ADMINISTRATIVE DELEGATION OF FUNCTIONS BY SECRETARY OF THE TREASURY

Administrative delegation of functions by Secretary of the Treasury, see note set out under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1014 of this title.

§ 1013. Conveyances and other instruments and acts validated

All conveyances and mortgages of any vessel or any part thereof, and all documentations, recordations, indorsements, and indexing thereof, and proceedings incidental thereto made or done, prior to February 16, 1925, are declared valid to the extent they would have been valid if the port or ports at which said vessel has in fact been documented from time to time had been the port or ports at which it should have been documented in accordance with law; and this section is declared retroactive so as to accomplish such validations: *Provided*, That nothing herein contained shall be construed to deprive any person of any vested right.

(Feb. 16, 1925, ch. 235, § 3, 43 Stat. 948.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1014 of this title.

§ 1014. Navigation laws and other legislation amended

All such provisions of the navigation laws of the United States and of the Ship Mortgage Act, 1920 [46 U.S.C. 911 et seq.], as are in conflict with sections 18, 1011, 1012, and 1013 of this title, are amended to conform therewith.

(Feb. 16, 1925, ch. 235, § 5, 43 Stat. 948.)

REFERENCES IN TEXT

The navigation laws of the United States, referred to in text, are classified generally to Title 33, Navigation and Navigable Waters.

The Ship Mortgage Act, 1920, referred to in text, is act June 5, 1920, ch. 250, § 30, 41 Stat. 1000, as amended, which is classified generally to chapter 25 (§ 911 et seq.) of this title. For complete classification of this Act to the Code, see section 984 of this title and Tables.

Section 18 of this title, referred to in text, was repealed by Pub. L. 96-594, title I, § 127, Dec. 24, 1980, 94 Stat. 3459.

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Cross References

Emergency foreign vessel acquisition, see sections 196 to 198 of Title 50, War and National Defense.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 817b, 841b, 865a of this title; title 11 sections 1101, 1102; title 26 section 49; title 40 sections 270f, 484; title 42 sections 9101, 9141; title 50 App. section 1744.

SUBCHAPTER I—DECLARATION OF POLICY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1122 of this title.

§ 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 water-borne 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; Oct. 21, 1970, Pub. L. 91-469, § 1, 84 Stat. 1018.)

AMENDMENTS

1970—Pub. L. 91-469 struck out from cl. (a) "on all routes" following "shipping service" and inserted cl. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1120, 1161, 1191, 1222 of this title.

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) Restriction on appointments; other employment forbidden; interest in shipping as disqualifying member

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.

(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 re-

ceive 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 Transporation or a designated employee thereof.

(g) Effective date of section

This section shall take effect on June 29, 1936.

(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; July 7, 1958, Pub. L. 85-507, § 21(b)(4), 72 Stat. 337; Oct. 21, 1970, Pub. L. 91-469, § 36, 84 Stat. 1036; Aug. 6, 1981, Pub. L. 97-31, § 12(58), 95 Stat. 158.)

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 that Title.

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 1, § 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" was 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, Government Organization and Employees.

AMENDMENTS

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 instances.

1958—Subsec. (e). Pub. L. 85-507 eliminated 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, title XI, § 1106(a), 63 Stat. 972, 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.

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the 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, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard. See section 1655(b) of Title 49, Transportation.

For transfer of functions of other officers, employees, and agencies of the Department of the Treasury, with certain exceptions, to the 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 the Coast Guard, and the Commandant of the Coast Guard, were excepted from transfer when the Coast Guard is operating as part of the Navy under sections 1 and 3 of Title 14.

COMPENSATION OF FEDERAL MARITIME COMMISSIONERS AND MARITIME ADMINISTRATOR

Annual basic compensation of Chairman of the Commission, members of the Commission, and Admin-

istrator, 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

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 1. 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 in the Commission, so long as there shall be three Commissioners in office, shall not impair the power of the Commission to execute its functions. Any three of the Commissioners in office shall constitute a quorum for the transaction of the business of the Commission and the affirmative votes of any three Commissioners shall be sufficient for the disposition of any matter which may come before the Commission. [As amended Pub. L. 88-426, title III, § 305(19), Aug. 14, 1964, 78 Stat. 425.]

