). Pub. L. 109–163, § 3507(a)(1)(F), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 109–163, § 3507(a)(1)(G), substituted ''Secretary or Administrator'' for ''Secretary'' the first, second, third, fifth, and last places it appeared.

2006—Subsec. (e). Pub. L. 109–163, § 3507(a)(1)(F), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

2003—Subsec. (f). Pub. L. 108–136 added subsec. (f).

1984—Subsec. (a). Pub. L. 98–595, § 1(8), inserted ''(unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default)''.

Subsec. (b). Pub. L. 98–595, § 1(9), expanded provisions relating to the Secretary's rights in the case of default under a security agreement between the obligor and the Secretary to include the option of assuming the obligor's rights and duties under the agreement.

Subsec. (c). Pub. L. 98–595, § 1(10), inserted ''or assumption''.

Subsec. (e). Pub. L. 98–595, § 1(11), substituted ''the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary'' for ''any payment made to an obligee under subsection (a) or (b) of this section and the expenses of collection of such amounts, he''.

1981—Subsecs. (a) to (c). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 97–35 struck out of first sentence the requirement of payment from the appropriate subfund established under section 1274(g)(2) of this Appendix.

Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' in five places.

Subsec. (e). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' in four places.

1980—Subsec. (d). Pub. L. 96–561 inserted in first sentence '', and shall be paid from the appropriate subfund required to be established under section 1274(g)(2) of this Appendix'' after ''paid in cash''.

1972—Subsec. (a). Pub. L. 92–507 substituted provisions relating to the rights of obligee to demand and receive payment from the Secretary under certain circumstances, for provisions relating to the rights of mortgagee and lender to demand and receive payment under certain circumstances and the authority of the Secretary to terminate the insurance contract by notification to the mortgagee or the lender as the case may be.

Subsec. (b). Pub. L. 92–507 inserted provisions relating to notification of default to the obligee, and payment of unpaid principal and interest amount, by the Secretary within certain time. Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 92–507 incorporated substantially the provisions of subsec. (d) into subsec. (c). Former subsec. (c) is now covered by subsec. (e).

Subsec. (d). Pub. L. 92–507 incorporated provisions of former subsec. (b) into subsec. (d). Former subsec. (d) is now covered by subsec. (c).

Subsec. (e). Pub. L. 92–507 incorporated provisions of former subsec. (c) relating to actions by the Secretary in the event of defaults by mortgagors and borrowers, into subsec. (e), and substituted therefor provisions relating to actions by the Secretary in the event of defaults by obligors of guaranteed obligations and related agreements. Provisions of former subsec. (e) relating to termination and cancellation of insurance contracts and the incontestability of such contracts except for fraud, duress or mutual mistake of fact are omitted.

1970—Subsec. (d). Pub. L. 91–469 substituted provision for inclusion of interest in the installments on the purchase price remaining unpaid at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such installments, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance, for prior rate of 3½ per centum per annum on installments of purchase price remaining unpaid.

1958—Subsec. (b). Pub. L. 85–520 authorized the Secretary of Commerce to issue notes or obligations whenever the moneys in the Federal Ship Mortgage Insurance Fund are insufficient to pay amounts required to be paid under subsec. (a) of this section.

1956—Subsec. (a)(1), (2). Act Aug. 7, 1956, § 1(e), struck out ''the insured portion of'' before ''the unpaid principal amount'', wherever appearing.

Subsec. (c)(1). Act Aug. 7, 1956, §1(f), substituted ''such excess to the borrower'' for ''to the mortgagee such cash amounts to the extent that the mortgagee has not been made whole through other sources for amounts advanced to the mortgagor but in no event shall such payments to the mortgagee exceed 10 per centum of the unpaid principal amount of mortgage and the interest thereon, and any excess of the amounts thus due the Government and the mortgagee shall be paid to the mortgagor''.

Subsec. (c)(2). Act Aug. 7, 1956, §1(g), substituted ''such excess to the borrower'' for ''to the lender such cash amount to the extent that the lender has not been made whole through other sources for amounts advanced to the borrower but in no event shall such payment to the lender exceed 10 per centum of the unpaid principal amount of loan and the interest thereon, and any excess of the amounts thus due the Government and the lender shall be paid to the borrower''.

1954—Act Sept. 3, 1954, gave new rights to both borrowers and lenders and set up new foreclosure procedures.

1953—Act Aug. 15, 1953, provided that in the event of a default in payment of either principal or interest, the lender may tender an assignment of the mortgage and all collateral to the Secretary who shall promptly pay the unpaid balance in cash, provided for the foreclosure and repossession of mortgaged vessels; allowed the Secretary to take any necessary steps to minimize the loss, and made all insurance commitments conclusive.

SECRETARY OF COMMERCE; FISHING VESSEL INSURANCE

Pub. L. 86–577, July 5, 1960, 74 Stat. 314, provided: ''That in order to permit the efficient execution of functions relating to the issuance of Federal ship mortgage insurance on fishing vessels, pursuant to the Merchant Marine Act of June 29, 1936, as amended [this chapter] (49 Stat. 1985; 46 U.S.C., 1952 edition, sec. 1271 and the following), which functions relating to fishing vessels have been transferred to the Secretary of the Interior pursuant to the Fish and Wildlife Act of 1956 [section 742a et seq. of Title 16, Conservation], the Secretary of the Interior hereafter may exercise authority comparable to the authority of the Secretary of Commerce under the said Merchant Marine Act of 1936 [this chapter], including, but not limited to the authority contained in the amendment to such Act of July 15, 1958 (72 Stat. 358) [amending this section].''

Functions relating to the issuance of Federal ship mortgage insurance on fishing vessels, which functions were transferred to the Secretary of the Interior, were retransferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970, §1, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1279a. Escrow fund

(a) Creation

If the proceeds of an obligation guaranteed under this subchapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the Secretary or Administrator, the Secretary or Administrator is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this subchapter whose proceeds are to be so used which is equal to: (i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or 87½ per centum, whichever is applicable under section 1274[1] of this Appendix, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels; (ii) with such interest thereon, if any, as the Secretary or Administrator may require: *Provided*, That in the event the security for the guarantee of an obligation by the Secretary or Administrator relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the Secretary or Administrator.

(b) Disbursement prior to termination of escrow agreement

The Secretary or Administrator shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the Secretary or Administrator under this subchapter, to redeem such obligations in connection with a refinancing under paragraph (4)[1] of section 1274(a) of this Appendix or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i), be credited against any amounts due or to become due to the Secretary or Administrator from the obligor with respect to the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

(c) Disbursement upon termination of escrow agreement

If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or 87½ per centum, whichever is applicable under section 1274[1] of this Appendix, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

(d) Investment of fund

The Secretary or Administrator may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

(e) Payment of income

Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

(f) Terms of escrow agreement

The escrow agreement shall contain such other terms as the Secretary or Administrator

[1] See References in Text note below.

may consider necessary to protect fully the interests of the United States.

(g) Payments required before disbursement

(1) In general

No disbursement shall be made under subsection (b) of this section to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12½ percent, whichever is applicable under section 1274 of this Appendix, of the aggregate actual cost of the vessel, as previously approved by the Secretary or Administrator. If the aggregate actual cost of the vessel has increased since the Secretary's or Administrator's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (b) of this section until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12½ percent, as applicable, of the increase, as determined by the Secretary or Administrator, in the aggregate actual cost of the vessel. Nothing in this paragraph shall require the Secretary or Administrator to consent to finance any increase in actual cost unless the Secretary or Administrator determines that such an increase in the obligation meets all the terms and conditions of this subchapter or other applicable law.

(2) Documented proof of progress requirement

The Secretary or Administrator shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary or Administrator may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(June 29, 1936, ch. 858, title XI, § 1108, formerly § 1111, as added Pub. L. 86–127, § 1(2), July 31, 1959, 73 Stat. 272; renumbered and amended Pub. L. 92–507, § 5, Oct. 19, 1972, 86 Stat. 916; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–136, div. C, title XXXV, § 3521(a), Nov. 24, 2003, 117 Stat. 1799; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555.)

REFERENCES IN TEXT

References in subsecs. (a) to (c) to section 1274 of this Appendix, were in the original references to section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Paragraph (4) of section 1274(a) of this Appendix, referred to in subsec. (b), was redesignated paragraph (5) of section 1274(a) of this Appendix by Pub. L. 96–561, title II, § 220(3)(A)(iii), Dec. 22, 1980, 94 Stat. 3292.

AMENDMENTS

2006—Subsecs. (a), (b), (d), (f). Pub. L. 109–163, § 3507(a)(1)(H), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

Subsec. (g). Pub. L. 109–163 substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing and ''Secretary's or Administrator's'' for ''Secretary's'' in par. (1).

2003—Subsec. (g). Pub. L. 108–136 added subsec. (g).

1981—Subsecs. (a), (b), (d), (f). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

1972—Subsec. (a). Pub. L. 92–507 substantially reenacted subsec. (a) and substituted requirement that an escrow fund be created out of proceeds of obligations, for requirement that such fund be created out of sale of bonds.

Subsec. (b). Pub. L. 92–507 substituted provisions for the disbursement of escrow fund to pay certain payments the obligor is obligated to pay, for provisions for the disbursement of such fund to pay certain payments the mortgagor or borrower is obligated to pay.

Subsec. (c). Pub. L. 92–507 substituted provisions for the disbursement of the remainder of funds in the escrow fund to the obligor on the termination of the escrow agreement, for provisions for the disbursement of such funds to the mortgagor or borrower as the case may be.

Subsec. (d). Pub. L. 92–507 substituted ''the escrow fund'' for ''such fund''.

Subsec. (e). Pub. L. 92–507 substituted provisions for payment of income to obligor, for provisions for payment of such income to mortgagor or borrower.

Subsec. (f). Pub. L. 92–507 substituted ''to protect fully'' for ''to fully protect''.

§ 1279b. Deposit fund

(a) Establishment of deposit fund

There is established in the Treasury a deposit fund for purposes of this section. The Secretary or Administrator may, in accordance with an agreement under subsection (b) of this section, deposit into and hold in the deposit fund cash belonging to an obligor to serve as collateral for a guarantee under this subchapter made with respect to the obligor.

(b) Agreement

(1) In general

The Secretary or Administrator and an obligor shall enter into a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the deposit fund established by subsection (a) of this section.

(2) Terms

The agreement shall contain such terms and conditions as are required under this section and such additional terms as are considered by the Secretary or Administrator to be necessary to protect fully the interests of the United States.

(3) Security interest of United States

The agreement shall include terms that grant to the United States a security interest in all amounts deposited into the deposit fund.

(c) Investment

The Secretary or Administrator may invest and reinvest any part of the amounts in the deposit fund established by subsection (a) of this section in obligations of the United States with such maturities as ensure that amounts in the

deposit fund will be available as required for purposes of agreements under subsection (b) of this section. Cash balances of the deposit fund in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) Withdrawals

(1) In general

The cash deposited into the deposit fund established by subsection (a) of this section may not be withdrawn without the consent of the Secretary or Administrator.

(2) Use of income

Subject to paragraph (3), the Secretary or Administrator may pay any income earned on cash of an obligor deposited into the deposit fund in accordance with the terms of the agreement with the obligor under subsection (b) of this section.

(3) Retention against default

The Secretary or Administrator may retain and offset any or all of the cash of an obligor in the deposit fund, and any income realized thereon, as part of the Secretary's or Administrator's recovery against the obligor in case of a default by the obligor on an obligation.

(June 29, 1936, ch. 858, title XI, § 1109, as added Pub. L. 107–107, div. C, title XXXV, § 3503, Dec. 28, 2001, 115 Stat. 1392; amended Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (3), Jan. 6, 2006, 119 Stat. 3555.)

PRIOR PROVISIONS

A prior section 1279b of this Appendix, act June 29, 1936, ch. 858, title XI, § 1109, formerly § 1112, as added Pub. L. 90–194, Dec. 14, 1967, 81 Stat. 580; renumbered and amended Pub. L. 92–507, § 5, Oct. 19, 1972, 86 Stat. 916, 917; Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166, directed Secretary to make rules and regulations to carry out this subchapter, prior to repeal by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

2006—Subsecs. (a), (b)(1), (2). Pub. L. 109–163, § 3507(a)(1)(H), substituted ''Secretary or Administrator'' for ''Secretary''.

Subsec. (c). Pub. L. 109–163, § 3507(a)(1)(H), substituted ''Secretary or Administrator may invest'' for ''Secretary may invest''.

Subsec. (d). Pub. L. 109–163 substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing and ''Secretary's or Administrator's'' for ''Secretary's'' in par. (3).

§ 1279c. Ocean thermal energy conversion demonstration facilities and plantships

(a) Financing of construction, reconstruction, or reconditioning

Pursuant to the authority granted under section 1273(a) of this Appendix, the Administrator, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1274(a)(1)[1] of this Appendix, except that—

(1) no guarantees or commitments to guarantee may be made by the Administrator under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1274[1] of this Appendix shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 87½ percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: *Provided*, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87½ percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) Certification of reasonableness of risk

A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Administrator, certifies to the Administrator that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

(c) OTEC Demonstration Fund

A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this subchapter. Except as specified

[1] See References in Text note below.

otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1274(g)[1] of this Appendix, (1) all moneys received by the Administrator pursuant to sections 1271 through 1276 and 1279[1] of this Appendix with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Administrator pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund, all moneys received by the Administrator pursuant to sections 1271 through 1276 and 1279[1] of this Appendix with respect to ocean thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Administrator pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed $1,650,000,000.

(d) Notes and obligations

The provisions of section 1275(d) of this Appendix shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: *Provided, however*, That any notes or obligations issued by the Administrator pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) Taxability of interest

The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(June 29, 1936, ch. 858, title XI, § 1110, as added Pub. L. 96–320, title II, § 203(a), Aug. 3, 1980, 94 Stat. 992; amended Pub. L. 97–31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1606(f), Aug. 13, 1981, 95 Stat. 752; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104–239, § 11(3), Oct. 8, 1996, 110 Stat. 3134; Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(H), Jan. 6, 2006, 119 Stat. 3555.)

REFERENCES IN TEXT

References in subsecs. (a) to (c) to section 1274 of this Appendix, were in the original references to section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101–380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Sections 1276 and 1279 of this Appendix, referred to in subsec. (c), were repealed by Pub. L. 101–225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163 substituted ''Administrator'' for ''Secretary'' in introductory provisions and par. (1).

Subsec. (b). Pub. L. 109–163 substituted ''Administrator, certifies to the Administrator'' for ''Secretary, certifies to the Secretary''.

Subsecs. (c), (d). Pub. L. 109–163 substituted ''Administrator'' for ''Secretary'' wherever appearing.

1996—Subsec. (a). Pub. L. 104–239 struck out ''owned by citizens of the United States'' after ''facility or plantship'' in introductory provisions.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1981—Subsecs. (a), (b). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 97–35 substituted ''$1,650,000,000'' for ''$2,000,000,000''.

Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary''.

§ 1279d. Loan guarantees for eligible export vessels

(a) Authority to guarantee obligations for eligible export vessels

The Administrator may guarantee obligations for eligible export vessels—

(1) in accordance with the terms and conditions of this subchapter applicable to loan guarantees in the case of vessels documented under the laws of the United States; or

(2) in accordance with such other terms as the Administrator determines to be more favorable than the terms otherwise provided in this subchapter and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) Interagency council

(1) Establishment; composition

There is hereby established an interagency council for the purposes of this section. The council shall be composed of the Administrator, who shall be chairman of the Council,[1] the Secretary of the Treasury, the Secretary of State, the Assistant to the President for Economic Policy, the United States Trade Representative, and the President and Chairman of the United States Export-Import Bank, or their designees.

(2) Purpose of the council

The council shall—

(A) obtain information on shipbuilding loan guarantees, on direct and indirect subsidies, and on other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards; and

(B) provide guidance to the Administrator in establishing terms for loan guarantees for eligible export vessels under subsection (a)(2) of this section.

(3) Consultation with U.S. shipbuilders

The council shall consult regularly with United States shipbuilders to obtain the essen-

[1] So in original. Probably should not be capitalized.

tial information concerning international shipbuilding competition on which to set terms and conditions for loan guarantees under subsection (a)(2) of this section.

(4) Annual report

Not later than January 31 of each year (beginning in 1995), the Administrator shall submit to Congress a report on the activities of the Administrator under this section during the preceding year. Each report shall include documentation of sources of information on assistance provided by the governments of other nations to shipyards in those nations and a summary of recommendations made to the Administrator during the preceding year regarding applications submitted to the Administrator during that year for loan guarantees under this subchapter for construction of eligible export vessels.

(June 29, 1936, ch. 858, title XI, § 1111, as added Pub. L. 103–160, div. A, title XIII, § 1355(a), Nov. 30, 1993, 107 Stat. 1811; amended Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(I), (J), (b)(8), Jan. 6, 2006, 119 Stat. 3555, 3556.)

PRIOR PROVISIONS

Another section 1111 of act June 29, 1936, was renumbered section 1113 and is classified to section 1279f of this Appendix.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, § 3507(a)(2)(I), substituted ''Administrator'' for ''Secretary'' in introductory provisions and par. (2).

Subsec. (b)(1). Pub. L. 109–163, § 3507(b)(8), substituted ''Administrator'' for ''Secretary of Transportation''.

Subsec. (b)(2)(B). Pub. L. 109–163, § 3507(a)(2)(I), substituted ''Administrator'' for ''Secretary''.

Subsec. (b)(4). Pub. L. 109–163, § 3507(a)(2)(J), (b)(8), substituted ''Administrator shall submit'' for ''Secretary of Transportation shall submit'', ''activities of the Administrator'' for ''activities of the Secretary'', ''recommendations made to the Administrator'' for ''recommendations made to the Secretary'', and ''submitted to the Administrator'' for ''submitted to the Secretary''.

INTERAGENCY COUNCIL DESIGNEES

Section 1355(b) of Pub. L. 103–160 provided that:

''(1) INITIAL DESIGNATION OF COUNCIL MEMBERS.—Each member of the council established under section 1111(b) of the Merchant Marine Act, 1936 [46 App. U.S.C. 1279d(b)], as added by subsection (a), shall name a designee for service on the council not later than 30 days after the date of the enactment of this Act [Nov. 30, 1993]. Each such member shall promptly notify the Secretary of Transportation of that designation.

''(2) DESIGNATION OF SENIOR MARAD OFFICIAL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall designate a senior official within the Maritime Administration to have the responsibility and authority to carry out the terms and conditions set forth under section 1111 of title XI the Merchant Marine Act, 1936, as added by subsection (a). The Secretary shall make the designation of that official known through a public announcement in a national periodical.''

§ 1279e. Loan guarantees for shipyard modernization and improvement

(a) General authority

The Administrator, under section 1273(a) of this Appendix and subject to the terms the Administrator shall prescribe, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States.

(b) Applicable laws, requirements, regulations, and procedures

Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this subchapter, except that guarantees or commitments to guarantee made under this section may be in the aggregate principal amount that does not exceed 87½ percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(c) Transfer of funds

The Administrator may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 661a of title 2) of making guarantees or commitments to guarantee loans entered into under this section.

(d) Definitions

For purposes of this section:

(1) The term ''advanced shipbuilding technology'' includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) The term ''modern shipbuilding technology'' means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(3) The term ''general shipyard facility'' means—

(A) for operations on land—

(i) any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment or rebuilding of any vessel (as defined in title 1) and including graving docks, building ways, ship lifts, wharves, and pier cranes;

(ii) the land necessary for any structure or appurtenance described in clause (i); and

(iii) equipment that is for the use in connection with any structure or appurtenance and that is necessary for the performance of any function referred to in subparagraph (A);

(B) for operations other than on land, any vessel, floating drydock or barge built in the United States and used for, equipped to be used for, or of a type that is normally used for activities referred to in subparagraph (A)(i) of this paragraph.

(June 29, 1936, ch. 858, title XI, § 1112, as added Pub. L. 103–160, div. A, title XIII, § 1357(a), Nov. 30, 1993, 107 Stat. 1814; amended Pub. L. 109–163, div. C, title XXXV, § 3507(a)(2)(K), Jan. 6, 2006, 119 Stat. 3555.)

PRIOR PROVISIONS

Another section 1112 of act June 29, 1936, was renumbered section 1114 and is classified to section 1279g of this Appendix.

AMENDMENTS

2006—Subsecs. (a), (c). Pub. L. 109–163 substituted ''Administrator'' for ''Secretary'' wherever appearing.

§ 1279f. Fisheries financing and capacity reduction

(a) Authorization for guarantees; issuance of obligations

The Secretary or Administrator is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary or Administrator and has agreed with the Secretary or Administrator to such conditions as the Secretary or Administrator deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Requirements for guaranteed obligations

Any debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this subchapter, except with respect to provisions of this subchapter that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary or Administrator determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2) of this section) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the Secretary or Administrator be issued in the public market or sold to the Federal Financing Bank.

(c) Fishing capacity reduction fund; establishment; availability of amounts; deposit or investment

(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the ''fund''). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary or Administrator to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: *Provided*, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) Issuance of regulations

The Secretary or Administrator is authorized and directed to issue such regulations as the Secretary or Administrator deems necessary to carry out this section.

(e) "Program" defined

For the purposes of this section, the term ''program'' means a fishing capacity reduction program established under section 1861a of title 16.

(June 29, 1936, ch. 858, title XI, § 1113, formerly § 1111, as added Pub. L. 104–297, title III, § 303(a), Oct. 11, 1996, 110 Stat. 3616; amended Pub. L. 104–208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; renumbered § 1113 and amended Pub. L. 109–163, div. C, title XXXV, § 3507(a)(1)(H), (d), Jan. 6, 2006, 119 Stat. 3555, 3557.)

AMENDMENTS

2006—Pub. L. 109–163, § 3507(a)(1)(H), substituted ''Secretary or Administrator'' for ''Secretary'' wherever appearing.

1996—Subsec. (e). Pub. L. 104–208 made technical amendment to reference in original act which appears in text as reference to section 1861a of title 16.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104–208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

§ 1279g. Direct loan obligations for fisheries financing and capacity reduction

(a) Notwithstanding any other provision of this subchapter, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this subchapter after October 11, 1996, shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this subchapter except with respect to provisions of this subchapter which by their nature can only be applied to obligations guaranteed under this subchapter.

(b) Notwithstanding any other provisions of this subchapter, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.

(June 29, 1936, ch. 858, title XI, § 1114, formerly § 1112, as added Pub. L. 104–297, title III, § 303(a), Oct. 11, 1996, 110 Stat. 3616; renumbered § 1114, Pub. L. 109–163, div. C, title XXXV, § 3507(d), Jan. 6, 2006, 119 Stat. 3557.)

§ 1280. Advances to fund

The Secretary or the Administrator of the Maritime Administration is authorized to advance to the Federal Ship Financing Fund from the ''Vessel operations revolving fund'' (46 U.S.C. 1241a),[1] such amounts as may be required for the payment, pursuant to section 1275 of this Appendix, of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: *Provided*, That such advances shall be repaid to the ''Vessel operations revolving fund'' as soon as practicable consistent with the status of the Federal Ship Financing Fund: *Provided further*, That the total advances outstanding at any one time shall not exceed $10,000,000.

(Pub. L. 85–469, title I, § 101, June 25, 1958, 72 Stat. 231; Pub. L. 92–507, § 2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97–31, § 12(137), Aug. 6, 1981, 95 Stat. 166; Pub. L. 109–163, div. C, title XXXV, § 3507(c)(2), Jan. 6, 2006, 119 Stat. 3556.)

CODIFICATION

''Federal Ship Financing Fund'' substituted for ''Federal Ship Mortgage Insurance Fund'' to conform to change of name in the amendment of section 1272 of this Appendix by Pub. L. 92–507, § 2, Oct. 19, 1972, 86 Stat. 910.

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

2006—Pub. L. 109–163 inserted ''or the Administrator of the Maritime Administration'' after ''Secretary''.