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 (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 (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 (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.

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 herafter 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."

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 amemded Reorg. Plan No. 7 of 1961, § 305, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840

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

§§ 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

§ 201. CREATION OF MARITIME ADMINISTRATION

There is hereby established in the Department of Commerce a Maritime Administration.

§ 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.]

§ 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.

§ 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

§ 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.

§§ 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 functions 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 con-

tained 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.].

§ 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.

§ 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.

§ 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 dead-weight 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) [section 1101 of this title], reaffirmed in section 2 of the Merchant Ship Sales Act, 1946 (60 Stat. 41) [section 1735 of Appendix to Title 50, War and National Defense] * * *.

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 [sections 812 to 817, 818, 819 and 821 to 832 of this title], 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 [sections 843 to 848 of this title];

(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 [section 876 of this title], 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 [section 1122(e) of this title]; 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 [section 820 of this title], 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 [section 811 of this title]; 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 [sections 1281 to 1294 of this title], 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 [sections 1281 to 1294 of this title]. 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 Administration 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 [note preceding section 1, and note under section 883, of this title; and sections 1735 note, 1738 and 1744 of Appendix to Title 50, War and National Defense];

(b) The functions conferred upon the Secretary of Commerce by Public Law 763, 81st Congress, 2d Session [sections 1281 to 1294 of this title], 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.

CROSS REFERENCES

Advertisements for proposals for purchases and contracts for supplies or services, see section 5 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 1745.

§ 1111a. Administrative expenses; limitations

After June 30, 1939, the Federal Maritime Commission and the Secretary of Transportation shall not incur any obligations for adminis-

trative 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; Aug. 6, 1981, Pub. L. 97-31, § 12(59), 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 title.

§ 1111b. Repealed. Sept. 1, 1954, ch. 1208, title III, § 305(g), 68 Stat. 1114

Section, act Mar. 13, 1944, ch. 91, 58 Stat. 115, related to awards. See section 4501 et seq. of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Sept. 1, 1954, see section 307 of act Sept. 1, 1954.

§ 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 effectuate 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; Aug. 6, 1981, Pub. L. 97-31, § 12(60), 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1158 of this title.

§ 1113. Omitted

CODIFICATION

Section, acts June 29, 1936, ch. 858, title II, § 203, 49 Stat. 1987; May 18, 1938, ch. 253, 52 Stat. 408, provided for dissolution and transfer of property of the United States Shipping Board Merchant Fleet Corporation, the disposition of pending suits and ratification of payments to employees.

§ 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 U.S.C. 801 et seq.], the Merchant Marine Act, 1920 [46 U.S.C. 861 et seq. and 911 et seq.], the Merchant Marine Act, 1928 [46 U.S.C. 891 et seq.], the Intercoastal Shipping Act, 1933 [46 U.S.C. 843 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 [46 U.S.C. 870].

(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, § 204, 49 Stat. 1987; June 23, 1938, ch. 600, § 41, 52 Stat. 964; Aug. 6, 1981, Pub. L. 97-31, § 12(61), 95 Stat. 158.)

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 principally to chapter 23 (§ 801 et seq.) of this title. For complete classification of this

Act to the Code, see section 842 of this title 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 is classified generally to chapters 24 and 25 (§§ 861 et seq. and 911 et seq.) of this title. Section 11 of the Act was repealed by act June 29, 1936, ch. 858, title IX, § 903(b), 49 Stat. 2016. For complete classification of this Act to the Code, see References in Text note set out under section 889 of this title 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 title. For complete classification of this Act to the Code, see References in Text note set out under section 891x of this title and Tables.

The Intercoastal Shipping Act, 1933, referred to in subsec. (a), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of this title. For complete classification of this Act to the Code, see section 848 of this title 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

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" following "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, eliminated 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.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1151, 1244 of this title; title 50 App. section 1745.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(62), 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.