1981—Pub. L. 97–31 struck out ''of Commerce'' after ''Secretary''.

§ 1280a. Eligible shipyards

To be eligible to receive loan guarantee assistance under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], a shipyard must be a private shipyard located in the United States.

(Pub. L. 103–160, div. A, title XIII, § 1358, Nov. 30, 1993, 107 Stat. 1816.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to this subchapter (§ 1271 et seq.). For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994 and also as part of the Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993, and the National Shipbuilding and Shipyard Conversion Act of 1993, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1280b. Annual report on program

The Administrator of the Maritime Administration shall report to Congress annually on the loan guarantee program under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.). The reports shall include—

(1) the size, in dollars, of the portfolio of loans guaranteed;

(2) the size, in dollars, of projects in the portfolio facing financial difficulties;

(3) the number and type of projects covered;

(4) a profile of pending loan applications;

(5) the amount of appropriations available for new guarantees;

(6) a profile of each project approved since the last report; and

(7) a profile of any defaults since the last report.

(Pub. L. 108–136, div. C, title XXXV, § 3527, Nov. 24, 2003, 117 Stat. 1802; Pub. L. 109–163, div. C, title XXXV, § 3507(c)(3), Jan. 6, 2006, 119 Stat. 3556.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to this subchapter (§ 1271 et seq.). For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

CODIFICATION

Section was enacted as part of the Maritime Security Act of 2003, and also as part of the National Defense Authorization Act for Fiscal Year 2004, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

2006—Pub. L. 109–163 substituted ''Administrator of the Maritime Administration'' for ''Secretary of Transportation'' in introductory provisions.

SUBCHAPTER XII—WAR RISK INSURANCE

§ 1281. Definitions

As used in this subchapter—

(a) The term ''American vessels'' includes any vessel registered, enrolled, or licensed under the laws of the United States and any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof and any tug or barge or other watercraft (documented or undocumented) owned by a citizen of the United States used in essential water transportation or in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(b) The term ''transportation in the waterborne commerce of the United States'' includes the operation of vessels in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

[1] Now 46 App. U.S.C. 1241a.

(c) The term ''war risks'' includes to such extent as the Secretary may determine—

(1) all or any part of any loss that is excluded from marine insurance coverage under a ''free of capture or seizure'' clause, or under analogous clauses; and

(2) other losses from hostile acts, including confiscation, expropriation, nationalization, or deprivation.

(d) The term ''citizen of the United States'' includes corporations, partnerships, and associations existing, authorized, or organized under the laws of the United States or any State, district, Territory, or possession thereof.

(e) The term ''Secretary'' shall mean the Secretary of Transportation.

(June 29, 1936, ch. 858, title XII, § 1201, as added Sept. 7, 1950, ch. 906, 64 Stat. 773; amended Pub. L. 97–31, § 12(138), Aug. 6, 1981, 95 Stat. 166; Pub. L. 107–107, div. C, title XXXV, § 3502, Dec. 28, 2001, 115 Stat. 1392.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The term 'war risks' includes to such extent as the Secretary may determine all or any part of those losses which are excluded from marine insurance coverage under a 'free of capture and seizure' clause, or analogous clauses.''

1981—Subsec. (e). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

§ 1282. Authority to provide insurance; consideration of risk

(a) Authorization, approval, and consultation; criteria

The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage by war risks in the manner and to the extent provided in this subchapter, whenever it appears to the Secretary that such insurance adequate for the needs of the water-borne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

(b) Consideration of risk

Any insurance or reinsurance issued under any of the provisions of this subchapter shall be based, insofar as practicable, upon consideration of the risk involved.

(c) Condition of availability in time of war or national emergency

Insurance and reinsurance for vessels may be provided by the Secretary under this subchapter only on the condition that such vessels be available for the United States in time of war or national emergency.

(June 29, 1936, ch. 858, title XII, § 1202, as added Sept. 7, 1950, ch. 906, 64 Stat. 773; amended Pub. L. 101–115, § 7(a), Oct. 13, 1989, 103 Stat. 694.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–115 added subsec. (c).

PROVISION OF MARINE WAR RISK INSURANCE COVERAGE

Memorandum of the President of the United States, Aug. 29, 1990, 55 F.R. 36257, provided:

Memorandum for the Secretary of State and the Secretary of Transportation

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and section 1202 of the Merchant Marine Act, 1936, as amended (Act), 46 U.S.C. App. 1282, I hereby:

approve the provision by the Secretary of Transportation of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent provided in Title XII of the Act, 46 U.S.C. App. 1281, *et seq.*, for purposes of responding to the current crisis in the Middle East, whenever, after consultation with the Department of State, it appears to the Secretary of Transportation that such insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States. This approval is effective for sixty days. I hereby delegate to the Secretary of Transportation, in consultation with the Secretary of State and the Director of Office of Management and Budget, the authority vested in me by section 1202 of the Act, to approve the provision of insurance or reinsurance for these purposes after the expiration of the sixty days.

The Secretary of Transportation is directed to bring this approval to the immediate attention of all operators and to arrange for its publication in the Federal Register.

GEORGE BUSH.

§ 1283. Persons, property, and interests insurable

The Secretary may provide the insurance and reinsurance authorized by section 1282 of this Appendix with respect to the following persons, property, or interest:

(a) American vessels, including vessels under construction, foreign-flag vessels owned by citizens of the United States or engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged. In determining whether to grant such insurance or reinsurance to foreign-flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer. American- and foreign-flag vessels so insured or reinsured shall be subject to such vessel location reporting requirements as the Secretary may establish by regulation.

(b) Cargoes shipped or to be shipped on any such vessels, including shipments by express or registered mail; cargoes owned by citizens or residents of the United States, its Territories or possessions; cargoes imported to, or exported from, the United States, its Territories or possessions, and cargoes sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions; cargoes shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions. For the purposes of this subchapter, the term ''cargo'' shall include load-

ed or empty containers located aboard such vessels.

(c) The disbursements, including advances to masters and general average disbursements, and freight and passage moneys of such vessels.

(d) The personal effects of the masters, officers, and crews of such vessels, and of other persons transported on such vessels.

(e) Masters, officers, members of the crews of such vessels and other persons employed or transported thereon against loss of life, injury, detention by an enemy of the United States following capture.

(f) Statutory or contractual obligations or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance.

(June 29, 1936, ch. 858, title XII, § 1203, as added Sept. 7, 1950, ch. 906, 64 Stat. 773; amended Pub. L. 94–523, §§ 1–3, Oct. 17, 1976, 90 Stat. 2474.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–523, § 1, prescribed criteria to be considered in granting insurance or reinsurance to foreign-flag vessels and made insured or reinsured vessels subject to vessel location reporting requirements established by regulation.

Subsec. (b). Pub. L. 94–523, § 2, defined term ''cargo'' to include loaded or empty containers located aboard the vessels.

Subsec. (f). Pub. L. 94–523, § 3, substituted ''Statutory or'' for ''Statutory on''.

§ 1284. Risks other than war risks

Whenever the Secretary shall insure any risk included under subsections (d), (e), or (f) of section 1283 of this Appendix, insofar as it concerns liabilities relating to the masters, officers, and crews of such vessels or to other persons transported thereon, the insurance on such risks may include risks other than war risks to the extent that the Secretary determines to be necessary or advisable.

(June 29, 1936, ch. 858, title XII, § 1204, as added Sept. 7, 1950, ch. 906, 64 Stat. 774.)

§ 1285. Insurance of property of Government departments and agencies

(a) Any department or agency of the United States may, with the approval of the President, procure from the Secretary any of the insurance as provided for in this subchapter, except as provided in sections 17302 and 17303(a) and (b) of title 40.

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary. The signature of the President (or of an official designated by the President) on the agreement shall be treated as an expression of the approval required under section 1282(a) of this Appendix to provide the insurance.

(June 29, 1936, ch. 858, title XII, § 1205, as added Sept. 7, 1950, ch. 906, 64 Stat. 774; amended Pub. L. 105–261, div. A, title X, § 1071(a), Oct. 17, 1998, 112 Stat. 2137.)

CODIFICATION

In subsec. (a), ''sections 17302 and 17303(a) and (b) of title 40'' substituted for ''sections 1 and 2 of the Act of July 8, 1937 (50 Stat. 479)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–261 inserted at end ''The signature of the President (or of an official designated by the President) on the agreement shall be treated as an expression of the approval required under section 1282(a) of this Appendix to provide the insurance.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title X, § 1071(b), Oct. 17, 1998, 112 Stat. 2137, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to a signature of the President (or of an official designated by the President) on or after the date of the enactment of this Act [Oct. 17, 1998].''

VESSEL WAR RISK INSURANCE

Memorandum of President of the United States, Oct. 7, 1994, 59 F.R. 52395, provided:

Memorandum for the Secretary of Defense [and] the Secretary of Transportation

By virtue of the authority vested in me by section 1205 of the Merchant Marine Act of 1936, as amended (46 U.S.C. App. 1285), I hereby approved [sic] the procurement of any insurance within the scope of section 1205 from the Secretary of Transportation by the Department of Defense for vessels under charter, contract, tender, or agreement with the Department of Defense, entering the territorial waters of Haiti excluded under commercial war risk trading warranties, whenever the Secretary of Defense determines such insurance to be necessary. This approval is effective for 60 days.

The Secretary of Transportation is directed to bring this approval to the immediate attention of all operators.

WILLIAM J. CLINTON.

§ 1286. Liability insurance for persons performing services or providing facilities for vessels

The Secretary is authorized to provide insurance for any person who performs services or provides facilities for or with respect to any American- or foreign-flag vessel, public or private, against legal liabilities that may be incurred by such person in connection with the performance of such services or the providing of such facilities. Such insurance shall not be issued against liability to employees in respect of employers' liability or workmen's compensation. No such insurance shall be provided unless, in the opinion of the Secretary, such insurance is required in the prosecution of the war effort or in connection with national defense and cannot be obtained at reasonable rates or upon reasonable conditions from approved companies authorized to do insurance business in any State of the United States.

(June 29, 1936, ch. 858, title XII, § 1206, as added Sept. 7, 1950, ch. 906, 64 Stat. 774; amended Aug. 3, 1956, ch. 929, § 5, 70 Stat. 986.)

AMENDMENTS

1956—Act Aug. 3, 1956, struck out ''during any time the United States is at war or during any period of

emergency declared to exist by the President of the United States'' after ''authorized'' in first sentence.

§ 1287. Reinsurance; rates; allowances to insurance carriers

(a) To the extent that he is authorized by this subchapter to provide marine, war risk, and liability insurance, the Secretary may reinsure, in whole or in part, any company authorized to do an insurance business in any State of the United States. The Secretary may reinsure with, or cede or retrocede to, any such company any insurance or reinsurance provided by the Secretary in accordance with the provisions of this subchapter.

(b) Reinsurance shall not be provided by the Secretary at rates less than nor obtained by the Secretary at rates more than the rates established by the Secretary on the same or similar risks or the rates charged by the insurance carrier for the insurance so reinsured whichever is most advantageous to the Secretary, except that the Secretary may make to the insurance carrier such allowances for expenses on account of the cost of services rendered or facilities furnished as he deems reasonably to accord with good business practice, but such allowance to the carrier shall not provide for any payment by the carrier on account of solicitation for or stimulation of insurance business.

(June 29, 1936, ch. 858, title XII, § 1207, as added Sept. 7, 1950, ch. 906, 64 Stat. 775.)

§ 1288. Insurance fund; investments; appropriations

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this subchapter. Moneys appropriated by Congress to carry out the provisions of this subchapter and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this subchapter shall be deposited in the Treasury to the credit of such fund. The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

(b) Such sums as shall be necessary to carry out the provisions of this subchapter are authorized to be appropriated to such fund.

(June 29, 1936, ch. 858, title XII, § 1208, as added Sept. 7, 1950, ch. 906, 64 Stat. 775; amended Pub. L. 87–743, Oct. 3, 1962, 76 Stat. 740; Pub. L. 97–31, § 12(139), Aug. 6, 1981, 95 Stat. 166; Pub. L. 108–375, div. C, title XXXV, § 3502(b), Oct. 28, 2004, 118 Stat. 2195.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–375 substituted ''The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.'' for ''Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this subchapter shall be made from such fund through the Division of Disbursement, Treasury Department.''

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1962—Subsec. (a). Pub. L. 87–743 authorized the investment or reinvestment of all or part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States, and required the interest and benefits accruing from such securities to be deposited to the credit of the fund.

§ 1288a. Transfer of funds from Vessel Operations Revolving Fund

For the war-risk insurance revolving fund, authorized by this subchapter, the Secretary of Transportation is authorized to transfer to said fund, at such times as it may become necessary in order to place into effect the insurance coverage authorized by this subchapter, and in such amounts as he may determine, not to exceed a total of $10,000,000 from the ''Vessel Operations Revolving Fund''.

(Nov. 1, 1951, ch. 664, ch. VII, 65 Stat. 746; Pub. L. 97–31, § 12(140), Aug. 6, 1981, 95 Stat. 166.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

§ 1289. Administrative provisions

(a) Issuance of policies, rules, and regulations; settlement of claims; valuation; rejection and review of valuation

(1) The Secretary, in the administration of this subchapter, may issue such policies, rules, and regulations as he deems proper and may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this subchapter.

(2) In respect of hull insurance, the valuation in the policy for actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the

Secretary which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 1242(a) of this Appendix at the time of the attachment of the insurance under said policy: *Provided*, That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 1242(a) of this Appendix at the time of the attachment of the insurance under said policy: *Provided*, That in the event of an election by the insured to reject the stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in section 1242–1[1] of this Appendix, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

(b) Forms and policies; rates; fees

The Secretary may prescribe and change forms and policies, and fix, adjust, and change the amounts insured and rates of premium provided for in this subchapter. The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, the employment of underwriting agents, and the appointment of experts.

(c) Commercial practice controlling; limitation on fees

The Secretary, in administering this subchapter, may exercise his powers, perform his duties and functions, and make his expenditures, in accordance with commercial practice in the marine insurance business. Except as authorized in subsection (d) of this section, no insurance broker or other person acting in a similar intermediary capacity shall be paid any fee or other consideration by the Secretary by virtue of his participation in arranging any insurance wherein the Secretary directly insures any of the risk thereof.

[1] See References in Text note below.

(d) Underwriting agents

The Secretary may, and whenever he finds it practical to do so shall, employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States, to act as his underwriting agent. The Secretary may allow such companies or groups of companies fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agent for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this subchapter, but no claim shall be paid unless and until it has been approved by the Secretary. Such compensation may include an allowance for expenses reasonably incurred by such agent, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

(e) Employment of marine insurance experts

The Secretary without regard to the laws, rules, or regulations relating to the employment of employees of the United States may appoint and prescribe the duties of such number of experts in marine insurance as he deems necessary under this subchapter.

(f) Utilization of services of other Government agencies

The Secretary with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this subchapter.

(June 29, 1936, ch. 858, title XII, § 1209, as added Sept. 7, 1950, ch. 906, 64 Stat. 775; amended Aug. 3, 1956, ch. 929, § 1, 70 Stat. 984; Pub. L. 88–478, § 1, Aug. 22, 1964, 78 Stat. 587; Pub. L. 94–523, § 4, Oct. 17, 1976, 90 Stat. 2474.)

REFERENCES IN TEXT

Section 1242–1 of this Appendix, referred to in subsec. (a)(2), was in the original "the twelfth paragraph under the heading Maritime Activities in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading Maritime Activities in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading 'MARITIME ACTIVITIES' in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading 'OPERATING DIFFERENTIAL SUBSIDIES' in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951". Section 1242–1 was not repeated in appropriation acts subsequent to Pub. L. 85–469 and was omitted from the Code.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–523 authorized imposition and collection of an annual fee to cover expenses of processing applications for insurance, employment of underwriting agents, and appointment of experts.

1964—Subsec. (a)(2). Pub. L. 88–478 struck out provisions which required for purposes of hull insurance, in the case of a construction-subsidized vessel, that the valuation determined for actual or constructive loss for

the period of insurance prior to requisition for title or use, be reduced by such proportion as the amount of construction subsidy paid with respect to the vessel bears to the entire construction cost and capital improvements thereof (excluding the cost of national defense features), and for the period of insurance after requisition for use limited the valuation to the amount which would be payable under section 1212 of this Appendix.

1956—Subsec. (a). Act Aug. 3, 1956, struck out provisions limiting settlement of claims of vessels insured under this subchapter to vessel's fair and reasonable value, designating the remaining provisions, as so amended, as par. (1), and added par. (2).

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–478 provided that: "The amendments made by this Act [amending this section] shall be applicable to war risk insurance coverage attaching after the date of enactment [Aug. 22, 1964]."

AMENDMENT OF INSURANCE IN FORCE ON AUGUST 3, 1956

Section 4 of act Aug. 3, 1956, provided that: "All war-risk insurance issued under title XII of the Merchant Marine Act, 1936 [this subchapter], which is in force on the date of the enactment of this Act [Aug. 3, 1956] shall, as of the beginning of such date, be deemed to have been amended to conform to the requirements of section 1209 of the Merchant Marine Act, 1936 [this section], as amended by this Act unless the insured, within ten days after such date, objects to such amendment."

§ 1290. Seamen's rights unaffected

This subchapter shall not affect rights of seamen under existing law.

(June 29, 1936, ch. 858, title XII, § 1210, as added Sept. 7, 1950, ch. 906, 64 Stat. 776.)

§ 1291. Reports to Congress

The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this subchapter for the period covered by such report.

(June 29, 1936, ch. 858, title XII, § 1211, as added Sept. 7, 1950, ch. 906, 64 Stat. 776; amended Pub. L. 89–348, § 1(7), Nov. 8, 1965, 79 Stat. 1310.)

AMENDMENTS

1965—Pub. L. 89–348 repealed provisions which required quarterly reports of contracts entered into, proposed contracts, and general progress with respect to war risk insurance activities under this chapter.

§ 1292. Actions on claims for losses; jurisdiction of courts; limitation of actions

Upon disagreement as to a loss insured under this subchapter, suit may be maintained against the United States in admiralty in the district in which the claimant or his agent resides, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this subchapter. If the claimant has no residence in the United States, suit may be brought in the district court of the District of Columbia or in such other district court in which the Attorney General of the United States agrees to accept service. Such suits shall be heard and determined under the provisions of the Act of March 9, 1920, as amended (known as the Suits in Admiralty Act) [46 App. U.S.C. 741 et seq.]. All persons having or claiming or who might have an interest in such insurance, may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the District Court for the District of Columbia, or in the district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in said Suits in Admiralty Act shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary and for sixty days thereafter: *Provided, however*, That such claim shall be deemed to have been administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

(June 29, 1936, ch. 858, title XII, § 1212, as added Sept. 7, 1950, ch. 906, 64 Stat. 776.)

REFERENCES IN TEXT

The Suits in Admiralty Act, referred to in text, is act Mar. 9, 1920, ch. 95, 41 Stat. 525, as amended, which is classified generally to chapter 20 (§ 741 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this Appendix and Tables.

§ 1293. Additional insurance with other underwriters

A person having an insurable interest in a vessel may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary of Transportation, and in that event the Secretary of Transportation shall not be entitled to the benefit of such insurance.

(June 29, 1936, ch. 858, title XII, § 1213, as added Sept. 7, 1950, ch. 906, 64 Stat. 777; amended Pub. L. 97–31, § 12(141), Aug. 6, 1981, 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97–31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two places.

§ 1294. Expiration of authority to provide insurance

The authority of the Secretary to provide insurance and reinsurance under this subchapter shall expire December 31, 2010.

(June 29, 1936, ch. 858, title XII, § 1214, as added Sept. 7, 1950, ch. 906, 64 Stat. 777; amended Aug.

3, 1955, ch. 492, 69 Stat. 440; Pub. L. 86–120, July 31, 1959, 73 Stat. 266; Pub. L. 89–89, July 27, 1965, 79 Stat. 264; Pub. L. 91–469, § 34, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 94–523, § 5, Oct. 17, 1976, 90 Stat. 2474; Pub. L. 96–195, Feb. 25, 1980, 94 Stat. 63; Pub. L. 99–59, July 3, 1985, 99 Stat. 110; Pub. L. 101–115, § 7(b), Oct. 13, 1989, 103 Stat. 694; Pub. L. 104–106, div. A, title X, § 1094, Feb. 10, 1996, 110 Stat. 461; Pub. L. 104–239, § 12, Oct. 8, 1996, 110 Stat. 3134; Pub. L. 106–65, div. C, title XXXVI, § 3603, Oct. 5, 1999, 113 Stat. 976; Pub. L. 108–375, div. C, title XXXV, § 3502(a), Oct. 28, 2004, 118 Stat. 2195.)

AMENDMENTS

2004—Pub. L. 108–375 substituted ''December 31, 2010'' for ''June 30, 2005''.

1999—Pub. L. 106–65 substituted ''June 30, 2005'' for ''June 30, 2000''.

1996—Pub. L. 104–106 and Pub. L. 104–239 amended section identically, substituting ''June 30, 2000'' for ''June 30, 1995''.

1989—Pub. L. 101–115 substituted ''June 30, 1995'' for ''June 30, 1990''.

1985—Pub. L. 99–59 substituted ''June 30, 1990'' for ''September 30, 1984''.

1980—Pub. L. 96–195 substituted ''September 30, 1984'' for ''September 30, 1979''.

1976—Pub. L. 94–523 substituted ''September 30, 1979'' for ''September 7, 1975''.

1970—Pub. L. 91–469 substituted ''September 7, 1975'' for ''twenty years from September 7, 1950''.

1965—Pub. L. 89–89 extended authority of Secretary to provide insurance and reinsurance for an additional five years.

1959—Pub. L. 86–120 extended authority of Secretary to provide insurance and reinsurance for an additional five years.

1955—Act Aug. 3, 1955, extended authority of Secretary to provide insurance and reinsurance for an additional five years.

SUBCHAPTER XIII—MARITIME EDUCATION AND TRAINING

§ 1295. Congressional declaration of policy

It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

(2) the Secretary of Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

(June 29, 1936, ch. 858, title XIII, § 1301, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; amended Pub. L. 97–31, § 12(142), Aug. 6, 1981, 95 Stat. 166.)

AMENDMENTS

1981—Par. (1). Pub. L. 97–31, § 12(142)(A), substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

Par. (2). Pub. L. 97–31, § 12(142)(B), substituted ''Maritime Administrator'' for ''Assistant Secretary of Commerce for Maritime Affairs''.

EFFECTIVE DATE

Section 4 of Pub. L. 96–453 provided that: ''This Act [enacting this subchapter, amending sections 1119 and 1244 of this Appendix, and repealing sections 1126, 1126a–1 to 1126d, 1331 to 1334, and 1381 to 1388 of former Title 46, Shipping] shall take effect on October 1, 1981.''

SHORT TITLE

Section 1 of Pub. L. 96–453 provided that: ''This Act [enacting this subchapter, amending sections 1119 and 1244 of this Appendix, and repealing sections 1126, 1126a–1 to 1126d, 1331 to 1334, and 1381 to 1388 of former Title 46, Shipping] may be cited as the 'Maritime Education and Training Act of 1980'.''

MARITIME POLLUTION PREVENTION TRAINING PROGRAM STUDY

Pub. L. 101–380, title IV, § 4117, Aug. 18, 1990, 104 Stat. 523, provided that: ''The Secretary shall conduct a study to determine the feasibility of a Maritime Oil Pollution Prevention Training program to be carried out in cooperation with approved maritime training institutions. The study shall assess the costs and benefits of transferring suitable vessels to selected maritime training institutions, equipping the vessels for oil spill response, and training students in oil pollution response skills. The study shall be completed and transmitted to the Congress no later than one year after the date of the enactment of this Act [Aug. 18, 1990].''

§ 1295a. Definitions

For purposes of this subchapter—

(1) the term ''Secretary'' means the Secretary of Transportation;

(2) the term ''Academy'' means the United States Merchant Marine Academy located at Kings Point, New York which is maintained under section 1295b of this Appendix;

(3) the term ''State maritime academy'' means any maritime academy or college which is assisted under section 1295c of this Appendix and which is sponsored by any State or territory of the United States or, in the case of a regional maritime academy or college, sponsored by any group of States or territories of the United States, or both;

(4) the term ''merchant marine officer'' means any person who holds a license issued by the United States Coast Guard which authorizes service—

(A) as a master, mate, or pilot on board any vessel of 1,000 gross tons or more as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title which is documented under the laws of the United States and which operates on the oceans or on the Great Lakes; or

(B) as an engineer officer on board any vessel propelled by machinery of 4,000 horsepower or more which is documented under the laws of the United States; and

(5) the term ''cost of education provided'' means the financial costs incurred by the Federal Government for providing training or financial assistance to students at the United States Merchant Marine Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.

(June 29, 1936, ch. 858, title XIII, § 1302, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1997; amended Pub. L. 97–31, § 12(143), Aug. 6, 1981, 95 Stat. 166; Pub. L. 104–324, title VII, § 708, Oct. 19, 1996, 110 Stat. 3934; Pub. L. 108–136, div. C, title XXXV, § 3515(a), Nov. 24, 2003, 117 Stat. 1792.)

AMENDMENTS

2003—Par. (5). Pub. L. 108–136 added par. (5).

1996—Par. (4)(A). Pub. L. 104–324 inserted ''as measured under section 14502 of title 46, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title'' after ''1,000 gross tons or more''.

1981—Par. (1). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1295b. Maintenance of Academy

(a) Duty of Secretary

The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) Nomination and appointment of cadets; designation and licensing of individuals from Trust Territory of Pacific Islands, Western Hemisphere nations and nations other than United States

(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate from American Samoa may nominate for appointment as a cadet at the Academy any individual who is—

(A) a citizen of the United States or a national of the United States; and

(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, or a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands.

(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among residents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 qualified individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve) before being appointed as a cadet at the Academy.

(G) For purposes of this paragraph, the term ''State'' means the several States.

(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy.

(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States, subject to such exceptions as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(6)(A) In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instructions (including the same allowances as received by cadets at the Academy appointed from the United States), as determined by the Secretary.

(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(7)(A) The Secretary may permit, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6) of this subsection.

(B) The Secretary shall be reimbursed for the cost of that instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(C) An individual receiving instructions at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7) of this subsection is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.

(c) Appointment of cadet as midshipman in United States Navy Reserve; rights and privileges

(1) Any citizen of the United States who is appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Navy Reserve to be issued an identification card (referred to as a ''military ID card'') and to be entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready

Reserve of the reserve components of the Armed Forces.

(3) The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary.

(d) Uniforms, textbooks, and transportation allowances

The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

(e) Commitment agreements

(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after October 1, 1981, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

(A) to complete the course of instruction at the Academy;

(B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy of such individual;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(2)(A) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement required by paragraph (1)(A), such individual may be ordered by the Secretary of Defense to active duty in one of the armed forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided by the Federal Government.

(3)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (1)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (1)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided and may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such a reduction.

(4) To aid in the recovery of the cost of education provided by the Federal Government pursuant to a commitment agreement under this section, the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

(5) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(f) Places of training

The Secretary may provide for the training of cadets at the Academy—

(1) on vessels owned or subsidized by the United States;

(2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(3) in shipyards or plants and with any industrial or educational organizations.

(g) Degrees awarded

(1) Bachelor's degree

The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

(2) Master's degree

The Superintendent of the Academy may confer a master's degree upon any individual who has met the conditions prescribed by the Secretary. Any master's degree program may be funded through non-appropriated funds. In order to maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may make regulations necessary to administer such a program.

(h) Board of Visitors

(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

(2) The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives;

(C) 1 Senator appointed by the Vice President;

(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(E) the chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.

(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(i) Advisory Board

(1) An Advisory Board to the Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed.

(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

(4) While away from their homes or regular places of business in the performance of service for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

(j) Limitation on charges and fees for attendance

(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.

(June 29, 1936, ch. 858, title XIII, § 1303, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 1998; amended Pub. L. 97–31, § 12(144), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97–35, title XVI, § 1607, Aug. 13, 1981, 95 Stat. 752; Pub. L. 99–368, § 5, Aug. 1, 1986, 100 Stat. 776; Pub. L. 101–595, title VII, §§ 703, 707(a), 708, Nov. 16, 1990, 104 Stat. 2994, 2995; Pub. L. 105–261, div. A, title V, § 568, Oct. 17, 1998, 112 Stat. 2031; Pub. L. 106–65, div. A, title X, § 1066(b)(5), Oct. 5, 1999, 113 Stat. 772; Pub. L. 108–136, div. C, title XXXV, § 3515(b), (c), Nov. 24, 2003, 117 Stat. 1792, 1794; Pub. L. 108–375, div. A, title V, § 545(e), Oct. 28, 2004, 118 Stat. 1909; Pub. L. 109–163, div. A, title V, § 515(g)(2), Jan. 6, 2006, 119 Stat. 3236.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (i)(5), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (b)(3)(F). Pub. L. 109–163, § 515(g)(2)(A), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places.

Subsec. (c). Pub. L. 109–163, § 515(g)(2)(B), which directed substitution of ''NAVY RESERVE'' for ''NAVAL RESERVE'' in subsec. (c), could not be executed because ''NAVAL RESERVE'' did not appear.

Pub. L. 109–163, § 515(g)(2)(A), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places in par. (1) and in par. (2).

Subsec. (e)(1)(D). Pub. L. 109–163, § 515(g)(2)(A), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places.

2004—Subsec. (j). Pub. L. 108–375 added subsec. (j).

2003—Subsec. (e)(1)(A). Pub. L. 108–136, § 3515(b)(1), which directed that subpar. (A) be amended by striking out ''Academy, unless the individual is separated from the'', was executed by striking out ''Academy, unless the individual is separated by the'' after ''instruction at the'', to reflect the probable intent of Congress.

Subsec. (e)(1)(C). Pub. L. 108–136, § 3515(b)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual;''.

Subsec. (e)(1)(E)(iii). Pub. L. 108–136, § 3515(b)(3), added cl. (iii) and struck out former cl. (iii) which read as follows: ''as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or''.

Subsec. (e)(2). Pub. L. 108–136, § 3515(b)(4), added par. (2) and struck out former par. (2) which read as follows: ''If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (1)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.''

Subsec. (e)(3). Pub. L. 108–136, § 3515(b)(5), added par. (3) and struck out former par. (3) which read as follows:

''(A) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (1), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

''(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), the Secretary of Transportation—

''(i) may recover from the individual the cost of education provided by the Federal Government; and

''(ii) shall request the Attorney General to begin court proceedings to recover the costs of education if the Secretary decides to seek recovery under clause (i).''

Subsec. (e)(4), (5). Pub. L. 108–136, § 3515(b)(6), added par. (4) and redesignated former par. (4) as (5).

Subsec. (g). Pub. L. 108–136, § 3515(c), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.''

1999—Subsec. (c). Pub. L. 106–65 made technical correction to Pub. L. 105–261, § 568. See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105–261, as amended by Pub. L. 106–65, designated existing provisions as par. (1), substituted ''shall'' for ''may'', and added pars. (2) and (3).

1990—Subsec. (b)(1). Pub. L. 101–595, § 708(1), in introductory provisions, substituted ''Delegate from American Samoa'' for ''Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)'' and ''any individual who is—'' for ''any individual who is'' and, in subpar. (B), inserted ''or'' after ''Canal Commission,'' and struck out before period at end '', or a resident of American Samoa if the individual is nominated by the Governor of American Samoa''.

Subsec. (b)(3)(A)(vi). Pub. L. 101–595, § 708(2), substituted ''Delegate to the House of Representatives from American Samoa'' for ''Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office)''.

Subsec. (b)(7)(A). Pub. L. 101–595, § 708(3)(A), struck out ''annually'' after ''Secretary may'', ''until September 30, 1995,'' before ''upon approval'', and ''up to six'' before ''additional''.

Subsec. (b)(7)(B). Pub. L. 101–595, § 708(3)(B), which directed the substitution of ''The Secretary shall be reimbursed'' for ''the Secretary shall insure that the Republic of Panama reimburse the Secretary'', was executed by making the substitution for ''The Secretary shall insure that the Republic of Panama reimburse the Secretary'' to reflect the probable intent of Congress.

Subsec. (e)(3). Pub. L. 101–595, § 707(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(1). Pub. L. 101–595, § 703, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''A Board of Visitors to the Academy shall be established to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.''

1986—Subsec. (b)(7), (8). Pub. L. 99–368 added pars. (7) and (8) and struck out former par. (7) which provided that any individual appointed as a cadet to the Academy under par. (3), or receiving instruction at the Academy under par. (4), (5), or (6), was not entitled to hold any license authorizing service on any merchant marine vessel of the United States solely by reason of graduation from the Academy.

1981—Subsec. (e)(3). Pub. L. 97–31, § 12(144)(A), struck out ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (e)(4). Pub. L. 97–31, § 12(144)(B), struck out ''the Secretary of the department in which the United States Coast Guard is operating with respect to the United States Coast Guard and'' before ''the Secretary of Commerce''.

Subsec. (h)(2)(D). Pub. L. 97–35 increased the membership on the Board from 1 to 2 Members of the House of Representatives.

Subsec. (i)(1). Pub. L. 97–31, § 12(144)(C), substituted ''Maritime Administrator'' for ''Assistant Secretary of Commerce for Maritime Affairs''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 707(b) of Pub. L. 101–595 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to individuals who sign agreements after the date of enactment of this Act [Nov. 16, 1990] under section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)).''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on National Security [now Committee on Armed Services] of House of Representatives, in case of provisions relating to interoceanic canals, Merchant Marine Academy and State Maritime Academies, or national security aspects of merchant marine, by section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DEGREES FOR PERSONS WHO GRADUATED BEFORE ACCREDITING OF MERCHANT MARINE ACADEMY

Act Aug. 10, 1956, ch. 1041, § 35, 70A Stat. 634, provided in part that, under conditions prescribed by the Secretary of Commerce, the Superintendent of the United States Merchant Marine Academy may confer the degree of bachelor of science upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who have met the requirements of the Academy for that degree.

§ 1295c. State maritime academies

(a) Cooperation and assistance

The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) Regional maritime academies

The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States.

(c) Training vessels

(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1) of this section. Any such vessel—

(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship;

(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b) of this section;

(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

(iv) shall be maintained in good repair by the Secretary; and

(v) shall remain the property of the United States.

(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

(2)(A) The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy.

(B) The amount of the payment to a State maritime academy under this paragraph shall not exceed—

(i) $100,000 for fiscal year 2006;

(ii) $200,000 for fiscal year 2007; and

(iii) $300,000 for fiscal year 2008 and each fiscal year thereafter.

(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

(i) on vessels owned or subsidized by the United States;

(ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(iii) in shipyards or plants and with any industrial or educational organizations.

(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

(d) Annual payments

(1)(A) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1) of this section, and with each regional maritime academy which meets the requirements of subsection (f)(1) of this section, to make annual payments to each such academy for the maintenance and support of such academy.

(B) Subject to subparagraph (C), the annual payment to such State maritime academy shall be at least equal to the amount given to the

academy for its maintenance and support by the State in which it is located, and to such regional maritime academy shall be at least equal to the amount given the academy by all States and territories cooperating to sponsor the academy.

(C) The amount under subparagraph (B) may not be more than $25,000, except that the amount shall be—

(i) $100,000 to such State maritime academy if the academy meets the condition set forth in subsection (f)(2) of this section; or

(ii) $300,000 for fiscal year 2006, $400,000 for fiscal year 2007, and $500,000 for fiscal year 2008 and each fiscal year thereafter to such regional maritime academy if the academy meets the condition set forth in subsection (f)(2) of this section.

(2) The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

(e) Detailing of personnel

Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.

(f) Conditions to receiving payments or use of vessels

(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—

(A) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies; and

(C) agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program shall pass the examination administered by the Coast Guard required for issuance of a license under section 7101 of title 46.

(2) As a condition to receiving an annual payment of any amount in excess of $25,000 under subsection (d) of this section, a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.

(g) Student incentive payment agreements

(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State maritime academy which entered into an agreement with the Secretary under subsection (d)(1) of this section, to make student incentive payments to such individual, which payments shall be in amounts equaling $4,000 for each academic year and which payments shall be—

(A) allocated among the various State maritime academies in a fair and equitable manner;

(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

(C) paid by the Secretary as the Secretary shall prescribe while the individual is attending the academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to accept midshipman and enlisted reserve status in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve) before receiving any student incentive payments under this subsection.

(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

(A) to complete the course of instruction at the State maritime academy which the individual is attending;

(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

(D) to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(4)(A) If the Secretary determines that an individual who has accepted the payment described in paragraph (1) for a minimum of 2 academic years has failed to fulfill the part of the agreement required by paragraph (1) and described in paragraph (3)(A), such individual may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(5)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (3)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (3)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(6) To aid in the recovery of student incentive payments plus interest and attorneys fees the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28 and other applicable administrative remedies.

(7) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(8) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after October 1, 1981.

(h) Appointment of cadet as midshipman in United States Navy Reserve

Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve).

(June 29, 1936, ch. 858, title XIII, § 1304, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2003; amended Pub. L. 97–31, § 12(145), Aug. 6, 1981, 95 Stat. 166; Pub. L. 101–115, §§ 2(a)–(d), 3(a), 5, Oct. 13, 1989, 103 Stat. 691–693; Pub. L. 102–587, title VI, § 6201(a)(1), (b), (c), Nov. 4, 1992, 106 Stat. 5093; Pub. L. 108–136, div. C, title XXXV, § 3515(d), Nov. 24, 2003, 117 Stat. 1794; Pub. L. 109–163, div. A, title V, § 515(g)(2), div. C, title XXXV, § 3502, Jan. 6, 2006, 119 Stat. 3236, 3547.)

AMENDMENTS

2006—Subsec. (c)(2). Pub. L. 109–163, § 3502(b), designated existing provisions as subpar. (A), substituted ''The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy'' for ''The Secretary may pay to any State maritime academy'', and added subpar. (B).

Subsec. (d)(1)(C)(ii). Pub. L. 109–163, § 3502(a), substituted ''$300,000 for fiscal year 2006, $400,000 for fiscal year 2007, and $500,000 for fiscal year 2008 and each fiscal year thereafter'' for ''$200,000''.

Subsec. (g)(2), (3)(D). Pub. L. 109–163, § 515(g)(2)(A), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places.

Subsec. (h). Pub. L. 109–163, § 515(g)(2)(B), which directed substitution of ''NAVY RESERVE'' for ''NAVAL RESERVE'' in subsec. (h), could not be executed because ''NAVAL RESERVE'' did not appear.

Pub. L. 109–163, § 515(g)(2)(A), substituted ''Navy Reserve'' for ''Naval Reserve'' in two places in text.

2003—Subsec. (g)(1). Pub. L. 108–136, § 3515(d)(1), substituted ''$4,000'' for ''$3,000''.

Subsec. (g)(3)(A). Pub. L. 108–136, § 3515(d)(2), substituted ''attending;'' for ''attending, unless the individual is separated by such academy;''.

Subsec. (g)(3)(C). Pub. L. 108–136, § 3515(d)(3), added subpar. (C) and struck out former subpar. (C) which read as follows: ''to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual;''.

Subsec. (g)(3)(E)(iii). Pub. L. 108–136, § 3515(d)(4), added cl. (iii) and struck out former cl. (iii) which read as follows: ''as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or''.

Subsec. (g)(4). Pub. L. 108–136, § 3515(d)(5), added par. (4) and struck out former par. (4) which read as follows: ''If the Secretary determines that any individual who has accepted the payment described in paragraph (1) has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (3)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.''

Subsec. (g)(5). Pub. L. 108–136, § 3515(d)(6), added par. (5) and struck out former par. (5) which read as follows: ''If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (3), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.''

Subsec. (g)(6) to (8). Pub. L. 108–136, § 3515(d)(7), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1992—Subsec. (g)(1). Pub. L. 102–587, § 6201(a)(1), substituted ''$3,000'' for ''$1,200''.

Subsec. (g)(1)(B) to (D). Pub. L. 102–587, § 6201(b), inserted ''and'' at end of subpar. (B), redesignated subpar. (D) as (C) and struck out '', for the academic years after those years specified in subparagraph (C),'' after ''paid by the Secretary'', and struck out former subpar. (C) which read as follows: ''paid by the Secretary to the individual for the first complete or partial academic year of attendance in a lump sum of $1,200 or in amounts prorated on the basis of actual attendance, and at a time during the second academic year when the individual enters into an agreement accepting midshipman and enlisted reserve status as required under paragraph (2); and''.

Subsec. (g)(4). Pub. L. 102–587, § 6201(c), substituted ''paragraph (1)'' for ''paragraph (1)(C) of this subsection'' after ''payment described in''.

1989—Subsec. (d)(1). Pub. L. 101–115, § 5, designated existing provisions as subpar. (A), struck out second sentence which read as follows: ''The amount of each such annual payment shall be not less than the amount furnished to such academy for its maintenance and support by the State or territory in which such academy is located or, in the case of a regional maritime academy an amount equal to the amount furnished to such academy for its maintenance and support by all States or territories, or both, cooperating to support such academy, but shall not exceed $25,000, or $100,000 if such academy meets the requirements of subsection (f)(2) of this section.'', and added subpars. (B) and (C).

Subsec. (f)(1)(C). Pub. L. 101–115, § 3(a), added subpar. (C).

Subsec. (g)(1)(C), (D). Pub. L. 101–115, § 2(a), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''paid by the Secretary to the individual in such payments as the Secretary shall prescribe while such individual is attending such academy.''

Subsec. (g)(2). Pub. L. 101–115, § 2(b), substituted ''accept midshipman and enlisted reserve status'' for ''apply for midshipman status''.

Subsec. (g)(3)(D). Pub. L. 101–115, § 2(c), struck out ''to apply for an appointment as,'' before ''to accept if tendered''.

Subsec. (g)(4). Pub. L. 101–115, § 2(d), substituted ''has accepted the payment described in paragraph (1)(C) of this subsection'' for ''has attended a State maritime academy for not less than 2 years''.

1981—Subsec. (g). Pub. L. 97–31 in par. (5) struck out ''and the Secretary of Transportation'' after ''Secretary of Defense'', and in par. (6) struck out ''the Secretary of the department in which the United States Coast Guard is operating with respect to the United States Coast Guard and'' before ''the Secretary of Commerce''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6201(a)(2) of Pub. L. 102–587 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments under section 1304(g)(1) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(g)(1)) made with respect to academic years beginning after the date of the enactment of this Act [Nov. 4, 1992].''

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–595, title VII, § 706, Nov. 16, 1990, 104 Stat. 2995, provided that: ''Section 3 of the Act of October 13, 1989 (Public Law 101–115; 103 Stat. 692) [adding subsec. (f)(1)(C) of this section and enacting provisions set out below], shall not be effective prior to October 1, 1994.''

Section 2(e) of Pub. L. 101–115 provided that: ''The amendments made by this section [amending this section] apply to individuals who commence attendance after December 31, 1989, at a State maritime academy in accordance with section 1304 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c).''

Section 3(b) of Pub. L. 101–115 provided that: ''The requirement set forth in subsection (f)(1)(C) of section 1304 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1295c(f)(1)(C)], as added by subsection (a) of this section, shall be a condition to any payment or use of any vessel received by a State maritime academy under such section 1304 after December 31, 1989.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

STUDY TO DETERMINE POSSIBLE USE OF SHIP SHARING PROGRAM TO PROVIDE TRAINING OPPORTUNITIES FOR MARITIME ACADEMY STUDENTS

Section 4 of Pub. L. 101–115, as amended by Pub. L. 101–595, title VII, § 705, Nov. 16, 1990, 104 Stat. 2994, provided that: ''With the funds authorized under this Act [Pub. L. 101–115, § 1, Oct. 13, 1989, 103 Stat. 691], the Secretary of Transportation, after consultation with other agencies in the executive branch and the State, regional, and Federal maritime academies, shall submit to the Congress a study within one year to determine how currently employed training vessels, United States-flag commercial vessels, vessels in the Ready Reserve Force, and other vessels under the control of the United States Government may be used to provide training opportunities for State, regional, and Federal maritime academy students that will produce licensed graduate officers. The study shall include data on the cost effectiveness to the United States Government; the cost impact on the affected State governments; the safety of any vessels involved; the safety of the students; the operational and scheduling impact upon the several entities involved; liability exposure; and the impact on national security sealift. The Secretary

shall not implement any ship sharing program until not less than sixty legislative days after the submission of the study to the Congress. The Secretary shall not take any vessel, currently in service as a State academy training vessel, out of service for the purpose of implementing any alternative program, including ship sharing, until or unless the vessel is incapable of being maintained in good repair as required under section 1304(c)(1)(A) of the Merchant Marine Act, 1936 [46 App. U.S.C. 1295c(c)(1)(A)]. The Secretary shall not implement any program requiring that any State academy share its training vessel with another State academy without having first received the express consent of Congress to do so.''

§ 1295c–1. Plan for sharing training vessels

On and after December 22, 1987, no funds shall be appropriated for the purchase or construction of training vessels for State maritime academies unless a plan for sharing training vessels between State maritime academies has been approved by the Maritime Administration.

(Pub. L. 100–202, § 101(a) [title V], Dec. 22, 1987, 101 Stat. 1329, 1329–28.)

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

§ 1295d. Additional training

(a) In general

The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.

(b) Equipment or supplies required for training

The Secretary may prepare or purchase any equipment or supplies required for any training provided under subsection (a) of this section and may contract with any person, partnership, firm, association, or corporation (without regard to section 5 of title 41) for the performance of any services deemed necessary by the Secretary in the preparation of any such equipment or supplies and in the supervision and administration of any such training.

(c) Oil pollution prevention, response, and clean-up program

(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

(2) Under the program established under paragraph (1)—

(A) the Secretary may provide, to maritime training institutions approved by the Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

(B) in return for receipt of such vessels, such institutions shall—

(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a maritime oil spill.

(3) The requirements referred to in paragraph (2)(A) are as follows:

(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

(iv) any approved maritime training institution in possession of such a vessel which can no longer utilize the vessel for training purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

(v) such other requirements or conditions as the Secretary determines appropriate.

(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under subchapter XI of this chapter.

(June 29, 1936, ch. 858, title XIII, § 1305, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006; amended Pub. L. 101–595, title VII, § 712, Nov. 16, 1990, 104 Stat. 2998.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–595 added subsec. (c).

§ 1295e. United States Maritime Service

(a) Establishment and maintenance

The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary, to be known as the United States Maritime Service.

(b) Enrollment; compensation; course of study and periods of training; uniforms

The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service, to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

(c) Ranks, grades, and ratings same as for United States Coast Guard

The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the

same as are then prescribed for the personnel of the United States Coast Guard.

(d) Awards and medals

The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the United States Maritime Service.

(June 29, 1936, ch. 858, title XIII, § 1306, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2006; amended Pub. L. 108–136, div. C, title XXXV, § 3515(e), Nov. 24, 2003, 117 Stat. 1795; Pub. L. 109–163, div. C, title XXXV, § 3509, Jan. 6, 2006, 119 Stat. 3557.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, which directed amendment of section 1306(a) of the Maritime Education and Training Act of 1980 by inserting ''and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary,'' after ''United States'' the second place it appears, was executed by making the amendment to subsec. (a) of this section, which is section 1306 of act June 29, 1936, as added by section 2 of the Maritime Education and Training Act of 1980, to reflect the probable intent of Congress.

2003—Subsec. (d). Pub. L. 108–136 added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1295f. Civilian nautical school

(a) "Civilian nautical school" defined

As used in this section, the term ''civilian nautical school'' means any school operated and conducted in the United States (except the Academy maintained under section 1295b of this Appendix, any State maritime academy assisted under section 1295c of this Appendix, and any other school operated by the United States or any agency of the United States) which offers instruction to individuals quartered on board any vessel for the primary purpose of training them for service in the merchant marine.