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 title.

§ 1116. Construction fund

All sums of money now in the construction loan fund created by section 870 of this title, 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; Aug. 6, 1981, Pub. L. 97-31, § 12(63), 95 Stat. 159.)

REFERENCES IN TEXT

Section 870 of this title, referred to in the text, 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 instances and "Secretary of Transportation" for "Commission" in three instances. 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 title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1116a, 1242 of this title.

§ 1116a. Application to obligations against emergency ship construction fund

On and after March 22, 1947, the construction fund established by section 1116 of this title shall be available for the payment of obligations previously incurred against the emergency ship construction fund.

(Mar. 22, 1947, ch. 20, title II, § 201, 61 Stat. 17; 1950 Reorg. Plan No. 21, § 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1277.)

CODIFICATION

Words "United States Maritime Commission" preceding "construction fund" were deleted and words "established by section 1116 of this title" were inserted following "construction fund" on authority of Reorg. Plan No. 21 of 1950, set out under section 1111 of this title.

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 General Accounting 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; Aug. 6, 1981, Pub. L. 97-31, § 12(64), 95 Stat. 159.)

REFERENCES IN TEXT

Act of March 20, 1922, ch. 104, 42 Stat. 444, referred to in text, is not classified to the Code.

AMENDMENTS

1981—Pub. L. 97-31 substituted "Federal Maritime Commission and the Secretary of Transportation" for "Commission" the first time it appears, 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 title.

CROSS REFERENCES

Advertisements for proposals for purchases and contracts for supplies or services, see section 5 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 1745.

§ 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; Apr. 21, 1976, Pub. L. 94-273, § 36, 90 Stat. 380; Aug. 6, 1981, Pub. L. 97-31, § 12(65), 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Federal Maritime Commission and the Secretary of Transportation" for "Commission" and inserted "or his" following "its" in three instances. 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1213, 1222 of this title.

§ 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 title;

(9) the Vessel Operations Revolving Fund;

(10) expenses necessary for additional training provided under section 1295d of this title;

(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 title 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; Sept. 5, 1967, Pub. L. 90-81, 81 Stat. 193; Oct. 21, 1970, Pub. L. 91-469, § 2, 84 Stat. 1018; Nov. 12, 1977, Pub. L. 95-173, § 6(a), 91 Stat. 1360; Oct. 7, 1980, Pub. L. 96-387, § 4, 94 Stat. 1546; Oct. 15, 1980, Pub. L. 96-453, § 3(a), 94 Stat. 2008; Aug. 6, 1981, Pub. L. 97-31, § 12(66), 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 former sections 891e to 891r of this title, 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 title, 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 title, 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 title, 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 title" for "State Marine Schools" and in par. (10) "for additional training provided under section 1295d of this title" for "for extension and correspondence courses authorized under section 1126(c) of this title" 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" following "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 the beginning of the 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 Mer-

[1] So in original. Pub. L. 96-453 added the second par. (10).

chant 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 title.

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."

CROSS REFERENCES

Application of construction fund to obligations against the emergency ship construction fund, see section 1116a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 1745.

§§ 1119a, 1119b. Omitted

CODIFICATION

Section 1119a, act Feb. 6, 1941, ch. 5, § 1, 55 Stat. 5, 1950 Reorg. Plan No. 21, §§ 204, 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277, appropriated $313,500,000 to provide cargo ships, added such sum to $500,000 and $36,000,000 previously allocated to create the "Emergency Ship Construction Fund, Department of Commerce" for: (1) the construction in the United States of ocean-going cargo vessels, (2) the production of parts for such ships, (3) the acquisition and management of facilities for such construction or production and for maintenance of the ships, and (4) the administrative expenses of the program, prohibited payment of salary and wages to persons advocating the violent overthrow of the Government, provided that an affidavit denying such advocacy be deemed prima facie evidence, made acceptance of salary or wages by a person advocating such overthrow a felony punishable by a fine up to $1,000 or imprisonment for not more than one year, or both, and provided that such penalty be additional to, and not in lieu of, existing law.