(b) Examination and inspection of school; rating and certification

Each civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may (under such rules and regulations as the Secretary may prescribe) provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of the equipment used by, or in connection with, such school.

(c) Repealed. Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603

(d) Fines and penalties

Whoever—

(1) violates this section or any regulations promulgated to implement this section;

(2), (3) Repealed. Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603.

shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each offense.

(June 29, 1936, ch. 858, title XIII, § 1307, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2007; amended Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98–89 struck out subsec. (c). See sections 2101(17), 3301(2), 3306, and 3307(1) of Title 46, Shipping.

Subsec. (d)(2), (3). Pub. L. 98–89 struck out pars. (2) and (3). See section 3318(g) of Title 46.

§ 1295g. Powers and duties of Secretary

(a) Rules and regulations

The Secretary shall establish such rules and regulations as may be necessary to carry out this subchapter.

(b) Excess vessels and equipment

The Secretary may cooperate with and assist the Academy, any State maritime academy, and any nonprofit training institution which has been jointly approved by the Secretary and the Secretary of the department in which the United States Coast Guard is operating as offering training courses which meet Federal regulations for maritime training, by making vessels, shipboard equipment, and other marine equipment, owned by the United States which have been determined to be excess or surplus, available by gift, loan, sale, lease, or charter to such institution for instructional purposes on such terms as the Secretary deems appropriate.

(c) Securing of information, facilities, or equipment; detailing of personnel

(1) The Secretary may secure directly from any department or agency of the United States any information, facilities, or equipment, on a reimbursable basis, necessary to carry out this subchapter.

(2) Upon the request of the Secretary, the head of any department or agency of the United States (including any military department of the United States) may detail, on a reimbursable basis, any of the personnel of such department or agency to the Secretary to assist in carrying out this subchapter.

(d) Employment of personnel

To carry out this subchapter, the Secretary may employ at the Academy any individual as a professor, lecturer, or instructor, without regard to the provisions of title 5 (governing appointments in the competitive service), and may pay such individual without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(June 29, 1936, ch. 858, title XIII, § 1308, as added Pub. L. 96–453, § 2, Oct. 15, 1980, 94 Stat. 2007; amended Pub. L. 98–89, § 4(b), Aug. 26, 1983, 97 Stat. 603.)

REFERENCES IN TEXT

The provisions of title 5 (governing appointments in the competitive service), referred to in subsec. (d), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1983—Subsec. (e). Pub. L. 98–89 struck out subsec. (e). See section 2101(17) of Title 46, Shipping.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 28—CARRIAGE OF GOODS BY SEA

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§ 1300. Bills of lading subject to chapter

Every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States, in foreign trade, shall have effect subject to the provisions of this chapter.

(Apr. 16, 1936, ch. 229, § 1, 49 Stat. 1207.)

§ 1301. Definitions

When used in this chapter—

(a) The term ''carrier'' includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) The term ''contract of carriage'' applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) The term ''goods'' includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) The term ''ship'' means any vessel used for the carriage of goods by sea.

(e) The term ''carriage of goods'' covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

(Apr. 16, 1936, ch. 229, title I, § 1, 49 Stat. 1208.)

§ 1302. Duties and rights of carrier

Subject to the provisions of section 1306 of this Appendix, under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in sections 1303 and 1304 of this Appendix.

(Apr. 16, 1936, ch. 229, title I, § 2, 49 Stat. 1208.)

§ 1303. Responsibilities and liabilities of carrier and ship

(1) Seaworthiness

The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

(a) Make the ship seaworthy;

(b) Properly man, equip, and supply the ship;

(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

(2) Cargo

The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

(3) Contents of bill

After receiving the goods into his charge the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods: *Provided*, That no carrier, master, or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

(4) Bill as prima facie evidence

Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (3)(a), (b), and (c), of this section: *Provided*, That nothing in this chapter shall be construed as repealing or limiting the application of any part of chapter 801 of title 49.

(5) Guaranty of statements

The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him; and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

(6) Notice of loss or damage; limitation of actions

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage may be endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: *Provided*, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

(7) "Shipped" bill of lading

After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier to the shipper shall, if the shipper so demands, be a ''shipped'' bill of lading: *Provided*, That if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the ''shipped'' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this section be deemed to constitute a ''shipped'' bill of lading.

(8) Limitation of liability for negligence

Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods, arising from negligence, fault, or failure in the duties and obligations provided in this section, or lessening such liability otherwise than as provided in this chapter, shall be null and void and of no effect. A benefit of insurance in favor of the carrier, or similar clause, shall be deemed to be a clause relieving the carrier from liability.

(Apr. 16, 1936, ch. 229, title I, § 3, 49 Stat. 1208.)

CODIFICATION

In par. (4), ''chapter 801 of title 49'' substituted for ''the Act of August 29, 1916, commonly known as the 'Pomerene Bills of Lading Act' [49 App. U.S.C. 81 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

§ 1304. Rights and immunities of carrier and ship

(1) Unseaworthiness

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation in accordance with the provisions of paragraph (1) of section 1303 of this Appendix. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

(2) Uncontrollable causes of loss

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) Fire, unless caused by the actual fault or privity of the carrier;

(c) Perils, dangers, and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of war;

(f) Act of public enemies;

(g) Arrest or restraint of princes, rulers, or people, or seizure under legal process;

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lockouts or stoppage or restraint of labor from whatever cause, whether partial or general: *Provided*, That nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts;

(k) Riots and civil commotions;

(*l*) Saving or attempting to save life or property at sea;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(n) Insufficiency of packing;

(*o*) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence; and

(q) Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

(3) Freedom from negligence

The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

(4) Deviations

Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of this chapter or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom: *Provided, however*, That if the deviation is for the purpose of loading or unloading cargo or passengers it shall, prima facie, be regarded as unreasonable.

(5) Amount of liability; valuation of cargo

Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier, and the shipper another maximum amount than that mentioned in this paragraph may be fixed: *Provided*, That such maximum shall not be less than the figure above named. In no event shall the carrier be liable for more than the amount of damage actually sustained.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with the transportation of the goods if the nature or value thereof has been knowingly and fraudulently misstated by the shipper in the bill of lading.

(6) Inflammable, explosive, or dangerous cargo

Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

(Apr. 16, 1936, ch. 229, title I, § 4, 49 Stat. 1210.)

§ 1305. Surrender of rights; increase of liabilities; charter parties; general average

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under this chapter, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of this chapter shall not be applicable to charter parties; but if bills of lading are issued in the case of a ship under a charter party, they shall comply with the terms of this chapter. Nothing in this chapter shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

(Apr. 16, 1936, ch. 229, title I, § 5, 49 Stat. 1211.)

§ 1306. Special agreement as to particular goods

Notwithstanding the provisions of sections 1303 to 1305 of this Appendix, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea: *Provided*, That in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a nonnegotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect: *Provided*, That this section shall not apply to ordinary commercial shipments made in the ordinary course of trade but only to other shipments where the character or condition of the property to be carried or the circumstances, terms, and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

(Apr. 16, 1936, ch. 229, title I, § 6, 49 Stat. 1211.)

§ 1307. Agreement as to liability prior to loading or after discharge

Nothing contained in this chapter shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

(Apr. 16, 1936, ch. 229, title I, § 7, 49 Stat. 1212.)

§ 1308. Rights and liabilities under other provisions

The provisions of this chapter shall not affect the rights and obligations of the carrier under the provisions of the Shipping Act, 1916 [46 App. U.S.C. 801 et seq.], or under the provisions of sections 4281 to 4289, inclusive, of the Revised Statutes of the United States [46 App. 181–188] or of any amendments thereto; or under the provisions of any other enactment for the time being in force relating to the limitation of the liability of the owners of seagoing vessels.

(Apr. 16, 1936, ch. 229, title I, § 8, 49 Stat. 1212.)

REFERENCES IN TEXT

The Shipping Act, 1916, referred to in text, is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified generally to chapter 23 (§ 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

Section 4288 of the Revised Statutes, referred to in text, was classified to section 175 of former Title 46, Shipping, and was repealed by act Oct. 9, 1940, ch. 777, § 7, 54 Stat. 1028.

§ 1309. Discrimination between competing shippers

Nothing contained in this chapter shall be construed as permitting a common carrier by water to discriminate between competing shippers similarly placed in time and circumstances, either (a) with respect to their right to demand and receive bills of lading subject to the provisions of this chapter; or (b) when issuing such bills of lading, either in the surrender of any of the carrier's rights and immunities or in the increase of any of the carrier's responsibilities and liabilities pursuant to section 1305 of this Appendix; or (c) in any other way prohibited by the Shipping Act, 1916, as amended [46 App. U.S.C. 801 et seq.].

(Apr. 16, 1936, ch. 229, title II, § 9, 49 Stat. 1212.)

REFERENCES IN TEXT

The Shipping Act, 1916, as amended, referred to in text, is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified generally to chapter 23 (§ 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

§ 1310. Weight of bulk cargo

Where under the customs of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper, and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in this chapter, the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

(Apr. 16, 1936, ch. 229, title II, § 11, 49 Stat. 1212.)

§ 1311. Liabilities before loading and after discharge; effect on other laws

Nothing in this chapter shall be construed as superseding any part of sections 190 to 196 of this Appendix, or of any other law which would be applicable in the absence of this chapter, insofar as they relate to the duties, responsibilities, and liabilities of the ship or carrier prior to the time when the goods are loaded on or after the time they are discharged from the ship.

(Apr. 16, 1936, ch. 229, title II, § 12, 49 Stat. 1212.)

§ 1312. Scope of chapter; "United States"; "foreign trade"

This chapter shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this chapter the term ''United States'' includes its districts, territories, and possessions. The term ''foreign trade'' means the transportation of goods between the ports of the United States and ports of foreign countries. Nothing in this chapter shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: *Provided, however*, That any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this chapter, shall be subjected hereto as fully as if subject hereto by the express provisions of this chapter: *Provided further*, That every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea from ports of the United States, in foreign trade, shall contain a statement that it shall have effect subject to the provisions of this chapter.

(Apr. 16, 1936, ch. 229, title II, § 13, 49 Stat. 1212; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

A proviso in second sentence that the Philippine Legislature might by law exclude its application to transportation to or from ports of the Philippine Islands was omitted in view of Proc. No. 2695, set out under section 1394 of Title 22, Foreign Relations and Intercourse, which proclaimed the independence of the Philippines.

§ 1313. Suspension of provisions by President

Upon the certification of the Secretary of Transportation that the foreign commerce of the United States in its competition with that of foreign nations is prejudiced by the provisions, or any of them, of sections 1301 to 1308 of this Appendix, or by the laws of any foreign

country or countries relating to the carriage of goods by sea, the President of the United States may, from time to time, by proclamation, suspend any or all provisions of said sections for such periods of time or indefinitely as may be designated in the proclamation. The President may at any time rescind such suspension of said sections, and any provisions thereof which may have been suspended shall thereby be reinstated and again apply to contracts thereafter made for the carriage of goods by sea. Any proclamation of suspension or rescission of any such suspension shall take effect on a date named therein, which date shall be not less than ten days from the issue of the proclamation.

Any contract for the carriage of goods by sea, subject to the provisions of this chapter, effective during any period when sections 1301 to 1308 of this Appendix, or any part thereof, are suspended, shall be subject to all provisions of law now or hereafter applicable to that part of said sections which may have thus been suspended.

(Apr. 16, 1936, ch. 229, title II, § 14, 49 Stat. 1213; Pub. L. 97–31, § 12(146), Aug. 6, 1981, 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97–31 substituted in first par. ''Secretary of Transportation'' for ''Secretary of Commerce''.

§ 1314. Effective date; retroactive effect

This chapter shall take effect ninety days after April 16, 1936; but nothing in this chapter shall apply during a period not to exceed one year following April 16, 1936, to any contract for the carriage of goods by sea, made before April 16, 1936, nor to any bill of lading or similar document of title issued, whether before or after such date in pursuance of any such contract as aforesaid.

(Apr. 16, 1936, ch. 229, title II, § 15, 49 Stat. 1213.)

§ 1315. Short title

This chapter may be cited as the ''Carriage of Goods by Sea Act.''

(Apr. 16, 1936, ch. 229, title II, § 16, 49 Stat. 1213.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''This Act'', meaning act Apr. 16, 1936, ch. 229, 49 Stat. 1207, as amended, which enacted this chapter and amended section 25 of former Title 49, Transportation. For complete classification of this Act to the Code, see Tables.

CHAPTER 34—SAFE CONTAINERS FOR INTERNATIONAL CARGO

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(a) Enforcement.
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§ 1501. Definitions

As used in this chapter—

(a) The term ''Secretary'' means the Secretary of Transportation.

(b) The term ''Convention'' means the International Convention for Safe Containers, and the annexes thereto, done at Geneva, Switzerland, December 2, 1972.

(c) The term ''container'' shall have the same meaning as that term is defined in the Convention.

(d) The term ''international transport'' means the transportation of a container—

(1) to any place within the jurisdiction of the United States from a place within a foreign country;

(2) by United States carriers between two points both of which are outside of the United States; or

(3) from any place within the jurisdiction of the United States to any place within a foreign country.

(e) The term ''United States'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(f) The term ''new container'' means a container (other than a container specially designed for air transport) which is used or is designed for use in international transport, the construction of which began on or after September 6, 1977.

(g) The term ''existing container'' means a container (other than a container specially designed for air transport) which is used or is designed for use in international transport and which is not a new container.

(h) The term ''owner'' means a person who owns a container, or, if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container, the lessee or bailee of

a container, to the extent such agreement so provides.

(i) The term ''safety approval plate'' shall have the same meaning as that term is defined in annex I of the Convention.

(Pub. L. 95–208, § 2, Dec. 13, 1977, 91 Stat. 1475.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (e), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

SHORT TITLE

Section 1 of Pub. L. 95–208 provided: ''That this Act [enacting this chapter] may be cited as the 'International Safe Container Act'.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1502. Duties of owners of containers

(a) Initial approval of containers; periodic examination

Beginning on the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, for new containers, and beginning on September 6, 1982, for existing containers, the owner of each such container—

(1) who is domiciled and has his principal office in the United States, shall have each such container initially approved in accordance with the procedure established by the Secretary or by the administration of another contracting party to the Convention; and shall, thereafter, have each such container periodically examined, as provided in the Convention, in accordance with the procedure established by the Secretary; and

(2) who is either domiciled or has his principal office in the United States, shall have each such container initially approved in accordance with the procedure established by the Secretary or by the administration of another contracting party to the Convention; and shall, thereafter, have each such container periodically examined, as provided in the Convention, in accordance with the procedure established by the administration of either the country where he is domiciled or has his principal office (so long as such country is a party to the Convention).

Any owner of either a new or existing container who is neither domiciled nor maintains a principal office in the United States, or in any other country which is a party to the Convention, may submit their containers for approval and periodic examination according to the procedure established by the Secretary.

(b) Repealed. Pub. L. 101–225, title III, § 307(10), Dec. 12, 1989, 103 Stat. 1925

(Pub. L. 95–208, § 3, Dec. 13, 1977, 91 Stat. 1476; Pub. L. 97–249, § 1(1), Sept. 8, 1982, 96 Stat. 708; Pub. L. 101–225, title III, § 307(10), Dec. 12, 1989, 103 Stat. 1925.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–225 struck out subsec. (b) which related to approval of existing containers.

1982—Subsec. (b). Pub. L. 97–249 substituted ''before January 1, 1985, an owner of an approved existing container may have a safety approval plate affixed to it, if that container'' for ''before September 6, 1982, an owner of an existing container may have such container approved according to the procedure established by the Secretary, and have a safety approval plate affixed to it, if such container''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97–249 provided that: ''This Act [amending this section and section 1504 of this Appendix] shall take effect on the later of the date of its enactment [Sept. 8, 1982] or September 6, 1982.''

§ 1503. Duties of Secretary of Transportation

(a) Enforcement

On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, the Secretary shall enforce and carry out the provisions of the Convention, and, unless an earlier date is specifically provided, the provisions of this chapter, in the United States.

(b) Regulations

The Secretary shall, as soon as practicable after December 13, 1977, promulgate, and from time to time, amend, those regulations he deems necessary for such enforcement. Such regulations, among other things, shall—

(1) establish procedures for the testing, inspection, and initial approval of existing and new containers and of designs for new containers, including procedures relating to the affixing, invalidating, and removal of safety approval plates for containers;

(2) establish procedures to be followed by owners of containers relating to the periodic examination of containers, as provided in the Convention; and

(3) provide a method for developing, collecting, and disseminating data concerning container safety and the international transport of containers.

(c) Affixation of approval plate; delegation of authority; fees

At any time after December 13, 1977, the Secretary may—

(1) authorize the affixation of a safety approval plate to any container which, after examination, is found not to have a safety approval plate attached to it and which the owner has established meets the standards of the Convention;

(2) delegate and withdraw the delegation of authority to initially approve existing and new containers and designs for new containers, and to authorize the affixing of safety approval plates; and

(3) establish a schedule of fees to be charged and collected for services performed by the Secretary, or under authority delegated by the Secretary, relating to the testing, inspection, and initial approval of containers and container designs.

(d) Method of delegating authority

Those delegations made under subsection (c)(2) of this section may be made to any person, including any public or private agency or non-

profit organization. The Secretary[1] before making any delegation under such subsection, shall promulgate regulations relating to—

(1) the criteria to be followed in selecting a person, public or private agency, or nonprofit organization as a recipient of delegated functions under such subsection;

(2) the manner in which such recipient shall carry out such delegated functions, including the records such recipient must keep, and a detailed description of the exact functions such recipient may exercise; and

(3) the review that will be carried out by the Secretary to determine that any recipient of delegated functions is performing properly the functions so delegated.

No recipient of authority delegated under such subsection may assess or collect, or attempt to assess or collect, any penalty for violation of any provision of this chapter, the Convention, or any order of the Secretary issued under this chapter, or issue or attempt to issue any detention or other order. Any records required to be kept by regulations promulgated by the Secretary under this subsection shall be available to the Secretary, for inspection, upon request. The name and address of the recipient, if other than the owner, together with the functions so delegated and the period of designation, shall be published in the Federal Register and otherwise publicized as appropriate.

(e) Intermodal transport

The Secretary shall, to the maximum possible extent, encourage the development and use of intermodal transport, using containers constructed to facilitate economical, safe, and expeditious handling of containerized cargo without intermediate reloading while such cargo is in transport over land, air, and sea areas.

(Pub. L. 95–208, § 4, Dec. 13, 1977, 91 Stat. 1476.)

§ 1504. Areas of enforcement

(a) Examination of containers; detention orders; restriction or removal of containers from service

(1) On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, to ensure compliance with this chapter, and with the Convention, the Secretary may—

(A) examine, or require to be examined, new containers, and existing containers which are subject to this chapter, in international transport, and test, inspect, and approve designs for new containers and new containers being manufactured;

(B) issue a detention order removing or excluding a container from service until the owner of the container establishes to the Secretary's satisfaction that the container meets the standards of the Convention, if the container is subject to this chapter and does not have a valid safety approval plate attached to it, or if there is significant evidence that such a container bearing a safety approval plate is in a condition which creates an obvious risk to safety; and

(C) take whatever other appropriate action he deems necessary, including issuance of any necessary orders, to remove the container involved from service, or restrict its use, in those instances where he finds that a container is not in compliance with the provisions of this chapter or the Convention but does not present an obvious risk to safety.

The Secretary may permit the movement to another location of a container which he finds to be unsafe or which does not have a valid safety approval plate affixed to it, under whatever restriction he considers necessary and consistent with the intent of the Convention, for repair or other appropriate disposition.

(2) Beginning on January 1, 1985, the Secretary may examine or require to be examined any existing container in international transport.

(b) Costs of examinations

The owner of the container involved in any action taken by the Secretary under this section with respect to an examination of a container, shall pay for or reimburse the Secretary for expenses arising from such actions, except for the costs of routine examinations of containers or safety approval plates. In addition, the owner of containers submitted to the procedure established by the Secretary for testing, inspection, and initial approval, and the manufacturers who submit designs of containers to the procedures established by the Secretary for testing, inspection, and initial approval shall pay for or reimburse the Secretary for the expenses arising from such testing, inspection or approval. Funds received by the Secretary in reimbursement shall be credited to the appropriations bearing the cost thereof.

(c) Presumption of safe condition

A container bearing a safety approval plate authorized by a country which is a party to the Convention shall be presumed to be in a safe condition unless there is significant evidence that the container creates an obvious risk to safety.

(d) Notification of detention or other order; duration of order

Whenever the Secretary issues a detention or other order under this section, he shall promptly notify, in writing, either the owner of the container subject to such order, his agent, or, when the identity of such owner is not apparent from the container of[1] shipping documents, the custodian. The notification shall reasonably identify the container involved, give the location of the container, and reasonably describe the condition or situation which gave rise to the order. An order issued by the Secretary under this section shall remain in effect until the container is declared by the Secretary, or under regulations promulgated by the Secretary, to be in compliance with the standards of the Convention, or until it is permanently removed from service, whichever first occurs.

(e) Notification to foreign country of defect at time of approval

If there is reason to believe that a container to which there is affixed a safety approval plate

[1] So in original. Probably should be followed by a comma.

[1] So in original. Probably should be "or".

issued by a foreign country was defective at the time of approval, the Secretary shall notify the country which issued the approval of such defect.

(Pub. L. 95–208, § 5, Dec. 13, 1977, 91 Stat. 1477; Pub. L. 97–249, § 1(2), Sept. 8, 1982, 96 Stat. 708.)

AMENDMENTS

1982—Subsec. (a)(2). Pub. L. 97–249 substituted ''January 1, 1985'' for ''September 6, 1982''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–249 effective Sept. 8, 1982, see section 2 of Pub. L. 97–249, set out as a note under section 1502 of this Appendix.

§ 1505. Penalties

(a) Civil penalty

On and after the date the instrument of ratification is deposited by the United States in accordance with the provisions of article VII of the Convention, any owner, agent, or custodian who—

(1) has been notified of an order issued by the Secretary under section 1504 of this Appendix; and

(2) fails to take reasonable and prompt action to prevent or stop a container subject to that order from being moved in violation of that order;

shall be subject to a civil penalty of not more than $5,000 for each container so moved. Each day the container remains in service while the order is in effect shall be treated as a separate violation.

(b) Assessment, collection, remission, mitigation, and compromise of penalties

The Secretary shall assess and collect any penalty incurred under this section, and, in his discretion may remit, mitigate, or compromise any such penalty. No penalty shall be assessed until after the person charged has been given notice and an opportunity for a hearing. In assessing, remitting, mitigating, or compromising a penalty the Secretary shall consider the gravity of the violation, the hazards involved, and the record of the person charged with respect to violations of this chapter or of the Convention. Upon failure of any person to pay any penalty assessed against him by the Secretary, the Secretary shall request the Attorney General to begin an action in any district court of the United States to recover the amount of the penalty unpaid.

(Pub. L. 95–208, § 6, Dec. 13, 1977, 91 Stat. 1478.)

§ 1506. Employee protection

(a) Discrimination against a reporting employee prohibited

No person shall discharge or in any manner discriminate against an employee because the employee has reported the existence of an unsafe container or reported a violation of this chapter to the Secretary or his agents.

(b) Complaint alleging discrimination

An employee who believes that he has been discharged or discriminated against in violation of this section may, within 60 days after the violation occurs, file a complaint alleging discrimination with the Secretary of Labor.

(c) Investigation by Secretary of Labor; judicial relief

The Secretary of Labor may investigate the complaint and, if he determines that this section has been violated, bring an action in an appropriate United States district court. The district court shall have jurisdiction to restrain violations of subsection (a) of this section and to order appropriate relief, including rehiring and reinstatement of the employee to his former position with back pay.

(d) Notification to complainant of intended action

Within 30 days after the receipt of a complaint filed under this section the Secretary of Labor shall notify the complainant of his intended action regarding the complaint.