Section 1119b, acts Feb. 6, 1941, ch. 5, § 2, 55 Stat. 6; 1950 Reorg. Plan No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Oct. 31, 1951, ch. 654, § 3(12), 65 Stat. 708, which made section 1117 of this title and the act of Oct. 10, 1940, ch. 838, 54 Stat. 1092 applicable to all functions of the Secretary of Commerce under section 1119a of this title, authorized the Secretary to perform his functions under such section 1119a without regard to section 733 of Title 33, Navigation and Navigable waters, section 529 of former Title 31, Money and Finance, section 5 of Title 41, Public Contracts, section 7 of Act May 27, 1930, ch. 340, 46 Stat. 391, sections 270a to 270d and 303b of Title 40, Public Buildings, Property, and Works, was omitted in view of the omission of section 1119a of this title.

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.

§ 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 title, 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; Oct. 21, 1970, Pub. L. 91-469, §§ 3, 35(a), 84 Stat. 1018, 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(67), 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. reading "First".

Par. First. Pub. L. 91-469, § 3(1), struck out from par. reading "First" the words "on all routes" following "shipping service".

Par. Fourth. Pub. L. 91-469, § 3(2), added par. reading "Fourth".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1191 of this title.

§ 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 con-

sider 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; Oct. 21, 1970, Pub. L. 91-469, §§ 4, 5, 35(a), (b), 84 Stat. 1018, 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(67), 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97-31 in introductory material 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 submitted "his" for "its" preceding "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" following "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" following "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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1125, 1171, 1173, 1204, 1213, 1222 of this title.

§ 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 until June 30, 1987, 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.)

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".

§ 1122. Maritime problems; cooperation with others; discriminatory charges on exports; 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 water-borne 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.

The Federal Maritime Commission is authorized and directed—

(e) Investigation of discriminatory charges, etc., against exports

To investigate, under the regulatory powers transferred to it by this chapter, 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 the foreign trade of the United States to pay a higher rate from any United States port to a foreign port than the rate charged by such carrier on similar cargo from such foreign port to such United States port, and recommend to Congress measures by which such discrimination may be corrected.

The Secretary of Transportation is authorized and directed—

(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; Mar. 16, 1968, Pub. L. 90-268, § 1, 82 Stat. 49; Aug. 6, 1981, Pub. L. 97-31, § 12(69), 95 Stat. 159.)

AMENDMENTS

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).

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 title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(70), 95 Stat. 159.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 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) Authorization of appropriations; use of foreign currencies

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.

(d) Report to Congress

The Secretary of Commerce shall submit annually to the Congress a report on his activities under this chapter.

(June 29, 1936, ch. 858, title II, § 212(B), as added Oct. 18, 1962, Pub. L. 87-839, § 1, 76 Stat. 1074, and amended July 7, 1965, Pub. L. 89-66, 79 Stat. 211; July 27, 1968, Pub. L. 90-434, 82 Stat. 449.)

AMENDMENTS

1968—Subsec. (a). Pub. L. 90-434 substituted "use insofar as practicable" for "exclusively use".

Subsec. (b). Pub. L. 90-434 added "(other than the cost of transportation on foreign-flag vessels and aircraft)," following "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; relative costs at yards

The Secretary of Transportation shall make studies of and make reports to Congress on—

(a) Removal of obsolete tonnage

The scrapping or removal from service of old or obsolete merchant tonnage owned by the United States or in use in the merchant marine;

(b) Tramp shipping; participation in by Americans

Tramp shipping service and the advisability of citizens of the United States participating in such service with vessels under United States registry.

(c) Relative cost of construction at different yards; equalization

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 para-

graph shall be made annually on the first day of October of each year.

(June 29, 1936, ch. 858, title II, § 213, 49 Stat. 1991; Oct. 24, 1962, Pub. L. 87-877, § 2(c), (d), 76 Stat. 1201; Apr. 21, 1976, Pub. L. 94-273, § 27, 90 Stat. 380; Aug. 6, 1981, Pub. L. 97-31, § 12(71), 95 Stat. 159.)

AMENDMENTS

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 the text preceding par. (a), and inserted "; reports under this paragraph shall be made annually on the first day of July of each year" in par. (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 title.

§ 1124. Witnesses

(a) Summoning; oaths; production of books and papers; fees

For the purpose of any investigation which, in the opinion of the Federal Maritime Commission or the Secretary of Transportation, is necessary and proper in carrying out the provisions of this chapter, any member of the Commission or any officer or employee thereof designated by it or the Secretary, is empowered to subpena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such 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 Commission or 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 subpena issued by the Commission or the Secretary, it or he may invoke the aid of any District Court of the United States within the jurisdiction in which such 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 such person to appear before the Commission or the Secretary, or member, officer, or employee designated by the Commission or the Secretary, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found.

(June 29, 1936, ch. 858, title II, § 214, 49 Stat., 1991; June 23, 1938, ch. 600, § 3, 52 Stat. 954; Oct. 15, 1970, Pub. L. 91-452, title II, § 241, 84 Stat. 930; Aug. 6, 1981, Pub. L. 97-31, § 12(72), 95 Stat. 159.)

AMENDMENTS

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," following "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," following "Commission" in three instances 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, eliminated words "within the Federal judicial district in which the witness resides" which followed "place of hearing".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISIONS

Amendment by Pub. L. 91-452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out in as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

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 title.

FEDERAL RULES OF CIVIL PROCEDURE

Subpoena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

§ 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 title, 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

econstruction-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, and amended June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; Aug. 6, 1981, Pub. L. 97-31, § 12(73), 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 the first sentence. In the first sentence following "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 sections 1125, 1152, 1153, 1156, 1157, 1159, 1160, 1175, 1177, 1181, 1195, 1204, 1274, 1276 and 1276a of this title, 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 title.

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, 1204 and 1276a(4) of this title 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, to this section and sections 1152, 1153, 1156, 1157, 1159, 1160, 1175, 1177, 1181, 1195, 1204, 1274, 1276, and 1276a of this title, and section 1737 of Title 50, Appendix, War and National Defense, 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, 1204, and 1276a(4) of this title, 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 title 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 hase 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 [amending sections 1125, 1152, 1153, 1156, 1157, 1159, 1160, 1175, 1177, 1181, 1195, 1204, 1274, 1276, and 1276a of this title, and section 1737 of Title 50, Appendix, War and National Defense] 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1152 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(74), 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 title.

§ 1126. Repealed. Pub. L. 96-453, § 3(d), Oct. 15, 1980, 94 Stat. 2009

Section, acts June 29, 1936, ch. 858, title II, § 216, as added June 23, 1938, ch. 600, § 44, 52 Stat. 965, and amended Aug. 4, 1939, ch. 417, § 5, 53 Stat. 1182; 1950 Reorg. Plan No. 21, § 204, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276; Feb. 20, 1956, ch. 64, 70 Stat. 25; Feb. 20, 1958, Pub. L. 85-331, § 1, 72 Stat. 16; July 20, 1961, Pub. L. 87-93, 75 Stat. 212; Sept. 6, 1961, Pub. L. 87-199, 75 Stat. 468; Sept. 6, 1961, Pub. L. 87-208, 75 Stat. 480; Oct. 2, 1964, Pub. L. 88-611, § 4(a)(3), 78 Stat. 991; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 951; Pub. L. 93-198, title IV, § 421, Dec. 24, 1073, 87 Stat. 789; Nov. 12, 1977, Pub. L. 95-173, § 7, 01 Stat. I360; July 28, 1978, Pub. L. 95-323, § 1, 92 Stat. 396; Aug. 6, 1981, Pub. L. 97-31, § 12(75), 95 Stat. 160, provided for the training of Merchant Marine personnel. See section 1295b of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 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 the Nation

(a) It is the policy of the United States that the United States Navy and the Merchant Marine 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".