(Pub. L. 95–208, § 7, Dec. 13, 1977, 91 Stat. 1479.)

§ 1507. Amendments to Convention

(a) Proposed amendments; advice and consent of Senate; declaration of non-acceptance

The Secretary of State, with the concurrence of the Secretary, may propose amendments to the Convention or may request a conference for amending the Convention in accordance with article IX of the Convention. An amendment communicated to the United States in accordance with article IX(2) of the Convention may be accepted for the United States by the President, with the advice and consent of the Senate. The President may make a declaration that the United States does not accept an amendment.

(b) Amendment of Convention annexes

The Secretary of State, with the concurrence of the Secretary, may propose amendments to the annexes of the Convention, may propose a conference for amending annexes to the Convention and shall consider and act on amendments to the annexes of the Convention adopted by the Maritime Safety Committee and communicated to the United States in accordance with article X(2) of the Convention. If a proposed amendment is approved by the United States, the amendment shall enter into force in accordance with article X of the Convention. If any proposed amendment is objected to, the Secretary of State shall promptly communicate the objection as provided in article X(3) of the Convention.

(c) Appointment of arbitrator

The Secretary of State, with the concurrence of the Secretary, shall appoint an arbitrator when one is required to resolve a dispute within the meaning of article XIII of the Convention.

(Pub. L. 95–208, § 8, Dec. 13, 1977, 91 Stat. 1479.)

CHAPTER 35—MARITIME ADMINISTRATION

Sec.
1601. Transfer of Administration.
1602. Transfer of functions, powers, and duties.
1603. Administrator; appointment, compensation, etc.
1604. Exercise of authorities.
1605. Transfer of personnel and funds.
1607. Use of personnel for implementation of transfer provisions.

Sec.
1608. Administrative determinations and proceedings.
(a) Continuation in effect of orders, determinations, etc., issued, made, granted, or effective in performance of functions transferred.
(b) Continuation of pending proceedings and applications during transfer period; Maritime Subsidy Board actions pending on review; promulgation of regulations for orderly transfer of continued proceedings.
(c) Actions and proceedings commenced prior to transfer of functions.
(d) Abatement of actions, proceedings, etc.
(e) Substitution of parties.
(f) Administrative and judicial review procedures applicable.
1609. References in other Federal laws to functions or offices transferred.
1610. Severability.

§ 1601. Transfer of Administration

The Maritime Administration of the Department of Commerce is transferred to the Department of Transportation.

(Pub. L. 97–31, § 2, Aug. 6, 1981, 95 Stat. 151.)

SHORT TITLE

Section 1 of Pub. L. 97–31 provided: ''That this Act [see Tables for classification] may be cited as the 'Maritime Act of 1981'.''

§ 1602. Transfer of functions, powers, and duties

There are transferred to the Department of Transportation and vested in the Secretary of Transportation all functions, powers, and duties relating to the Maritime Administration of the Secretary of Commerce and of officers and offices of the Department of Commerce.

(Pub. L. 97–31, § 3, Aug. 6, 1981, 95 Stat. 151.)

§ 1603. Administrator; appointment, compensation, etc.

There shall be at the head of the Maritime Administration an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level III of the Executive Schedule. The Maritime Administrator shall report directly to the Secretary of Transportation and shall perform such duties as the Secretary of Transportation shall prescribe.

(Pub. L. 97–31, § 4, Aug. 6, 1981, 95 Stat. 151.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in text, is set out in section 5314 of Title 5, Government Organization and Employees.

§ 1604. Exercise of authorities

In carrying out any function transferred by this Act, the Secretary of Transportation may exercise any authority available by law to the Secretary of Commerce with respect to such function and the actions of the Secretary of Transportation in exercising such authority shall have the same force and effect as if exercised by the Secretary of Commerce on the day preceding August 6, 1981.

(Pub. L. 97–31, § 5, Aug. 6, 1981, 95 Stat. 151.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

§ 1605. Transfer of personnel and funds

The personnel employed in connection with, and the assets, liabilities, contracts, property, facilities, records, and unexpended balance of appropriations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and offices, or portions thereof, transferred by this Act, including all Senior Executive Service positions, subject to section 1531 of title 31, shall be transferred to the Secretary of Transportation for appropriate allocation. Personnel employed in connection with functions transferred by this Act shall be transferred in accordance with any applicable laws and regulations relating to transfer of functions. Unexpended funds transferred pursuant to this section shall be used only for the purposes for which the funds were originally authorized and appropriated, except that such funds may be used for the expenses associated with the transfer pursuant to this Act.

(Pub. L. 97–31, § 6, Aug. 6, 1981, 95 Stat. 151.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

CODIFICATION

''Section 1531 of title 31'' substituted in text for ''section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

§ 1607. Use of personnel for implementation of transfer provisions

With the consent of the Secretary of Commerce, the Secretary of Transportation may use the services of such officers, employees, and other personnel of the Department of Commerce as needed to implement this Act.

(Pub. L. 97–31, § 8, Aug. 6, 1981, 95 Stat. 152.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

§ 1608. Administrative determinations and proceedings

(a) Continuation in effect of orders, determinations, etc., issued, made, granted, or effective in performance of functions transferred

All orders, determinations, rules, regulations, permits, grants, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President,

any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Secretary of Transportation or the Department of Transportation, and

(2) which are in effect on August 6, 1981,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Transportation, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) Continuation of pending proceedings and applications during transfer period; Maritime Subsidy Board actions pending on review; promulgation of regulations for orderly transfer of continued proceedings

(1) This Act does not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance, pending on August 6, 1981, but such proceedings and applications, to the extent that they relate to functions so transferred and except as provided in paragraph (2), shall be continued at the Department of Transportation. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Secretary of Transportation, by a court of competent jurisdiction, or by operation of law. This subsection does not prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that the proceeding could have been discontinued or modified if this Act had not been enacted.

(2) Actions of the Maritime Subsidy Board pending on review before the Secretary of Commerce on the day preceding August 6, 1981, shall remain with the Secretary of Commerce, unless otherwise agreed between the Secretary of Commerce and the Secretary of Transportation, for final administrative disposition as though this Act had not been enacted.

(3) The Secretary of Transportation may promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1).

(c) Actions and proceedings commenced prior to transfer of functions

Except as provided in subsection (e) of this section—

(1) the provisions of this Act shall not affect actions commenced prior to August 6, 1981, and

(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) Abatement of actions, proceedings, etc.

No action or other proceeding commenced by or against any officer of the Maritime Administration in his official capacity shall abate by reason of the enactment of this Act. No cause of action by or against the Maritime Administration or by or against any officer of the Maritime Administration in his official capacity shall abate by reason of the enactment of this Act.

(e) Substitution of parties

If, before August 6, 1981, the Secretary of Commerce is a party to an action, and under this Act any function of the Secretary of Commerce which is the subject of the action is transferred to the Secretary of Transportation, then such action shall be continued with the Secretary of Transportation substituted as a party.

(f) Administrative and judicial review procedures applicable

Orders and actions of the Secretary of Transportation in the exercise of functions transferred under this Act shall be subject to judicial review as if such orders and actions had been by the Secretary of Commerce exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Secretary of Transportation.

(Pub. L. 97–31, § 9, Aug. 6, 1981, 95 Stat. 152.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

§ 1609. References in other Federal laws to functions or offices transferred

With respect to any function or office transferred by this Act and exercised on or after August 6, 1981, reference in any other Federal law to the Maritime Administration or any of its predecessor agencies or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary of Transportation, other official, or component of the Department of Transportation to which this Act transfers such functions.

(Pub. L. 97–31, § 10, Aug. 6, 1981, 95 Stat. 153.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

§ 1610. Severability

If any provisions of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 97–31, § 11, Aug. 6, 1981, 95 Stat. 153.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 151, known as the Maritime Act of 1981. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this Appendix and Tables.

CHAPTER 36—INTERNATIONAL OCEAN COMMERCE TRANSPORTATION

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§ 1701. Declaration of policy

The purposes of this chapter are—

(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices;

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs; and

(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

(Pub. L. 98–237, § 2, Mar. 20, 1984, 98 Stat. 67; Pub. L. 105–258, title I, § 101, Oct. 14, 1998, 112 Stat. 1902.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'' meaning Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, known as the Shipping Act of 1984. For complete classification of this Act to the Code, see Short Title note below and Tables.

AMENDMENTS

1998—Par. (4). Pub. L. 105–258 added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–258, § 2, Oct. 14, 1998, 112 Stat. 1902, provided that: ''Except as otherwise expressly provided in this Act [see Tables for classification], this Act and the amendments made by this Act take effect May 1, 1999.''

EFFECTIVE DATE

Section 21 of Pub. L. 98–237, which provided that Pub. L. 98–237 (see Short Title note below) shall become ef-

fective 90 days after Mar. 20, 1984, except that sections 1716 and 1717 of this Appendix shall become effective Mar. 20, 1984, was repealed by Pub. L. 101–225, title III, § 307(11), Dec. 12, 1989, 103 Stat. 1925.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–258, § 1, Oct. 14, 1998, 112 Stat. 1902, provided that: ''This Act [see Tables for classification] may be cited as the 'Ocean Shipping Reform Act of 1998'.''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–251, title II, § 201(a), Mar. 9, 1992, 106 Stat. 60, provided that: ''This section [amending sections 1709 and 1721 of this Appendix and enacting provisions set out as notes under sections 1709 and 1721 of this Appendix] may be cited as the 'Non-Vessel-Operating Common Carrier Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–595, title VII, § 710(a), Nov. 16, 1990, 104 Stat. 2996, provided that: ''This section [enacting section 1721 of this Appendix, amending section 1709 of this Appendix, and enacting provisions set out as notes under sections 1709 and 1721 of this Appendix] may be cited as the 'Non-Vessel-Operating Common Carrier Amendments of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–418, title X, § 10001, Aug. 23, 1988, 102 Stat. 1570, provided that: ''This subtitle [subtitle A (§§ 10001–10003) of title X of Pub. L. 100–418, enacting section 1710a of this Appendix, amending section 1122b of this Appendix, and enacting provisions set out as a note under section 3302 of Title 46, Shipping] may be cited as the 'Foreign Shipping Practices Act of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 98–237 provided: ''That this Act [enacting this chapter, amending sections 801, 812, 814, 815, 816, 817, 819, 820, 821, 824, 828, 829, 830, 831, 841c, 1122, and 1124 of this Appendix, repealing sections 813, 813a, 825, and 841b of this Appendix, enacting provisions set out as notes under this section, and repealing provisions set out as a note under section 801 of this Appendix] may be cited as the 'Shipping Act of 1984'.''

§ 1702. Definitions

As used in this chapter—

(1) ''agreement'' means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof; but the term does not include a maritime labor agreement.

(2) ''antitrust laws'' means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended [15 U.S.C. 1 et seq.]; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended [15 U.S.C. 12 et seq.]; the Federal Trade Commission Act (38 Stat. 717), as amended [15 U.S.C. 41 et seq.]; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended [15 U.S.C. 8 and 9]; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended [15 U.S.C. 13, 13a, 13b, 21a]; the Antitrust Civil Process Act (76 Stat. 548), as amended [15 U.S.C. 1311 et seq.]; and amendments and Acts supplementary thereto.

(3) ''assessment agreement'' means an agreement, whether part of a collective-bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

(4) ''bulk cargo'' means cargo that is loaded and carried in bulk without mark or count.

(5) ''Commission'' means the Federal Maritime Commission.

(6) ''common carrier'' means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker or by vessel when primarily engaged in the carriage of perishable agricultural commodities (i) if the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and (ii) only with respect to the carriage of those commodities. As used in this paragraph, ''chemical parcel-tanker'' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7) ''conference'' means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

(8) ''controlled carrier'' means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(9) ''deferred rebate'' means a return by a common carrier of any portion of freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier over a fixed period of time, the payment of

which is deferred beyond the completion of service for which it is paid, and is made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.

(10) ''forest products'' means forest products including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls or in pallet or skid-sized sheets.

(11) ''inland division'' means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) ''inland portion'' means the charge to the public by a common carrier for the nonocean portion of through transportation.

(13) ''loyalty contract'' means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement and the contract provides for a deferred rebate arrangement.

(14) ''marine terminal operator'' means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.

(15) ''maritime labor agreement'' means a collective-bargaining agreement between an employer subject to this chapter, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(16) ''ocean common carrier'' means a vessel-operating common carrier.

(17) ''ocean transportation intermediary'' means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph, the term—

(A) ''ocean freight forwarder'' means a person that—

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(B) ''non-vessel-operating common carrier'' means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(18) ''person'' includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(19) ''service contract'' means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(20) ''shipment'' means all of the cargo carried under the terms of a single bill of lading.

(21) ''shipper'' means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation is provided;

(C) the person to whom delivery is to be made;

(D) a shippers' association; or

(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(22) ''shippers' association'' means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(23) ''through rate'' means the single amount charged by a common carrier in connection with through transportation.

(24) ''through transportation'' means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

(25) ''United States'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

(Pub. L. 98–237, § 3, Mar. 20, 1984, 98 Stat. 67; Pub. L. 99–307, § 11, May 19, 1986, 100 Stat. 447; Pub. L. 105–258, title I, § 102, Oct. 14, 1998, 112 Stat. 1902; Pub. L. 105–383, title IV, § 424(d), Nov. 13, 1998, 112 Stat. 3441.)

REFERENCES IN TEXT

Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended, referred to in par. (2), is known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended, referred to in par. (2), is known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15 and sections 52 and

53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in par. (2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in par. (2), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570. Sections 73 to 77 of such Act are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note under section 8 of Title 15 and Tables.

Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended, referred to in par. (2), is popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15 and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Antitrust Civil Process Act, referred to in par. (2), is Pub. L. 87–664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§ 1311 et seq.) of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of Title 15 and Tables.

AMENDMENTS

1998—Par. (6)(B). Pub. L. 105–383, in first sentence, substituted ''parcel-tanker or by vessel when primarily engaged in the carriage of perishable agricultural commodities (i) if the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and (ii) only with respect to the carriage of those commodities.'' for ''parcel-tanker.''

Par. (8). Pub. L. 105–258, § 102(1), substituted ''a government;'' for ''the government under whose registry the vessels of the carrier operate;'' in introductory provisions.

Par. (9). Pub. L. 105–258, § 102(2), added par. (9) and struck out former par. (9) which read as follows: '' 'deferred rebate' means a return by a common carrier of any portion of the freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.''

Par. (10). Pub. L. 105–258, § 102(5), substituted ''paper and paper board in rolls or in pallet or skid-sized sheets.'' for ''paper board in rolls, and paper in rolls.''

Pub. L. 105–258, § 102(4), struck out ''in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container,'' after ''means forest products''.

Pub. L. 105–258, § 102(3), redesignated par. (11) as (10) and struck out former par. (10) which read as follows: '' 'fighting ship' means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade.''

Pars. (11), (12). Pub. L. 105–258, § 102(3), redesignated pars. (12) and (13) as (11) and (12), respectively. Former par. (11) redesignated (10).

Par. (13). Pub. L. 105–258, § 102(7), substituted ''agreement and the contract provides for a deferred rebate arrangement.'' for ''conference.''

Pub. L. 105–258, § 102(6), substituted ''agreement'' for ''conference, other than a service contract or contract based upon time-volume rates,''.

Pub. L. 105–258, § 102(3), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Par. (14). Pub. L. 105–258, § 102(3), (8), redesignated par. (15) as (14) and substituted ''carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49.'' for ''carrier.'' Former par. (14) redesignated (13).

Par. (15). Pub. L. 105–258, § 102(3), redesignated former par. (16) as (15). Former par. (15) redesignated (14).

Par. (16). Pub. L. 105–258, § 102(9), redesignated par. (17) as (16) and struck out former par. (16) which read as follows: '' 'non-vessel-operating common carrier' means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.''

Pub. L. 105–258, § 102(3), redesignated par. (17) as (16). Former par. (16) redesignated (15).

Par. (17). Pub. L. 105–258, § 102(10), added par. (17) and struck out former par. (17) which read as follows: '' 'ocean freight forwarder' means a person in the United States that—

''(A) dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

''(B) processes the documentation or performs related activities incident to those shipments.''

Pub. L. 105–258, § 102(9), redesignated par. (18) as (17). Former par. (17) redesignated (16).

Pub. L. 105–258, § 102(3), redesignated par. (18) as (17). Former par. (17) redesignated (16).

Par. (18). Pub. L. 105–258, § 102(9), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Pub. L. 105–258, § 102(3), redesignated par. (19) as (18). Former par. (18) redesignated (17).

Par. (19). Pub. L. 105–258, § 102(11), added par. (19) and struck out former par. (19) which read as follows: '' 'service contract' means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.''

Pub. L. 105–258, § 102(9), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Pub. L. 105–258, § 102(3), redesignated par. (20) as (19). Former par. (19) redesignated (18).

Par. (20). Pub. L. 105–258, § 102(9), redesignated par. (21) as (20). Former par. (20) redesignated (19).

Pub. L. 105–258, § 102(3), redesignated par. (21) as (20). Former par. (20) redesignated (19).

Par. (21). Pub. L. 105–258, § 102(12), added par. (21) and struck out former par. (21) which read as follows: '' 'shipper' means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.''

Pub. L. 105–258, § 102(9), redesignated par. (22) as (21). Former par. (21) redesignated (20).

Pub. L. 105–258, § 102(3), redesignated par. (22) as (21). Former par. (21) redesignated (20).

Pars. (22) to (27). Pub. L. 105–258, § 102(3), (9), redesignated pars. (24) to (27) as (22) to (25), respectively. Former pars. (22) and (23) redesignated (20) and (21), respectively.

1986—Par. (6)(B). Pub. L. 99–307, § 11(1), inserted provision that ''common carrier'' not include common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker, and defined ''chemical parcel-tanker''.

Par. (18). Pub. L. 99–307, § 11(2), struck out ''; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp'' after ''common carrier''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1703. Agreements within scope of chapter

(a) Ocean common carriers

This chapter applies to agreements by or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to service contracts.

(b) Marine terminal operators

This chapter applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to—

(1) discuss, fix, or regulate rates or other conditions of service; or

(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

(c) Acquisitions

This chapter does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(Pub. L. 98–237, § 4, Mar. 20, 1984, 98 Stat. 70; Pub. L. 105–258, title I, § 103, Oct. 14, 1998, 112 Stat. 1904.)

AMENDMENTS

1998—Subsec. (a)(5). Pub. L. 105–258, § 103(a)(1), substituted ''operators;'' for ''operators or non-vessel-operating common carriers;''.

Subsec. (a)(6). Pub. L. 105–258, § 103(a)(2), substituted ''or'' for ''and'' at end.

Subsec. (a)(7). Pub. L. 105–258, § 103(a)(3), added par. (7) and struck out former par. (7) which read as follows: ''regulate or prohibit their use of service contracts.''

Subsec. (b). Pub. L. 105–258, § 103(b)(1), struck out ''(to the extent the agreements involve ocean transportation in the foreign commerce of the United States)'' after ''agreements'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–258, § 103(b)(2), substituted ''or'' for ''and'' at end.

Subsec. (b)(2). Pub. L. 105–258, § 103(b)(3), substituted ''arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.'' for ''arrangements.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1704. Agreements

(a) Filing requirements

A true copy of every agreement entered into with respect to an activity described in section 1703(a) or (b) of this Appendix shall be filed with the Commission, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. In the case of an oral agreement, a complete memorandum specifying in detail the substance of the agreement shall be filed. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

(b) Conference agreements

Each conference agreement must—

(1) state its purpose;

(2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 1709(c)(1) or (3) of this Appendix;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes, and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and that, except for exempt commodities not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item;

(c) Ocean common carrier agreements

An ocean common carrier agreement may not—

(1) prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with 1 or more shippers;

(2) require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required to be published under section 1707(c)(3) of this Appendix; or

(3) adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into service contracts.

An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. These guidelines shall be confidentially submitted to the Commission.

(d) Interconference agreements

Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(e) Assessment agreements

Assessment agreements shall be filed with the Commission and become effective on filing. The Commission shall thereafter, upon complaint filed within 2 years of the date of the agreement, disapprove, cancel, or modify any such agreement, or charge or assessment pursuant thereto, that it finds, after notice and hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in any such proceeding within 1 year of the date of filing of the complaint. To the extent that an assessment or charge is found in the proceeding to be unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall remedy the unjust discrimination or unfairness for the period of time between the filing of the complaint and the final decision by means of assessment adjustments. These adjustments shall be implemented by prospective credits or debits to future assessments or charges, except in the case of a complainant who has ceased activities subject to the assessment or charge, in which case reparation may be awarded. Except for this subsection and section 1706(a) of this Appendix, this chapter does not apply to assessment agreements.

(f) Maritime labor agreements

This chapter does not apply to maritime labor agreements. This subsection does not exempt from this chapter any rates, charges, regulations, or practices of a common carrier that are required to be set forth in a tariff or are essential terms of a service contract, whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

(g) Vessel sharing agreements

An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a United States-flag liner vessel documented pursuant to sections[1] 12102(a) or (d) of title 46 is authorized to agree with an ocean common carrier that is not the owner, operator or bareboat charterer for at least 1 year of United States-flag liner vessels which are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program pursuant to subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.), to which it charters or subcharters the United States-flag vessel or space on the United States-flag vessel that such charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for United States-flag vessels.

(Pub. L. 98–237, § 5, Mar. 20, 1984, 98 Stat. 70; Pub. L. 98–595, § 3(b)(1), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 104–88, title III, § 335(c)(2), Dec. 29, 1995, 109 Stat. 954; Pub. L. 105–258, title I, § 104, Oct. 14, 1998, 112 Stat. 1904; Pub. L. 105–383, title IV, § 424(a), Nov. 13, 1998, 112 Stat. 3440.)

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (g), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Subtitle B of title VI of the Act is classified generally to part B (§ 1187 et seq.) of subchapter VI of chapter 27 of this Appendix. For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

AMENDMENTS

1998—Subsec. (b)(8). Pub. L. 105–258, § 104(a)(1), added par. (8) and struck out former par. (8) which read as follows: "provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 1707(a) of this Appendix upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item."

Subsec. (c). Pub. L. 105–258, § 104(a)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 105–258, § 104(a)(2), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–258, § 104(a)(2), (b)(1), redesignated former subsec. (d) as (e) and substituted "this chapter does" for "this chapter, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, do". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–258, § 104(b)(2)(C), inserted "or are essential terms of a service contract" after "tariff".

Pub. L. 105–258, § 104(b)(2)(B), which directed amendment of subsec. (f) by striking out "or the Shipping Act, 1916," was executed by striking out "or the Shipping Act, 1916" before "any rates, charges", to reflect the probable intent of Congress.

Pub. L. 105–258, § 104(b)(2)(A), which directed amendment of subsec. (f) by substituting "does" for "and the Shipping Act, 1916, do", was executed by making the substitution for "and the Shipping Act, 1916 do" after "This chapter", to reflect the probable intent of Congress.

Pub. L. 105–258, § 104(a)(2), redesignated subsec. (e) as (f).

Subsec. (g). Pub. L. 105–383 added subsec. (g).

1995—Subsec. (e). Pub. L. 104–88 substituted "This chapter and the Shipping Act 1916" for "This chapter, the Shipping Act, 1916 [46 App. U.S.C. 801 et seq.], and the Intercoastal Shipping Act, 1933," and "this chapter or the Shipping Act, 1916" for "this chapter, the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933,".

1984—Subsec. (a). Pub. L. 98–595 substituted "section 1703(a) or (b) of this Appendix" for "section 1703 of this Appendix".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

[1] So in original. Probably should be "section".

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

AUTHORITY OR EFFECTIVENESS OF ORDERS

Pub. L. 105–383, title IV, § 424(c), Nov. 13, 1998, 112 Stat. 3441, provided that: ''Nothing in this section [amending this section and sections 1702 and 1709 of this Appendix] shall affect or in any way diminish the authority or effectiveness of orders issued by the Maritime Administration pursuant to sections 9 and 41 of the Shipping Act, 1916 (46 U.S.C. App. 808 and 839).''