§ 1126a. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 641

Section, acts May 25, 1933, ch. 37, 48 Stat. 73; July 8, 1937, ch. 441, 50 Stat. 477; Aug. 9, 1946, ch. 932, 60 Stat. 968; Aug. 4, 1949, ch. 393, § 13, 63 Stat. 559; Aug. 18, 1949, ch. 476, 63 Stat. 614, authorized the issuance of a bachelor of science degree on graduation from United States Merchant Marine Academy. See section 1295b(g) of this title.

§ 1126a-1. Repealed. Pub. L. 96-453, § 3(i), Oct. 15, 1980, 94 Stat. 2009

Section, act Aug. 10, 1956, ch. 1041, § 34, 70A Stat. 634; Aug. 6, 1981, Pub. L. 97-31, § 12(77), 95 Stat. 160, provided for the conferring of the degree of bachelor of science upon graduates of the Academy. See section 1295b(g) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 1126b. Repealed. Pub. L. 96-453, § 3(g), Oct. 15, 1980, 94 Stat. 2009

Section, act Aug. 9, 1946, ch. 928, 60 Stat. 961; 1950 Reorg. Plan No. 21, § 204, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276; Aug. 6, 1981, Pub. L. 97-31, § 12(78), 95 Stat. 160, provided for the admission of persons from other American republics to the United States Merchant Marine Academy. See section 1295b(b)(5) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 1126b–1. Repealed. Pub. L. 96–453, § 3(k), Oct. 15, 1980, 94 Stat. 2010

Section, Pub. L. 87-244, Sept. 14, 1961, 75 Stat. 514; Pub. L. 97-31, § 12(79), Aug. 6, 1981, 95 Stat. 160, authorized the admission of persons from the Trust Territory of the Pacific Islands to the United States Merchant Marine Academy. See section 1295b(b)(4)(A) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 1126c. Repealed. Pub. L. 96–453, § 3(f), Oct. 15, 1980, 94 Stat. 2009

Section, act May 11, 1944, ch. 194, 58 Stat. 220; 1950 Reorg. Plan No. 21, § 204, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276; Aug. 6, 1981, Pub. L. 97-31, § 12(80), 95 Stat. 160, related to the Board of Visitors for United States Merchant Marine Academy. See section 1295b(h) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 1126d. Repealed. Pub. L. 96–453, § 3(h), Oct. 15, 1980, 94 Stat. 2009

Section, acts July 22, 1947, ch. 290, 61 Stat. 401; July 11, 1956, ch. 564, 70 Stat. 524; Aug. 6, 1981, Pub. L. 97-31, § 12(81), 95 Stat. 160, provided for the appointment of an Advisory Board to the Merchant Marine Academy. See section 1295b(i) of this title.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1981, see section 4 of Pub. L. 96-453, set out as an Effective Date note under section 1295 of this title.

§ 1127. Repealed. Pub. L. 86–360, Sept. 22, 1959, 73 Stat. 643

Section, act June 29, 1936, ch. 858, title II, § 217, as added Mar. 14, 1942, ch. 186, 56 Stat. 171, and amended Aug. 30, 1954, ch. 1076, § 1(9), 68 Stat. 967, related to coordination of forwarding and similar servicing of waterborne export and import foreign commerce.

SUBDIVISION—INSURANCE

§§ 1128 to 1128e. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449

Section 1128, act June 29, 1936, ch. 858, title II, § 221, as added June 29, 1940, ch. 447, 54 Stat. 689, and amended Apr. 11, 1942, ch. 240, 56 Stat. 214, related to the authority of the United States Maritime Commission to provide marine and war-risk insurance, duration of such authority, reports, and an insurance fund. See section 1281 et seq. of this title.