§ 1705. Action on agreements

(a) Notice

Within 7 days after an agreement is filed, the Commission shall transmit a notice of its filing to the Federal Register for publication.

(b) Review standard

The Commission shall reject any agreement filed under section 1704(a) of this Appendix that, after preliminary review, it finds does not meet the requirements of section 1704 of this Appendix. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement.

(c) Review and effective date

Unless rejected by the Commission under subsection (b) of this section, agreements, other than assessment agreements, shall become effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever day is later; or

(2) if additional information or documentary material is requested under subsection (d) of this section, on the 45th day after the Commission receives—

(A) all the additional information and documentary material requested; or

(B) if the request is not fully complied with, the information and documentary material submitted and a statement of the reasons for noncompliance with the request. The period specified in paragraph (2) may be extended only by the United States District Court for the District of Columbia upon an application of the Commission under subsection (i) of this section.

(d) Additional information

Before the expiration of the period specified in subsection (c)(1) of this section, the Commission may request from the person filing the agreement any additional information and documentary material it deems necessary to make the determinations required by this section.

(e) Request for expedited approval

The Commission may, upon request of the filing party, shorten the review period specified in subsection (c) of this section, but in no event to a date less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(f) Term of agreements

The Commission may not limit the effectiveness of an agreement to a fixed term.

(g) Substantially anticompetitive agreements

If, at any time after the filing or effective date of an agreement, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h) of this section.

(h) Injunctive relief

The Commission may, upon making the determination specified in subsection (g) of this section, bring suit in the United States District Court for the District of Columbia to enjoin operation of the agreement. The court may issue a temporary restraining order or preliminary injunction and, upon a showing that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, may enter a permanent injunction. In a suit under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene with respect to a claim under this subsection.

(i) Compliance with informational needs

If a person filing an agreement, or an officer, director, partner, agent, or employee thereof, fails substantially to comply with a request for the submission of additional information or documentary material within the period specified in subsection (c) of this section, the United States District Court for the District of Columbia, at the request of the Commission—

(1) may order compliance;

(2) shall extend the period specified in subsection (c)(2) of this section until there has been substantial compliance; and

(3) may grant such other equitable relief as the court in its discretion determines necessary or appropriate.

(j) Nondisclosure of submitted material

Except for an agreement filed under section 1704 of this Appendix, information and documentary material filed with the Commission under section 1704 of this Appendix or this section is exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial action or proceeding. This section does not prevent disclosure to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(k) Representation

Upon notice to the Attorney General, the Commission may represent itself in district court proceedings under subsections (h) and (i) of this section and section 1710(h) of this Appendix. With the approval of the Attorney General, the Commission may represent itself in proceedings in the United States Courts of Appeal under subsections (h) and (i) of this section and section 1710(h) of this Appendix.

(Pub. L. 98–237, § 6, Mar. 20, 1984, 98 Stat. 72.)

§ 1706. Exemption from antitrust laws

(a) In general

The antitrust laws do not apply to—

(1) any agreement that has been filed under section 1704 of this Appendix and is effective under section 1704(d)[1] or section 1705 of this Appendix or is exempt under section 1715 of this Appendix from any requirement of this chapter;

(2) any activity or agreement within the scope of this chapter, whether permitted under or prohibited by this chapter, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place, or (B) it is exempt under section 1715 of this Appendix from any filing or publication requirement of this chapter;

(3) any agreement or activity that relates to transportation services within or between foreign countries, whether or not via the United States, unless that agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(4) any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(5) any agreement or activity to provide or furnish wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(6) subject to section 1719(e)(2) of this Appendix, any agreement, modification, or cancellation approved by the Commission before the effective date of this chapter under section 15[1] of the Shipping Act, 1916, or permitted under section 14b[1] thereof, and any properly published tariff, rate, fare, or charge, classification, rule, or regulation explanatory thereof implementing that argeement,[2] modification, or cancellation.

(b) Exceptions

This chapter does not extend antitrust immunity—

(1) to any agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this chapter with respect to transportation within the United States;

(2) to any discussion or agreement among common carriers that are subject to this chapter regarding the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) to any agreement among common carriers subject to this chapter to establish, operate, or maintain a marine terminal in the United States; or

(4) to any loyalty contract.

(c) Limitations

(1) Any determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws set forth in subsection (a) of this section shall not remove or alter the antitrust immunity for the period before the determination.

(2) No person may recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this chapter.

(Pub. L. 98–237, § 7, Mar. 20, 1984, 98 Stat. 73; Pub. L. 105–258, title I, § 105, Oct. 14, 1998, 112 Stat. 1905.)

REFERENCES IN TEXT

Section 1704(d) of this Appendix, referred to in subsec. (a)(1), was redesignated section 1704(e) of this Appendix by Pub. L. 105–258, title I, § 104(a)(2), Oct. 14, 1998, 112 Stat. 1904.

For the effective date of this chapter, referred to in subsec. (a)(6), as 90 days after Mar. 20, 1984, see section 21 of Pub. L. 98–237, formerly set out as an Effective Date note under section 1701 of this Appendix.

Section 15 of the Shipping Act, 1916, referred to in subsec. (a)(6), which was classified to section 814 of this Appendix, was repealed by Pub. L. 104–88, title III, § 335(b)(3), Dec. 29, 1996, 109 Stat. 954.

Section 14b of the Shipping Act, 1916, referred to in subsec. (a)(6), which was classified to section 813a of former Title 46, Shipping, was repealed by Pub. L. 98–237, § 20(a), Mar. 20, 1984, 98 Stat. 88.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–258, § 105(1), inserted ''or publication'' after ''filing''.

Subsec. (b)(4). Pub. L. 105–258, § 105(2)–(4), added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1707. Tariffs

(a) In general

(1) Except with regard to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, and paper waste, each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, common carriers shall not be required to state separately or otherwise reveal in tariffs the inland divisions of a through rate. Tariffs shall—

(A) state the places between which cargo will be carried;

(B) list each classification of cargo in use;

(C) state the level of ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix, compensation, if any, by a carrier or conference;

(D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges;

(E) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(F) include copies of any loyalty contract, omitting the shipper's name.

(2) Tariffs shall be made available electronically to any person, without time, quantity, or

[1] See References in Text note below.

[2] So in original. Probably should be ''agreement,''.

other limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access. No charge may be assessed a Federal agency for such access.

(b) Time-volume rates

Rates shown in tariffs filed under subsection (a) of this section may vary with the volume of cargo offered over a specified period of time.

(c) Service contracts

(1) In general

An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this chapter. The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. In no case may the contract dispute resolution forum be controlled by or in any way affiliated with a controlled carrier as defined in section 1702(8) of this Appendix, or by the government which owns or controls the carrier.

(2) Filing requirements

Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract entered into under this subsection by an individual ocean common carrier or an agreement shall be filed confidentially with the Commission. Each service contract shall include the following essential terms—

(A) the origin and destination port ranges;

(B) the origin and destination geographic areas in the case of through intermodal movements;

(C) the commodity or commodities involved;

(D) the minimum volume or portion;

(E) the line-haul rate;

(F) the duration;

(G) service commitments; and

(H) the liquidated damages for nonperformance, if any.

(3) Publication of certain terms

When a service contract is filed confidentially with the Commission, a concise statement of the essential terms described in paragraphs 2(A),[1] (C), (D), and (F) shall be published and made available to the general public in tariff format.

(4) Disclosure of certain terms

(A) An ocean common carrier, which is a party to or is subject to the provisions of a collective bargaining agreement with a labor organization, shall, in response to a written request by such labor organization, state whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transportation under a service contract described in paragraph (1) of this subsection—

(i) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area;

(ii) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(iii) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; and

(iv) the assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(B) The common carrier shall provide the information described in subparagraph (A) of this paragraph to the requesting labor organization within a reasonable period of time.

(C) This paragraph requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act [29 U.S.C. 151 et seq.], and without reference to this paragraph.

(D) Nothing in this paragraph shall have any effect on the lawfulness or unlawfulness under this chapter, the National Labor Relations Act [29 U.S.C. 151 et seq.], the Taft-Hartley Act [29 U.S.C. 141 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], the antitrust laws, or any other Federal or State law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under this subsection.

(E) For purposes of this paragraph the terms ''dock area'' and ''within the port area'' shall have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(d) Tariff rates

No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 calendar days after publication. The Commission, for good cause, may allow such a new or initial rate or change to become effective in less than 30 calendar days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication.

(e) Refunds

The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

[1] So in original. Probably should be ''(2)(A),''.

(1) there is an error in a,[2] in failing to publish a new tariff, or an error in quoting a tariff, and the refund will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference has, prior to filing an application for authority to make a refund for an error in a tariff or a failure to publish a tariff, published a new tariff that sets forth the rate on which the refund or waiver would be based; and

(3) the application for refund or waiver is filed with the Commission within 180 days from the date of shipment.

(f) Marine terminal operator schedules

A marine terminal operator may make available to the public, subject to section 1709(d) of this Appendix, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) Regulations

The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission may, after periodic review, prohibit the use of any automated tariff system that fails to meet the requirements established under this section. The Commission may not require a common carrier to provide a remote terminal for access under subsection (a)(2) of this section. The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

(Pub. L. 98–237, § 8, Mar. 20, 1984, 98 Stat. 74; Pub. L. 105–258, title I, § 106, Oct. 14, 1998, 112 Stat. 1905.)

REFERENCES IN TEXT

The National Labor Relations Act, referred to in subsec. (c)(4)(C), (D), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Taft-Hartley Act, also known as the Labor Management Relations Act, 1947, referred to in subsec. (c)(4)(D), is act June 23, 1947, ch. 120, 61 Stat. 136, as amended, which is classified principally to chapter 7 (§ 141 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 141 of Title 29 and Tables.

The Federal Trade Commission Act, referred to in subsec. (c)(4)(D), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–258, § 106(a)(1)–(4), in introductory provisions, in first sentence, inserted ''new assembled motor vehicles,'' after ''scrap,'', struck out ''file with the Commission, and'' after ''conference shall'', and substituted ''inspection in an automated tariff system,'' for ''inspection,'', and in second sentence, substituted ''tariffs'' for ''tariff filings''.

Subsec. (a)(1)(C). Pub. L. 105–258, § 106(a)(5), substituted ''transportation intermediary, as defined in section 1702(17)(A) of this Appendix,'' for ''freight forwarder''.

Subsec. (a)(1)(E). Pub. L. 105–258, § 106(a)(7), struck out ''loyalty contract,'' before ''bill of lading''.

Subsec. (a)(1)(F). Pub. L. 105–258, § 106(a)(6), (8), (9), added subpar. (F).

Subsec. (a)(2). Pub. L. 105–258, § 106(a)(10), added par. (2) and struck out former par. (2) which read as follows: ''Copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them.''

Subsec. (c). Pub. L. 105–258, § 106(b), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this chapter. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

''(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;

''(2) the commodity or commodities involved;

''(3) the minimum volume;

''(4) the line-haul rate;

''(5) the duration;

''(6) service commitments; and

''(7) the liquidated damages for nonperformance, if any.

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.''

Subsec. (d). Pub. L. 105–258, § 106(c), substituted ''Tariff rates'' for ''Rates'' in heading and substituted ''30 calendar days after publication.'' for ''30 days after filing with the Commission.'' in first sentence, inserted ''calendar'' after ''30'' in second sentence, and substituted ''publication.'' for ''publication and filing with the Commission.'' in last sentence.

Subsec. (e)(1). Pub. L. 105–258, § 106(d)(2), which directed amendment of par. (1) by substituting ''publish a new tariff, or an error in quoting a tariff,'' for ''file a new tariff,'' was executed by making the substitution for ''file a new tariff'' after ''in failing to'', to reflect the probable intent of Congress.

Pub. L. 105–258, § 106(d)(1), substituted ''error in a,'' for ''error in a tariff of a clerical or administrative nature or an error due to inadvertence''.

Subsec. (e)(2). Pub. L. 105–258, § 106(d)(3), (4), substituted ''refund for an error in a tariff or a failure to publish a tariff, published a new tariff'' for ''refund, filed a new tariff with the Commission'' and inserted ''and'' at end.

Subsec. (e)(3), (4). Pub. L. 105–258, § 106(d)(5), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''the common carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require that give notice of the rate on which the refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; and''.

Subsec. (f). Pub. L. 105–258, § 106(e), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The Commission may by regula-

[2] So in original.

tion prescribe the form and manner in which the tariffs required by this section shall be published and filed. The Commission may reject a tariff that is not filed in conformity with this section and its regulations. Upon rejection by the Commission, the tariff is void and its use is unlawful.''

Subsec. (g). Pub. L. 105–258, § 106(f), added subsec. (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1708. Controlled carriers

(a) Controlled carrier rates

No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts, or charge or assess rates, that are below a level that is just and reasonable, nor may any such carrier establish[1] maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, prohibit the publication or use of any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations that have been suspended or prohibited by the Commission are void and their use is unlawful.

(b) Rate standards

For the purpose of this section, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs. For purposes of the preceding sentence, the term ''constructive costs'' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. The Commission may also take into account other appropriate factors, including but not limited to, whether—

(1) the rates, charges, classifications, rules, or regulations are the same as or similar to those published or assessed or assessed[2] by other carriers in the same trade;

(2) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or

(3) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

[1] So in original. Probably should be followed by a comma.

[2] So in original.

(c) Effective date of rates

Notwithstanding section 1707(d) of this Appendix and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication. Each controlled carrier shall, upon the request of the Commission, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(d) Prohibition of rates

Within 120 days after the receipt of information requested by the Commission under this section, the Commission shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be prohibited. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend the rates, charges, classifications, rules, or regulations at any time before their effective date. In the case of rates, charges, classifications, rules, or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules, or regulations on not less than 30 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected controlled carrier may publish new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations—except that the Commission may reject the new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

(e) Presidential review

Concurrently with the publication thereof, the Commission shall transmit to the President each order of suspension or final order of prohibition of rates, charges, classifications, rules, or regulations of a controlled carrier subject to this section. Within 10 days after the receipt or the effective date of the Commission order, the President may request the Commission in writing to stay the effect of the Commission's order if the President finds that the stay is required for reasons of national defense or foreign policy, which reasons shall be specified in the report. Notwithstanding any other law, the Commission shall immediately grant the request by the

issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(f) Exceptions

This section does not apply to—

(1) a controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served exclusively by controlled carriers.

(Pub. L. 98–237, § 9, Mar. 20, 1984, 98 Stat. 76; Pub. L. 102–100, § 5, Aug. 17, 1991, 105 Stat. 492; Pub. L. 105–258, title I, § 108, Oct. 14, 1998, 112 Stat. 1908.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–258, § 108(1)–(4), substituted ''service contracts, or charge or assess rates,'' for ''service contracts filed with the Commission'' and ''maintain, or enforce'' for ''or maintain'' in first sentence, ''prohibit the publication or use of'' for ''disapprove'' in third sentence, and ''that have been suspended or prohibited by the Commission'' for ''filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission'' in last sentence.

Subsec. (b). Pub. L. 105–258, § 108(5), substituted ''shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs. For purposes of the preceding sentence, the term 'constructive costs' means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. The Commission may also take into account other appropriate factors, including but not limited to, whether—'' for ''may take into account appropriate factors including, but not limited to, whether—'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–258, § 108(6), (7), redesignated par. (2) as (1), substituted ''published or assessed'' for ''filed'', and struck out former par. (1) which read as follows: ''the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade;''.

Subsec. (b)(2) to (4). Pub. L. 105–258, § 108(6), redesignated pars. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 105–258, § 108(8), substituted ''publication.'' for ''filing with the Commission.'' in first sentence.

Subsec. (d). Pub. L. 105–258, § 108(9)–(15), substituted ''Prohibition'' for ''Disapproval'' in heading, inserted first sentence to read as follows: ''Within 120 days after the receipt of information requested by the Commission under this section, the Commission shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable.'', substituted ''published or assessed'' for ''filed'', ''shall issue'' for ''may issue'', and ''prohibited.'' for ''disapproved.'' in second sentence, substituted ''30'' for ''60'' in fourth sentence, and in last sentence inserted ''controlled'' after ''affected'' and substituted ''publish'' for ''file''.

Subsec. (e). Pub. L. 105–258, § 108(16), substituted ''prohibition'' for ''disapproval'' in first sentence.

Subsec. (f)(1). Pub. L. 105–258, § 108(17), inserted ''or'' at end.

Subsec. (f)(2) to (5). Pub. L. 105–258, § 108(18), (19), redesignated par. (5) as (2) and struck out former pars. (2) to (4) which read as follows:

''(2) a controlled carrier of a state which, on the effective date of this section, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

''(3) rates, charges, classifications, rules, or regulations of a controlled carrier in any particular trade that are covered by an agreement effective under section 1705 of this Appendix, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection;

''(4) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein and the United States; or''.

1991—Subsec. (a). Pub. L. 102–100, § 5(a), inserted ''or service contracts'' after ''tariffs'' in two places.

Subsec. (c). Pub. L. 102–100, § 5(b), inserted ''and except for service contracts'' after ''Notwithstanding section 1707(d) of this Appendix''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1709. Prohibited acts

(a) In general

No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable;

(2) operate under an agreement required to be filed under section 1704 of this Appendix that has not become effective under section 1705 of this Appendix, or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 1704 of this Appendix except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

(b) Common carriers

No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means;

(2) provide service in the liner trade that—

(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under section 1707 of this Appendix unless excepted or exempted under section 1707(a)(1) or 1715 of this Appendix; or

(B) is under a tariff or service contract which has been suspended or prohibited by

the Commission under section 1708 of this Appendix or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a);

(3) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

(D) the loading and landing of freight; or

(E) the adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

(6) use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

(7) offer or pay any deferred rebates;

(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 1707 and 1718 of this Appendix;

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 1707 and 1718 of this Appendix, or with an affiliate of such ocean transportation intermediary; or

(13) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

(A) may be used to the detriment or prejudice of the shipper or consignee;

(B) may improperly disclose its business transaction to a competitor; or

(C) may be used to the detriment or prejudice of any common carrier.

Nothing in paragraph (13) shall be construed to prevent providing such information, in response to legal process, to the United States, the Commission, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this chapter. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this chapter, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or for the purpose of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this chapter or any other Act is prohibited.

(c) Concerted action

No conference or group of two or more common carriers may—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a nonocean carrier or group of nonocean carriers (for example, truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this chapter: *Provided*, That this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or an association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean transportation intermediary, as defined by section 1702(17)(A) of this Appendix, or limit that compensation to less than a reasonable amount;

(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as authorized by section 1704(g) of this Appendix, or as otherwise required by the law of the United States or the importing or exporting country, or as agreed to by a shipper in a service contract;

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries;

(d) Common carriers, ocean transportation intermediaries, and marine terminal operators

(1) No common carrier, ocean transportation intermediary, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, any common carrier or ocean tramp.

(3) The prohibitions in subsections (b)(10) and (13) of this section apply to marine terminal operators.

(4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

(5) The prohibition in subsection (b)(13) of this section applies to ocean transportation intermediaries, as defined by section 1702(17)(A) of this Appendix.

(e) Joint ventures

For purposes of this section, a joint venture or consortium of two or more common carriers but operated as a single entity shall be treated as a single common carrier.

(Pub. L. 98–237, § 10, Mar. 20, 1984, 98 Stat. 77; Pub. L. 101–595, title VII, § 710(c), Nov. 16, 1990, 104 Stat. 2997; Pub. L. 102–251, title II, § 201(b), Mar. 9, 1992, 106 Stat. 60; Pub. L. 105–258, title I, § 109, Oct. 14, 1998, 112 Stat. 1909; Pub. L. 105–383, title IV, § 424(b), Nov. 13, 1998, 112 Stat. 3441.)

REFERENCES IN TEXT

The Foreign Shipping Practices Act of 1988, referred to in subsec. (b)(2), is Pub. L. 100–418, title X, subtitle A (§§ 10001–10003), Aug. 23, 1988, 102 Stat. 1570, which enacted section 1710a of this Appendix, amended section 1122b of this Appendix, and enacted provisions set out as a note under section 3302 of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1701 of this Appendix and Tables.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–258, § 109(a)(16), (17), substituted ''paragraph (13)'' for ''paragraph (16)'' and inserted ''the Commission,'' after ''United States,'' in concluding provisions.

Subsec. (b)(1). Pub. L. 105–258, § 109(a)(1), (2), redesignated par. (4) as (1) and struck out former par. (1) which read as follows: ''charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;''.

Subsec. (b)(2). Pub. L. 105–258, § 109(a)(1), (3), added par. (2) and struck out former par. (2) which read as follows: ''rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts;''.

Subsec. (b)(3). Pub. L. 105–258, § 109(a)(1), (4), redesignated par. (5) as (3) and struck out former par. (3) which read as follows: ''extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its tariffs or service contracts;''.

Subsec. (b)(4). Pub. L. 105–258, § 109(a)(5), substituted ''for service pursuant to a tariff,'' for ''except for service contracts,'' in introductory provisions.

Pub. L. 105–258, § 109(a)(4), redesignated par. (6) as (4). Former par. (4) redesignated (1).

Subsec. (b)(4)(A). Pub. L. 105–258, § 109(a)(6), substituted ''rates or charges;'' for ''rates;''.

Subsec. (b)(5). Pub. L. 105–258, § 109(a)(7), added par. (5). Former par. (5) redesignated (3).

Subsec. (b)(6). Pub. L. 105–258, § 109(a)(9), added par. (6) and struck out former par. (6) which read as follows: ''employ any fighting ship;''.

Pub. L. 105–258, § 109(a)(8), redesignated par. (7) as (6). Former par. (6) redesignated (4).

Subsec. (b)(7). Pub. L. 105–258, § 109(a)(8), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (b)(8). Pub. L. 105–258, § 109(a)(10), added par. (8). Former par. (8) redesignated (7).

Subsec. (b)(9), (10). Pub. L. 105–258, § 109(a)(10), added pars. (9) and (10) and struck out former pars. (9) and (10) which read as follows:

''(9) use a loyalty contract, except in conformity with the antitrust laws;

''(10) demand, charge, or collect any rate or charge that is unjustly discriminatory between shippers or ports;''.

Subsec. (b)(11). Pub. L. 105–258, § 109(a)(10)–(13), redesignated par. (14) as (11), substituted ''an ocean transportation intermediary'' for ''a non-vessel-operating common carrier'' and ''sections 1707 and 1718'' for ''sections 1707 and 1721'', and struck out former par. (11) which read as follows: ''except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;''.

Subsec. (b)(12). Pub. L. 105–258, § 109(a)(10)–(15), redesignated par. (15) as (12), substituted ''an ocean transportation intermediary'' for ''a non-vessel-operating common carrier'' in two places, substituted ''sections 1707 and 1718'' for ''sections 1707 and 1721'', struck out ''or in which an ocean transportation intermediary is listed as an affiliate'' before ''that does not'', substituted ''Appendix, or with an affiliate of such ocean transportation intermediary;'' for ''Appendix;'', and struck out former par. (12) which read as follows: ''subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;''.

Subsec. (b)(13). Pub. L. 105–258, § 109(a)(10), (11), redesignated par. (16) as (13) and struck out former par. (13) which read as follows: ''refuse to negotiate with a shippers' association;''.

Subsec. (b)(14) to (16). Pub. L. 105–258, § 109(a)(11), redesignated pars. (14) to (16) as (11) to (13), respectively.

Subsec. (c)(4). Pub. L. 105–258, § 109(b)(1), which directed amendment of subsec. (c)(4) by substituting ''non-ocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this chapter'' for ''non-ocean carriers'', was executed by making the substitution for ''nonocean carriers'' the second place it appeared, to reflect the probable intent of Congress.

Subsec. (c)(5). Pub. L. 105–258, § 109(b)(2), substituted ''transportation intermediary, as defined by section 1702(17)(A) of this Appendix,'' for ''freight forwarder''.

Subsec. (c)(6). Pub. L. 105–383 inserted ''authorized by section 1704(g) of this Appendix, or as'' before ''otherwise''.

Subsec. (c)(7), (8). Pub. L. 105–258, § 109(b)(3)–(5), added pars. (7) and (8).

Subsec. (d). Pub. L. 105–258, § 109(c)(1), substituted ''transportation intermediaries,'' for ''freight forwarders,'' in heading.

Subsec. (d)(1). Pub. L. 105–258, § 109(c)(2), substituted ''transportation intermediary,'' for ''freight forwarder,''.

Subsec. (d)(3). Pub. L. 105–258, § 109(c)(3), which directed amendment of subsec. (d) by substituting ''subsections (b)(10) and (13)'' for ''subsection (b)(11), (12), and (16)'', was executed by making the substitution for ''subsection (b)(11), (12), and (14)'' in par. (3), to reflect the probable intent of Congress.

Subsec. (d)(4), (5). Pub. L. 105–258, § 109(c)(4), added pars. (4) and (5).

1992—Subsec. (b)(14), (15). Pub. L. 102–251 inserted '', insurance, or other surety'' after ''bond''.

1990—Subsec. (b). Pub. L. 101–595 added pars. (14) and (15), redesignated former par. (14) as (16), and substituted ''paragraph (16)'' for ''paragraph (14)'' in penultimate sentence.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 201(f) of Pub. L. 102–251 provided that: ''This section [amending this section and section 1721 of this Appendix and enacting provisions set out as notes under sections 1701 and 1721 of this Appendix] shall become effective 90 days after the date of its enactment [Mar. 9, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 710(e) of Pub. L. 101–595 provided that: ''This section [enacting section 1721 of this Appendix, amending this section, and enacting provisions set out as notes under sections 1701 and 1721 of this Appendix] shall become effective 90 days after the date of its enactment [Nov. 16, 1990].''

§ 1710. Complaints, investigations, reports, and reparations

(a) Filing of complaints

Any person may file with the Commission a sworn complaint alleging a violation of this chapter, other than section 1705(g) of this Appendix, and may seek reparation for any injury caused to the complainant by that violation.

(b) Satisfaction or investigation of complaints

The Commission shall furnish a copy of a complaint filed pursuant to subsection (a) of this section to the person named therein who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Commission shall investigate it in an appropriate manner and make an appropriate order.

(c) Commission investigations

The Commission, upon complaint or upon its own motion, may investigate any conduct or agreement that it believes may be in violation of this chapter. Except in the case of an injunction granted under subsection (h) of this section, each agreement under investigation under this section remains in effect until the Commission issues an order under this subsection. The Commission may by order disapprove, cancel, or modify any agreement filed under section 1704(a) of this Appendix that operates in violation of this chapter. With respect to agreements inconsistent with section 1705(g) of this Appendix, the Commission's sole remedy is under section 1705(h) of this Appendix.

(d) Conduct of investigation

Within 10 days after the initiation of a proceeding under this section, the Commission shall set a date on or before which its final decision will be issued. This date may be extended for good cause by order of the Commission.

(e) Undue delays

If, within the time period specified in subsection (d) of this section, the Commission determines that it is unable to issue a final decision because of undue delays caused by a party to the proceedings, the Commission may impose sanctions, including entering a decision adverse to the delaying party.

(f) Reports

The Commission shall make a written report of every investigation made under this chapter in which a hearing was held stating its conclusions, decisions, findings of fact, and order. A copy of this report shall be furnished to all parties. The Commission shall publish each report for public information, and the published report shall be competent evidence in all courts of the United States.

(g) Reparations

For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this chapter plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section 1709(b)(3) or (6) of this Appendix or section 1709(c)(1) or (3) of this Appendix, or that violates section 1709(a)(2) or (3) of this Appendix, the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by section 1709(b)(4)(A) or (B) of this Appendix, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

(h) Injunction

(1) In connection with any investigation conducted under this section, the Commission may bring suit in a district court of the United States to enjoin conduct in violation of this chapter. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation. Any such suit shall be brought in a district in which the defendant resides or transacts business.

(2) After filing a complaint with the Commission under subsection (a) of this section, the complainant may file suit in a district court of the United States to enjoin conduct in violation of this chapter. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to ex-

ceed 10 days after the Commission has issued an order disposing of the complaint. Any such suit shall be brought in the district in which the defendant has been sued by the Commission under paragraph (1); or, if no suit has been filed, in a district in which the defendant resides or transacts business. A defendant that prevails in a suit under this paragraph shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

(Pub. L. 98–237, § 11, Mar. 20, 1984, 98 Stat. 80; Pub. L. 98–595, § 3(b)(2), Oct. 30, 1984, 98 Stat. 3132; Pub. L. 105–258, title I, § 110, Oct. 14, 1998, 112 Stat. 1911.)

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–258 substituted ''1709(b)(3) or (6)'' for ''1709(b)(5) or (7)'' and ''1709(b)(4)(A) or (B)'' for ''1709(b)(6)(A) or (B)''.

1984—Subsec. (g). Pub. L. 98–595 substituted ''section 1709(c)(1) or (3) of this Appendix'' for ''section 1709(c)(1) or (4) of this Appendix''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1710a. Foreign laws and practices

(a) Definitions

For purposes of this section—

(1) ''common carrier'', ''marine terminal operator'', ''ocean transportation intermediary'', ''ocean common carrier'', ''person'', ''shipper'', ''shippers' association'', and ''United States'' have the meanings given each such term, respectively, in section 1702 of this Appendix;

(2) ''foreign carrier'' means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) ''maritime services'' means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) ''maritime-related services'' means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(5) ''United States carrier'' means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) ''United States oceanborne trade'' means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) Authority to conduct investigations

The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(c) Investigations

(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

(d) Information requests

(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

(e) Action against foreign carriers

(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs and service contracts, including the right of an ocean common carrier to use any or all tariffs and service contracts of con-

ferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed $1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) Actions upon request of Commission

Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 91 of this Appendix to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) Report

The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) Administration and enforcement of other laws

The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 1712(b)(6) of this Appendix or section 876(1)(b)[1] of this Appendix.

(i) Review of rules, regulations, and final orders of Commission; exclusive procedure

Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28.

(Pub. L. 100–418, title X, § 10002, Aug. 23, 1988, 102 Stat. 1570; Pub. L. 105–258, title I, § 111, Oct. 14, 1998, 112 Stat. 1911.)

REFERENCES IN TEXT

Section 876(1)(b) of this Appendix, referred to in subsec. (h), was redesignated section 876(a)(2) of this Appendix by Pub. L. 105–258, title III, § 301(b)(1), (2), Oct. 14, 1998, 112 Stat. 1915, 1916.

CODIFICATION

This section was enacted as part of the Foreign Shipping Practices Act of 1988 and also as part of the Omnibus Trade and Competitiveness Act of 1988, and not as part of the Shipping Act of 1984 which comprises this chapter.

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–258, § 111(1), substituted "'ocean transportation intermediary'," for "'non-vessel-operating common carrier'.".

Subsec. (a)(4). Pub. L. 105–258, § 111(2), (3), struck out "forwarding and" before "agency services" and substituted "ocean transportation intermediary services and" for "non-vessel-operating common carrier".

Subsecs. (c)(1), (d)(1). Pub. L. 105–258, § 111(4), substituted "transportation intermediary," for "freight forwarder,".

Subsec. (e)(1)(B). Pub. L. 105–258, § 111(5), (6), substituted "and service contracts," for "filed with the Commission," and inserted "and service contracts" before "of conferences".

Subsec. (h). Pub. L. 105–258, § 111(7), substituted "(b)(6)" for "(b)(5)".

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1711. Subpenas and discovery

(a) In general

In investigations and adjudicatory proceedings under this chapter—

(1) depositions, written interrogatories, and discovery procedures may be utilized by any party under rules and regulations issued by the Commission that, to the extent practicable, shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States; and

[1] See References in Text note below.

(2) the Commission may by subpena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

(b) Witness fees

Witnesses shall, unless otherwise prohibited by law, be entitled to the same fees and mileage as in the courts of the United States.

(Pub. L. 98–237, § 12, Mar. 20, 1984, 98 Stat. 81.)

§ 1712. Penalties

(a) Assessment of penalty

Whoever violates a provision of this chapter, a regulation issued thereunder, or a Commission order is liable to the United States for a civil penalty. The amount of the civil penalty, unless otherwise provided in this chapter, may not exceed $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.

(b) Additional penalties

(1) For a violation of section 1709(b)(1), (2), or (7) of this Appendix, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(2) For failure to supply information ordered to be produced or compelled by subpena under section 1711 of this Appendix, the Commission may, after notice and an opportunity for hearing, suspend any or all tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member.

(3) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or after its right to utilize that tariff has been suspended is subject to a civil penalty of not more than $50,000 for each shipment.

(4) If the Commission finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 1711 of this Appendix, the Commission may request that the Secretary of the Treasury refuse or revoke any clearance required for a vessel operated by that common carrier. Upon request by the Commission, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 91 of this Appendix.

(5) If, in defense of its failure to comply with a subpena or discovery order, a common carrier alleges that documents or information located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. Upon receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

(6) If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including the imposition of any of the penalties authorized under paragraphs (1), (2), (3), and (4) of this subsection.

(7) Before an order under this subsection becomes effective, it shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove the order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) Assessment procedures

Until a matter is referred to the Attorney General, the Commission may, after notice and an opportunity for hearing, assess each civil penalty provided for in this chapter. In determining the amount of the penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. The Commission may compromise, modify, or remit, with or without conditions, any civil penalty.

(d) Review of civil penalty

A person against whom a civil penalty is assessed under this section may obtain review thereof under chapter 158 of title 28.

(e) Failure to pay assessment

If a person fails to pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to recover the amount assessed in an appropriate district court of the United States. In such an action, the court shall enforce the Commission's order unless it finds that the order was not regularly made or duly issued.

(f) Limitations

(1) No penalty may be imposed on any person for conspiracy to violate section 1709(a)(1), (b)(1), or (b)(2) of this Appendix, or to defraud the Commission by concealment of such a violation. Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.

(2) Each proceeding to assess a civil penalty under this section shall be commenced within 5 years from the date the violation occurred.

(Pub. L. 98–237, § 13, Mar. 20, 1984, 98 Stat. 82; Pub. L. 105–258, title I, § 112, Oct. 14, 1998, 112 Stat. 1911.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–258, § 112(a), inserted at end ''The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.''

Subsec. (b)(1). Pub. L. 105–258, § 112(b)(1), substituted ''section 1709(b)(1), (2), or (7)'' for ''section 1709(b)(1), (2), (3), (4), or (8)''.

Subsec. (b)(4). Pub. L. 105–258, § 112(b)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 105–258, § 112(b)(2), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6). Pub. L. 105–258, § 112(b)(2), (4), redesignated par. (5) as (6) and substituted ''paragraphs (1), (2), (3), and (4)'' for ''paragraphs (1), (2), and (3)''. Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 105–258, § 112(b)(2), redesignated par. (6) as (7).

Subsec. (f)(1). Pub. L. 105–258, § 112(c)(3), inserted at end ''Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.''

Pub. L. 105–258, § 112(c)(2), which directed that ''(b)(1), (2)'' be substituted for ''(b)(1), (4)'', could not be executed, because ''(b)(1), (4)'' does not appear in text.

Pub. L. 105–258, § 112(c)(1), substituted ''or (b)(2)'' for ''or (b)(4)''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1713. Commission orders

(a) In general

Orders of the Commission relating to a violation of this chapter or a regulation issued thereunder shall be made, upon sworn complaint or on its own motion, only after opportunity for hearing. Each order of the Commission shall continue in force for the period of time specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(b) Reversal or suspension of orders

The Commission may reverse, suspend, or modify any order made by it, and upon application of any party to a proceeding may grant a rehearing of the same or any matter determined therein. No rehearing may, except by special order of the Commission, operate as a stay of that order.

(c) Enforcement of nonreparation orders

In case of violation of an order of the Commission, or for failure to comply with a Commission subpena, the Attorney General, at the request of the Commission, or any party injured by the violation, may seek enforcement by a United States district court having jurisdiction over the parties. If, after hearing, the court determines that the order was properly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(d) Enforcement of reparation orders

(1) In case of violation of an order of the Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a United States district court having jurisdiction of the parties.

(2) In a United States district court the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor for the costs of any subsequent stage of the proceedings, unless they accrue upon his appeal. A petitioner in a United States district court who prevails shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

(3) All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in the order may be joined as defendants, in a single suit in a district in which any one plaintiff could maintain a suit against any one defendant. Service of process against a defendant not found in that district may be made in a district in which is located any office of, or point of call on a regular route operated by, that defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

(e) Statute of limitations

An action seeking enforcement of a Commission order must be filed within 3 years after the date of the violation of the order.

(Pub. L. 98–237, § 14, Mar. 20, 1984, 98 Stat. 83.)

§ 1714. Reports

The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Conference minutes required to be filed with the Commission under this section shall not be released to third parties or published by the Commission.

(Pub. L. 98–237, § 15, Mar. 20, 1984, 98 Stat. 84; Pub. L. 98–595, § 3(b)(3), Oct. 30, 1984, 98 Stat. 3133; Pub. L. 105–258, title I, § 113, Oct. 14, 1998, 112 Stat. 1912.)

AMENDMENTS

1998—Pub. L. 105–258 struck out ''and certificates'' after ''Reports'' in section catchline, struck out ''(a) Reports'' before ''The Commission'', and struck out heading and text of subsec. (b). Text read as follows: ''The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

''(1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provisions of this chapter;

''(2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;

''(3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and

''(4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues.''

1984—Subsec. (b). Pub. L. 98–595 substituted ''Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for'' for ''Failure to file a certificate shall result in'' before ''a civil penalty''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1715. Exemptions

The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this chapter or any specified activity of those persons from any requirement of this chapter if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(Pub. L. 98–237, § 16, Mar. 20, 1984, 98 Stat. 84; Pub. L. 105–258, title I, § 114, Oct. 14, 1998, 112 Stat. 1912.)

AMENDMENTS

1998—Pub. L. 105–258 substituted ''result in substantial reduction in competition or be detrimental to commerce.'' for ''substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1716. Regulations

(a) The Commission may prescribe rules and regulations as necessary to carry out this chapter.

(b) The Commission may prescribe interim rules and regulations necessary to carry out this chapter. For this purpose, the Commission is excepted from compliance with the notice and comment requirements of section 553 of title 5. All rules and regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after March 20, 1984.

(Pub. L. 98–237, § 17, Mar. 20, 1984, 98 Stat. 84.)

REGULATIONS

Pub. L. 105–258, title II, § 203, Oct. 14, 1998, 112 Stat. 1915, provided that: ''Not later than March 1, 1999, the Federal Maritime Commission shall prescribe final regulations to implement the changes made by this Act [see Tables for classification].''

§ 1718. Ocean transportation intermediaries

(a) License

No person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission. The Commission shall issue an intermediary's license to any person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) Financial responsibility

(1) No person may act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

(2) A bond, insurance, or other surety obtained pursuant to this section—

(A) shall be available to pay any order for reparation issued pursuant to section 1710 or 1713 of this Appendix, or any penalty assessed pursuant to section 1712 of this Appendix;

(B) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities described in section 1702(17) of this Appendix with the consent of the insured ocean transportation intermediary and subject to review by the surety company, or when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(C) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities under section 1702(17) of this Appendix, provided the claimant has first attempted to resolve the claim pursuant to subparagraph (B) of this paragraph and the claim has not been resolved within a reasonable period of time.

(3) The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(4) An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(c) Suspension or revocation

The Commission shall, after notice and hearing, suspend of[1] revoke a license if it finds that the ocean transportation intermediary is not

[1] So in original. Probably should be ''or''.

qualified to render intermediary services or that it willfully failed to comply with a provision of this chapter or with a lawful order, rule, or regulation of the Commission. The Commission may also revoke an intermediary's license for failure to maintain a bond, proof of insurance, or other surety in accordance with subsection (b)(1) of this section.

(d) Exception

A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without a license.

(e) Compensation of intermediaries by carriers

(1) A common carrier may compensate an ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix, in connection with a shipment dispatched on behalf of others only when the ocean transportation intermediary has certified in writing that it holds a valid license, if required by subsection (a) of this section, and has performed the following services:

(A) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space.

(B) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(2) No common carrier may pay compensation for services described in paragraph (1) more than once on the same shipment.

(3) No ocean transportation intermediary may receive compensation from a common carrier with respect to a shipment in which the intermediary has a direct or indirect beneficial interest nor shall a common carrier knowingly pay compensation on that shipment.

(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix, may—

(A) deny to any member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean transportation intermediary, as so defined; or

(B) agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a tariff and which are assessed against the cargo on which the intermediary services are provided.

(Pub. L. 98–237, § 19, Mar. 20, 1984, 98 Stat. 87; Pub. L. 105–258, title I, § 116, Oct. 14, 1998, 112 Stat. 1912.)

AMENDMENTS

1998—Pub. L. 105–258, § 116(1), substituted ''transportation intermediaries'' for ''freight forwarders'' in section catchline.

Subsec. (a). Pub. L. 105–258, § 116(2), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''No person may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that—

''(1) the Commission determines to be qualified by experience and character to render forwarding services; and

''(2) furnishes a bond in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.''

Subsec. (b). Pub. L. 105–258, § 116(4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–258, § 116(6), substituted ''a bond, proof of insurance, or other surety in accordance with subsection (b)(1) of this section.'' for ''a bond in accordance with subsection (a)(2) of this section.''

Pub. L. 105–258, § 116(5)(D), substituted ''intermediary services'' for ''forwarding services'' in first sentence.

Pub. L. 105–258, § 116(5)(B), substituted ''an intermediary's'' for ''a forwarder's'' in second sentence.

Pub. L. 105–258, § 116(5)(A), substituted ''transportation intermediary'' for ''freight forwarder'' in first sentence.

Pub. L. 105–258, § 116(3), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–258, § 116(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–258, § 116(3), (7), redesignated subsec. (d) as (e) and substituted ''intermediaries'' for ''forwarders'' in heading.

Subsec. (e)(1). Pub. L. 105–258, § 116(9), substituted ''license, if required by subsection (a) of this section,'' for ''license'' in introductory provisions.

Pub. L. 105–258, § 116(8), substituted ''an ocean transportation intermediary, as defined in section 1702(17)(A) of this Appendix,'' for ''an ocean transportation intermediary'' in introductory provisions.

Pub. L. 105–258, § 116(5)(A), substituted ''transportation intermediary'' for ''freight forwarder'' in two places in introductory provisions.

Subsec. (e)(3). Pub. L. 105–258, § 116(10), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''No compensation may be paid to an ocean transportation intermediary except in accordance with the tariff requirements of this chapter.''

Pub. L. 105–258, § 116(5)(A), substituted ''transportation intermediary'' for ''freight forwarder''.

Subsec. (e)(4). Pub. L. 105–258, § 116(11), added par. (4). Former par. (4) redesignated (3).

Pub. L. 105–258, § 116(5)(C), substituted ''intermediary has'' for ''forwarder has''.

Pub. L. 105–258, § 116(5)(A), substituted ''transportation intermediary'' for ''freight forwarder''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

§ 1719. Contracts, agreements, and licenses under prior shipping legislation

(a) to (c) Omitted

(d) Effects on certain agreements and contracts

All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916, or the Shipping Act of 1984, shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998, and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.

(e) Savings provisions

(1) Each service contract entered into by a shipper and an ocean common carrier or conference before March 20, 1984, may remain in full

force and effect and need not comply with the requirements of section 1707(c) of this Appendix until 15 months after March 20, 1984.

(2) This Act and the amendments made by it shall not affect any suit—

(A) filed before March 20, 1984; or

(B) with respect to claims arising out of conduct engaged in before March 20, 1984, filed within 1 year after March 20, 1984.

(3) The Ocean Shipping Reform Act of 1998 shall not affect any suit—

(A) filed before the effective date of that Act; or

(B) with respect to claims arising out of conduct engaged in before the effective date of that Act filed within 1 year after the effective date of that Act.

(4) Regulations issued by the Federal Maritime Commission shall remain in force and effect where not inconsistent with this Act, as amended by the Ocean Shipping Reform Act of 1998.

(Pub. L. 98–237, § 20, Mar. 20, 1984, 98 Stat. 90; Pub. L. 105–258, title I, § 117, Oct. 14, 1998, 112 Stat. 1914.)

REFERENCES IN TEXT

The Shipping Act, 1916, referred to in subsec. (d), is act Sept. 7, 1916, ch. 451, 39 Stat. 728, as amended, which is classified generally to chapter 23 (§ 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

The Shipping Act of 1984 and this Act and the amendments made by it, referred to in text, is Pub. L. 98–237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to this chapter (§ 1701 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

The Ocean Shipping Reform Act of 1998, referred to in subsecs. (d) and (e)(3), (4), is Pub. L. 105–258, Oct. 14, 1998, 112 Stat. 1902. For the effective date of this Act, see section 2 of Pub. L. 105–258, set out as an Effective Date of 1998 Amendment note under section 1701 of this Appendix. For complete classification of this Act to the Code, see Short Title of 1998 Amendment note set out under section 1701 of this Appendix and Tables.

CODIFICATION

Section is comprised of subsecs. (d) and (e) of section 20 of Pub. L. 98–237. Subsecs. (a) to (c) of section 20 amended sections 801, 812, 814, 815, 816, 817, 819, 820, 821, 824, 828, 829, 830, 831, 841c, 1122, and 1124 of this Appendix and repealed sections 813, 813a, 825, and 841b of this Appendix and provisions set out as a note under section 801 of this Appendix.

AMENDMENTS

1998—Subsec. (d). Pub. L. 105–258, § 117(1), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: ''All agreements, contracts, modifications, and exemptions previously approved or licenses previously issued by the Commission shall continue in force and effect as if approved or issued under this chapter; and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this chapter.''

Subsec. (e)(3), (4). Pub. L. 105–258, § 117(2), added pars. (3) and (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–258 effective May 1, 1999, see section 2 of Pub. L. 105–258, set out as a note under section 1701 of this Appendix.

CHAPTER 37—INTERNATIONAL MARITIME AND PORT SECURITY

Sec.
1801. International measures for seaport and shipboard security.
1802. Threat of terrorism to United States ports and vessels.
1803. Security standards at foreign ports.
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(b) Consultation with Secretary of State.
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1805. Suspension of passenger service.
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1809. Reports.
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§ 1801. International measures for seaport and shipboard security

The Congress encourages the President to continue to seek agreement through the International Maritime Organization on matters of international seaport and shipboard security, and commends him on his efforts to date. In developing such agreement, each member country of the International Maritime Organization should consult with appropriate private sector interests in that country. Such agreement would establish seaport and vessel security measures and could include—

(1) seaport screening of cargo and baggage similar to that done at airports;

(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

(3) additional security on board vessels;

(4) licensing or certification of compliance with appropriate security standards; and

(5) other appropriate measures to prevent unlawful acts against passengers and crews on board vessels.

(Pub. L. 99–399, title IX, § 902, Aug. 27, 1986, 100 Stat. 889.)

SHORT TITLE

Section 901 of title IX of Pub. L. 99–399 provided that: ''This title [enacting this chapter and section 1226 of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes below] may be cited as the 'International Maritime and Port Security Act'.''

MEASURES TO PREVENT UNLAWFUL ACTS AGAINST PASSENGERS AND CREWS ON BOARD SHIPS

Section 903 of Pub. L. 99–399 provided that:

''(a) REPORT ON PROGRESS OF IMO.—The Secretary of Transportation and the Secretary of State, jointly, shall report to the Congress by February 28, 1987, on the progress of the International Maritime Organization in developing recommendations on Measures to Prevent Unlawful Acts Against Passengers and Crews On Board Ships.

''(b) CONTENT OF REPORT.—The report required by subsection (a) shall include the following information—

''(1) the specific areas of agreement and disagreement on the recommendations among the member nations of the International Maritime Organization;

''(2) the activities of the Maritime Safety Committee, the Facilitation Committee, and the Legal Committee of the International Maritime Organization in regard to the proposed recommendations; and

''(3) the security measures specified in the recommendations.

''(c) SECURITY MEASURES AT UNITED STATES PORTS.—If the member nations of the International Maritime Organization have not finalized and accepted the proposed recommendations by February 28, 1987, the Secretary of Transportation shall include in the report required by this section a proposed plan of action (including proposed legislation if necessary) for the implementation of security measures at United States ports and on vessels operating from those ports based on the assessment of threat from acts of terrorism reported by the Secretary of Transportation under section 905 [46 App. U.S.C. 1802].''

PANAMA CANAL SECURITY

Section 904 of Pub. L. 99–399 provided that: ''Not later than 6 months after the date of enactment of this Act [Aug. 27, 1986], the President shall report to the Congress on the status of physical security at the Panama Canal with respect to the threat of terrorism.''

§ 1802. Threat of terrorism to United States ports and vessels

Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report to the Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports. Beginning with the first report submitted under this section after the date of enactment of the Maritime Transportation Security Act of 2002 [November 25, 2002], the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against acts of terrorism.

(Pub. L. 99–399, title IX, § 905, Aug. 27, 1986, 100 Stat. 890; Pub. L. 107–295, title I, § 110(a), Nov. 25, 2002, 116 Stat. 2091.)

REFERENCES IN TEXT

The Maritime Transportation Security Act of 2002, referred to in text, is Pub. L. 107–295, Nov. 25, 2002, 116 Stat. 2064. Title I of the Act enacted subtitle VI of Title 46, Shipping, amended this section, sections 661 and 724 of Title 14, Coast Guard, section 1431a of Title 19, Customs Duties, sections 1226, 1501 to 1504, 1507, and 1520 of Title 33, Navigation and Navigable Waters, and sections 192 and 195 of Title 50, War and National Defense, enacted provisions set out as notes under sections 1226 and 1504 of Title 33 and sections 70101, 70103, 70104, 70111, 70114, and 70116 of Title 46, amended provisions set out as a note under section 2071 of Title 19, and repealed provisions set out as a note under section 2071 of Title 19. For complete classification of title I to the Code, see Tables.

AMENDMENTS

2002—Pub. L. 107–295 inserted at end ''Beginning with the first report submitted under this section after the date of enactment of the Maritime Transportation Security Act of 2002, the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against acts of terrorism.''

§ 1803. Security standards at foreign ports

(a) Assessment of security measures

The Secretary of Transportation shall develop and implement a plan to assess the effectiveness of the security measures maintained at those foreign ports which the Secretary, in consultation with the Secretary of State, determines pose a high risk of acts of terrorism directed against passenger vessels.

(b) Consultation with Secretary of State

In carrying out subsection (a) of this section, the Secretary of Transportation shall consult the Secretary of State with respect to the terrorist threat which exists in each country and poses a high risk of acts of terrorism directed against passenger vessels.

(c) Report of assessments

Not later than 6 months after August 27, 1986, the Secretary of Transportation shall report to the Congress on the plan developed pursuant to subsection (a) of this section and how the Secretary will implement the plan.

(d) Determination and notification to foreign country

If, after implementing the plan in accordance with subsection (a) of this section, the Secretary of Transportation determines that a port does not maintain and administer effective security measures, the Secretary of State (after being informed by the Secretary of Transportation) shall notify the appropriate government authorities of the country in which the port is located of such determination, and shall recommend the steps necessary to bring the security measures in use at that port up to the standard used by the Secretary of Transportation in making such assessment.

(e) Antiterrorism assistance related to maritime security

The President is encouraged to provide antiterrorism assistance related to maritime security under chapter 8 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2349aa et seq.] to foreign countries, especially with respect to a port which the Secretary of Transportation determines under subsection (d) of this section does not maintain and administer effective security measures.

(Pub. L. 99–399, title IX, § 907, Aug. 27, 1986, 100 Stat. 891.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (e), is Pub. L. 97–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 8 of part II of that Act is classified generally to part VIII (§ 2349aa et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

§ 1804. Travel advisories concerning security at foreign ports

(a) Travel advisory

Upon being notified by the Secretary of Transportation that the Secretary has determined that a condition exists that threatens the safety

or security of passengers, passenger vessels, or crew traveling to or from a foreign port which the Secretary of Transportation has determined pursuant to section 1803(d) of this Appendix to be a port which does not maintain and administer effective security measures, the Secretary of State shall immediately issue a travel advisory with respect to that port. The Secretary of State shall take the necessary steps to widely publicize that travel advisory.

(b) Lifting of travel advisory

The travel advisory required to be issued under subsection (a) of this section may be lifted only if the Secretary of Transportation, in consultation with the Secretary of State, has determined that effective security measures are maintained and administered at the port with respect to which the Secretary of Transportation had made the determination described in section 1803(d) of this Appendix.

(c) Notification to Congress

The Secretary of State shall immediately notify the Congress of any change in the status of a travel advisory imposed pursuant to this section.

(Pub. L. 99–399, title IX, § 908, Aug. 27, 1986, 100 Stat. 891; Pub. L. 105–277, div. G, title XXII, § 2224(b), Oct. 21, 1998, 112 Stat. 2681–819.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–277 struck out second sentence which read as follows: ''Any travel advisory issued pursuant to this subsection shall be published in the Federal Register.''

§ 1805. Suspension of passenger service

(a) President's determination

Whenever the President determines that a foreign nation permits the use of territory under its jurisdiction as a base of operations or training for, or as a sanctuary for, or in any way arms, aids, or abets, any terrorist or terrorist group which knowingly uses the illegal seizure of passenger vessels or the threat thereof as an instrument of policy, the President may, without notice or hearing and for as long as the President determines necessary to assure the security of passenger vessels against unlawful seizure, suspend the right of any passenger vessel common carrier to operate to and from, and the right of any passenger vessel of the United States to utilize, any port in that foreign nation for passenger service.

(b) Prohibition

It shall be unlawful for any passenger vessel common carrier, or any passenger vessel of the United States, to operate in violation of the suspension of rights by the President under this section.

(c) Penalty

(1) If a person operates a vessel in violation of this section, the Secretary of the department in which the Coast Guard is operating may deny the vessels of that person entry to United States ports.

(2) A person violating this section is liable to the United States Government for a civil penalty of not more than $50,000. Each day a vessel utilizes a prohibited port shall be a separate violation of this section.

(Pub. L. 99–399, title IX, § 909, Aug. 27, 1986, 100 Stat. 892.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1806. Sanctions for seizure of vessels by terrorists

The Congress encourages the President—

(1) to review the adequacy of domestic and international sanctions against terrorists who seize or attempt to seize vessels; and

(2) to strengthen where necessary, through bilateral and multilateral efforts, the effectiveness of such sanctions.

Not later than one year after August 27, 1986, the President shall submit a report to the Congress which includes the review of such sanctions and the efforts to improve such sanctions.

(Pub. L. 99–399, title IX, § 910, Aug. 27, 1986, 100 Stat. 892.)

§ 1807. Definitions

For purposes of this chapter—

(1) the term ''common carrier'' has the same meaning given such term in section 1702(6) of this Appendix; and

(2) the terms ''passenger vessel'' and ''vessel of the United States'' have the same meaning given such terms in section 2101 of title 46.

(Pub. L. 99–399, title IX, § 911, Aug. 27, 1986, 100 Stat. 892.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title IX of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 889, known as the International Maritime and Port Security Act, which enacted this chapter and section 1226 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as notes under section 1801 of this Appendix. For complete classification of title IX to the Code, see Short Title note set out under section 1801 of this Appendix and Tables.

§ 1808. Authorization of Appropriations

There are authorized to be appropriated $12,500,000 for each of the fiscal years 1987 through 1991, to be available to the Secretary of Transportation to carry out this chapter.

(Pub. L. 99–399, title IX, § 912, Aug. 27, 1986, 100 Stat. 892.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title IX of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 889, known as the International Maritime and Port Security Act, which enacted this chapter and section 1226 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as notes under section 1801 of this Appendix. For complete classification of title IX to the Code, see Short Title note set out under section 1801 of this Appendix and Tables.

§ 1809. Reports

(a) Consolidation

To the extent practicable, the reports required under sections 903, 905, and 907 [46 App. U.S.C. 1801 note, 1802, 1803] shall be consolidated into a single document before being submitted to the Congress. Any classified material in those reports shall be submitted separately as an addendum to the consolidated report.

(b) Submission to committees

The reports required to be submitted to the Congress under this chapter shall be submitted to the Committee on Foreign Affairs and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science and Transportation of the Senate.

(Pub. L. 99–399, title IX, § 913, Aug. 27, 1986, 100 Stat. 892; Pub. L. 107–295, title IV, § 408(c)(3), Nov. 25, 2002, 116 Stat. 2117.)

REFERENCES IN TEXT

Sections 903, 905, and 907, referred to in subsec. (a), are sections 903, 905, and 907 of Pub. L. 99–399, which enacted a provision set out as a note under section 1801 of this Appendix and sections 1802 and 1803 of this Appendix, respectively.

This chapter, referred to in subsec. (b), was in the original ''this title'', meaning title IX of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 889, known as the International Maritime and Port Security Act, which enacted this chapter and section 1226 of Title 33, Navigation and Navigable Waters, and enacted provisions set out as notes under section 1801 of this Appendix. For complete classification of title IX to the Code, see Short Title note set out under section 1801 of this Appendix and Tables.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–295 substituted ''Transportation and Infrastructure'' for ''Merchant Marine and Fisheries''.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

CHAPTER 38—MARITIME DRUG LAW ENFORCEMENT

Sec.
1901. Short title.
1902. Congressional declaration of findings.
1903. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels.
(a) Vessels of United States or vessels subject to jurisdiction of United States.
(b) ''Vessel of the United States'' defined.
(c) ''Vessel subject to the jurisdiction of the United States'' and ''vessel without nationality'' defined; claim of nationality or registry.
(d) Claim of failure to comply with international law; standing; jurisdiction of court.
(e) Exception; burden of proof.
(f) Jurisdiction and venue.
(g) Penalties.
(h) Extension beyond territorial jurisdiction of United States.
(i) Definitions of drug abuse terms.
(j) Attempt or conspiracy to commit offense.
1904. Seizure or forfeiture of property.

§ 1901. Short title

This chapter may be cited as the ''Maritime Drug Law Enforcement Act''.

(Pub. L. 96–350, § 1, Sept. 15, 1980, 94 Stat. 1159; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552.)

CODIFICATION

Section was formerly classified to section 955a of Title 21, Food and Drugs.

AMENDMENTS

1986—Pub. L. 99–570 and Pub. L. 99–640 generally amended section identically, substituting provisions relating to short title for provisions relating to manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels.

SHORT TITLE OF 1986 AMENDMENT

Section 3201 of title III of Pub. L. 99–570 provided that: ''This subtitle [subtitle C (§§ 3201, 3202) of title III of Pub. L. 99–570, amending this chapter] may be cited as the 'Maritime Drug Law Enforcement Prosecution Improvements Act of 1986'.''

§ 1902. Congressional declaration of findings

The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

(Pub. L. 96–350, § 2, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–307, § 7, May 19, 1986, 100 Stat. 447; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552.)

CODIFICATION

Section was formerly classified to section 955b of Title 21, Food and Drugs.

AMENDMENTS

1986—Pub. L. 99–570 and Pub. L. 99–640 generally amended section identically, substituting provisions relating to Congressional declaration of findings for provisions relating to definitions.

Subsec. (a). Pub. L. 99–307 inserted provision that an event otherwise qualifying as an arrangement not lose that qualification by the fact that consent to, or the terms of, such arrangement are communicated by radio, telephone, or other similar means, or by how specific such arrangement is as to the vessel to which such arrangement applies.

INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY

Section 2015 of Pub. L. 99–570, as amended by Pub. L. 100–690, title IV, § 4802(a)(1), Nov. 18, 1988, 102 Stat. 4294, provided for interdiction procedures for vessels of foreign registry, prior to repeal by Pub. L. 103–447, title I, § 103(c), Nov. 2, 1994, 108 Stat. 4694.

§ 1903. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels

(a) Vessels of United States or vessels subject to jurisdiction of United States

It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, or who is a citizen of the United States or a resident alien of the United States on board any vessel, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

(b) "Vessel of the United States" defined

For purposes of this section, a ''vessel of the United States'' means—

(1) a vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(2) a vessel owned in whole or part by—

(A) the United States or a territory, commonwealth, or possession of the United States;

(B) a State or political subdivision thereof;

(C) a citizen or national of the United States; or

(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(c) "Vessel subject to the jurisdiction of the United States" and "vessel without nationality" defined; claim of nationality or registry

(1) For purposes of this section, a ''vessel subject to the jurisdiction of the United States'' includes—

(A) a vessel without nationality;

(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

(D) a vessel located within the customs waters of the United States;

(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States; and

(F) a vessel located in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999, and (i) is entering the United States, (ii) has departed the United States, or (iii) is a hovering vessel as defined in section 1401 of title 19.

Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under subparagraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and is conclusively proved by certification of the Secretary of State or the Secretary's designee.

(2) For purposes of this section, a ''vessel without nationality'' includes—

(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed;

(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and

(C) a vessel aboard which the master or person in charge makes a claim of registry and the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

A claim of registry under subparagraph (A) or (C) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation is conclusively proved by certification of the Secretary of State or the Secretary's designee.

(3) For purposes of this section, a claim of nationality or registry only includes:

(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

(B) flying its flag nation's ensign or flag; or

(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

(d) Claim of failure to comply with international law; standing; jurisdiction of court

Any person charged with a violation of this section shall not have standing to raise the claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be invoked solely by a foreign nation, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this chapter.

(e) Exception; burden of proof

This section does not apply to a common or contract carrier or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who

possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

(f) Jurisdiction and venue

Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia. Jurisdiction of the United States with respect to vessels subject to this chapter is not an element of any offense. All jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.

(g) Penalties

(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this chapter shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

(h) Extension beyond territorial jurisdiction of United States

This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

(i) Definitions of drug abuse terms

The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this chapter.

(j) Attempt or conspiracy to commit offense

Any person who attempts or conspires to commit any offense defined in this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 96–350, § 3, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–95; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3552; Pub. L. 100–690, title VII, § 7402, Nov. 18, 1988, 102 Stat. 4483; Pub. L. 101–647, title XII, § 1203, Nov. 29, 1990, 104 Stat. 4830; Pub. L. 104–324, title XI, § 1138, Oct. 19, 1996, 110 Stat. 3988; Pub. L. 107–295, title IV, § 418(a), Nov. 25, 2002, 116 Stat. 2123.)

REFERENCES IN TEXT

Presidential Proclamation 7219 of September 2, 1999, referred to in subsec. (c)(1)(F), is set out as a note under section 1331 of Title 43, Public Lands.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (i), is Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to chapter 13 (§ 801 et seq.) of Title 21, Food and Drugs. Section 802 of Title 21 contains provisions relating to definitions used in title II (21 U.S.C. 801 et seq.) of the Comprehensive Drug Abuse Prevention and Control Act of 1970. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

CODIFICATION

Section was formerly classified to section 955c of Title 21, Food and Drugs.

AMENDMENTS

2002—Subsec. (c)(1)(F). Pub. L. 107–295 added subpar. (F).

1996—Subsec. (c)(1). Pub. L. 104–324, § 1138(a)(2), substituted "and is conclusively" for "and may be" in closing provisions.

Subsec. (c)(2). Pub. L. 104–324, § 1138(a)(3), (b), in closing provisions, inserted "or (C)" after "under subparagraph (A)" and substituted "nation is conclusively" for "nation may be".

Subsec. (c)(2)(C). Pub. L. 104–324, § 1138(a)(1), added subpar. (C).

Subsec. (d). Pub. L. 104–324, § 1138(a)(4), inserted "Any person charged with a violation of this section shall not have standing to raise the claim of failure to comply with international law as a basis for a defense." before "A claim of failure".

Subsec. (f). Pub. L. 104–324, § 1138(a)(5), inserted at end "Jurisdiction of the United States with respect to vessels subject to this chapter is not an element of any offense. All jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge."

1990—Subsec. (j). Pub. L. 101–647 substituted "shall be subject to the same penalties as those" for "is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment".

1988—Subsec. (a). Pub. L. 100–690, § 7402(a), inserted "or who is a citizen of the United States or a resident alien of the United States on board any vessel," after "jurisdiction of the United States,".

Subsec. (b)(2). Pub. L. 100–690, § 7402(b), inserted "and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law" after "High Seas".

1986—Pub. L. 99–570 and Pub. L. 99–640 generally amended section in substantially identical manner, substituting provisions relating to manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels for provisions relating to attempt or conspiracy.

§ 1904. Seizure or forfeiture of property

(a) Any property described in section 881(a) of title 21 that is used or intended for use to commit, or to facilitate the commission of, an offense under this chapter shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 881 of title 21.

(b) Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under this chapter, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to

commit, or to facilitate the commission of an offense under this chapter:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment which is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

(6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on a person aboard the vessel, of a quantity or other nature which reasonably indicates manufacturing or distribution activity.

(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

(Pub. L. 96–350, § 4, Sept. 15, 1980, 94 Stat. 1160; Pub. L. 99–570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207–97; Pub. L. 99–640, § 17, Nov. 10, 1986, 100 Stat. 3554; Pub. L. 107–295, title IV, § 418(b), Nov. 25, 2002, 116 Stat. 2123.)

CODIFICATION

Section was formerly classified to section 955d of Title 21, Food and Drugs.

Pub. L. 96–350, as amended generally by Pub. L. 99–570, contained two sections designated 3, the first of which is classified to section 1903 of this Appendix, and the second of which was classified to this section. Subsequently, Pub. L. 99–640 amended Pub. L. 96–350 generally designating this section as section 4.

AMENDMENTS

2002—Pub. L. 107–295 designated existing provisions as subsec. (a) and added subsec. (b).

1986—Pub. L. 99–570 and Pub. L. 99–640 generally amended section identically, substituting provisions relating to seizure or forfeiture of property for provisions of the same general subject matter.

CHAPTER 39—MERCHANT MARINE DECORATIONS AND MEDALS

Sec.
2001. Award of decorations and medals by Secretary of Transportation.
2002. Merchant Marine Distinguished Service Medal and Meritorious Service Medal; other decorations or medals.
2003. Gallant Ship Award; citation; plaque; citation ribbon bar; consultation with Secretary of State.
2004. Administrative provisions.
(a) Restriction on award of more than one of any type.
(b) Receipt by personal representative.
(c) Manufacture and sale; replacements.
(d) Design.
2005. Flag and grave marker for deceased individual who served in periods of war or national emergency.
2006. Issuance of special certificate in recognition of service; effect.
2007. Unauthorized manufacture, sale, possession, or display of decoration or medal; penalty.

§ 2001. Award of decorations and medals by Secretary of Transportation

The Secretary of Transportation may award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine.

(Pub. L. 100–324, § 2, May 30, 1988, 102 Stat. 576.)

SHORT TITLE

Section 1 of Pub. L. 100–324 provided that: "This Act [enacting this chapter and repealing sections 249 to 249c of this Appendix and provisions set out as a note under section 753 of Title 50, Appendix, War and National Defense] may be cited as the 'Merchant Marine Decorations and Medals Act'."

§ 2002. Merchant Marine Distinguished Service Medal and Meritorious Service Medal; other decorations or medals

The Secretary of Transportation may award—

(1) a Merchant Marine Distinguished Service Medal to an individual for outstanding acts, conduct, or valor beyond the line of duty;

(2) a Merchant Marine Meritorious Service Medal to an individual for meritorious acts,

conduct, or valor in the line of duty, but not of the outstanding character as would warrant the award of the Merchant Marine Distinguished Service Medal;

(3) a decoration or medal to an individual for service in time of war or national emergency proclaimed by the President or Congress, or during operations by the Armed Forces of the United States outside the continental United States under conditions of danger to life and property; and

(4) a decoration or medal to an individual for other acts or service of conspicuous gallantry, intrepidity, and extraordinary heroism under conditions of danger to life and property that would warrant a similar decoration or medal for a member of the Armed Forces of the United States.

(Pub. L. 100–324, § 3, May 30, 1988, 102 Stat. 576.)

§ 2003. Gallant Ship Award; citation; plaque; citation ribbon bar; consultation with Secretary of State

The Secretary of Transportation may issue a Gallant Ship Award and a citation to a United States vessel or to a foreign-flag vessel participating in outstanding or gallant action in marine disasters or other emergencies for the purpose of saving life or property at sea. The Secretary may award a plaque to a vessel so cited, and a replica of the plaque may be preserved as a permanent historical record. The Secretary may also award an appropriate citation ribbon bar to the master and each individual serving on board the vessel at the time of the action for which the citation is made. The Secretary shall consult with the Secretary of State before giving an award or citation to a foreign-flag vessel or its crew under this section.

(Pub. L. 100–324, § 4, May 30, 1988, 102 Stat. 576.)

§ 2004. Administrative provisions

(a) Restriction on award of more than one of any type

The Secretary of Transportation may not award more than one of any type of decoration or medal to an individual. For each succeeding act or service justifying the same decoration or medal, a suitable device may be awarded to be worn with the decoration or medal.

(b) Receipt by personal representative

When an individual scheduled to receive a decoration or medal under this chapter is unable to accept it, the Secretary may make the award to an appropriate personal representative.

(c) Manufacture and sale; replacements

The Secretary may provide—

(1) the decorations and medals authorized under section 2001 of this Appendix and replacements for those decorations and medals; and

(2) replacements for decorations and medals issued under a prior law.

(d) Design

Decorations and medals authorized under section 2001 of this Appendix may be of similar design as are authorized for members of the Armed Forces of the United States for similar acts or service.

(Pub. L. 100–324, § 5, May 30, 1988, 102 Stat. 576; Pub. L. 109–163, div. C, title XXXV, § 3510, Jan. 6, 2006, 119 Stat. 3557.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ''this Act'', meaning Pub. L. 100–324, May 30, 1988, 102 Stat. 576, known as the Merchant Marine Decorations and Medals Act, which enacted this chapter and repealed sections 249 to 249c of this Appendix and provisions set out as a note under section 753 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this Appendix and Tables.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 substituted ''provide—'' for ''provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—'' in introductory provisions.

§ 2005. Flag and grave marker for deceased individual who served in periods of war or national emergency

Except as authorized under another law, the Secretary of Transportation may issue at no cost a flag of the United States and a grave marker to the family or personal representative of a deceased individual, who served in the United States merchant marine in support of the Armed Forces of the United States or its allies in periods of war or national emergency.

(Pub. L. 100–324, § 6, May 30, 1988, 102 Stat. 577.)

§ 2006. Issuance of special certificate in recognition of service; effect

(a) The Maritime Administrator may issue a special certificate in recognition of service to an individual, or the personal representative of an individual, whose service in the United States merchant marine has been determined to be active duty under section 401 of Public Law 95–202 (38 U.S.C. 106, Note).

(b) Issuance of a certificate to any individual under subsection (a) of this section does not entitle that individual to any rights, privileges, or benefits under any law of the United States.

(Pub. L. 100–324, § 7, May 30, 1988, 102 Stat. 577.)

REFERENCES IN TEXT

Section 401 of Public Law 95–202, referred to in subsec. (a), is section 401 of Pub. L. 95–202, title IV, Nov. 23, 1977, 91 Stat. 1449, as amended, which is set out as a note under section 106 of Title 38, Veterans' Benefits.

§ 2007. Unauthorized manufacture, sale, possession, or display of decoration or medal; penalty

Except as authorized by this chapter, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter. A person violating this section is liable to the United States Government for a civil penalty of $2,000.

(Pub. L. 100–324, § 8, May 30, 1988, 102 Stat. 577.)