Section 1128a, act June 29, 1936, ch. 858, title II, § 222, as added June 29, 1940, ch. 447, 54 Stat. 690, and amended Mar. 6, 1942, ch. 154, 56 Stat. 140; Apr. 11, 1942, ch. 240, 56 Stat. 214; Mar. 24, 1943, ch. 26, § 2(a), 57 Stat. 47, related to authority of United States Maritime Commission to insure against loss or damage by risks of war, persons, property and certain insurable interests. See section 1281 et seq. of this title.

Section 1128b, act June 29, 1936, ch. 858, title II, § 223, as added June 29, 1940, ch. 447, 54 Stat. 690, and amended Apr. 11, 1942, ch. 240, 56 Stat. 215; Mar. 24, 1943, ch. 26, § 3(e), 57 Stat. 50, related to reinsurance, prohibition against fees to brokers, and rates. See section 1287 of this title.

Section 1128c, act June 29, 1936, ch. 858, title II, § 224, as added June 29, 1940, ch. 447, 54 Stat. 690, and amended Apr. 11, 1942, ch. 240, 56 Stat. 215; Mar. 24, 1943, ch. 26, § 3(f), 57 Stat. 50, related to insurance of government departments and agencies. See section 1285 of this title.

Section 1128d, act June 29, 1936, ch. 858, title II, § 225, as added June 29, 1940, ch. 447, 54 Stat. 690, and amended Apr. 11, 1942, ch. 240, 56 Stat. 215; Mar. 24, 1943, ch. 26, § 3(g), 57 Stat. 50, related to actions on claims for losses and jurisdiction of courts. See section 1292 of this title.

Section 1128e, act June 29, 1936, ch. 858, title II, § 226, as added June 29, 1940, ch. 447, 54 Stat. 691, and amended Apr. 11, 1942, ch. 240, 56 Stat. 216; Mar. 24, 1943, ch. 26, § 3(h), 57 Stat. 51; Apr. 24, 1944, ch. 178, § 1, 58 Stat. 216, related to general administrative provisions, suspension of statute of limitations and definitions. See sections 1281 and 1289 of this title.

SAVINGS PROVISIONS

Act July 25, 1947, provided that section 1 of act Apr. 24, 1944, ch. 178, 58 Stat. 216, which added second sentence to section 1128e(a) of this title, was repealed, "except that any suspension of the statute of limitations heretofore provided for in an agreement entered into under the authority of such section shall continue in effect for the period provided in such agreement, but in no case longer than two years after the date of enactment of this joint resolution [July 25, 1947]."

§ 1128e–1. Omitted

CODIFICATION

Section, act Apr. 24, 1944, ch. 178, § 2, 58 Stat. 216, which related to compromise or settlement, by the Administrator of the War Shipping Administration, of claims after expiration of time for filing, has been omitted in view of termination of War Shipping Administration on Sept. 1, 1946. See note set out under section 1291 of Title 50, Appendix, War and National Defense.

§§ 1128f to 1128h. Repealed. July 25, 1947, ch. 327, § 1, 61 Stat. 449

Section 1128f, act June 29, 1936, ch. 858, title II, § 227, as added June 29, 1940, ch. 447, 54 Stat. 691, and amended Apr. 11, 1942, ch. 240, 56 Stat. 216, related to effect of former sections 1128 to 1128h of this title on seamen's rights under existing laws. See section 1290 of this title.

Section 1128g, act June 29, 1936, ch. 858, § 228, as added June 29, 1940, ch. 447, 54 Stat. 691, and amended Apr. 11, 1942, ch. 240, 56 Stat. 217, vested United States Maritime Commission's authority in Administrator of War Shipping Administration. See section 1251 et seq. of this title.

Section 1128h, act June 29, 1936, ch. 858, § 229, as added Mar. 24, 1943, ch. 26, § 3(i), 57 Stat. 51, authorized War Shipping Administration to insure directly or to reinsure. See section 1251 et seq. of this title.

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 or 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 Naval 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 Naval Reserve.

(June 29, 1936, ch. 858, title III, § 301, 49 Stat. 1992; June 23, 1938, ch. 600, §§ 5, 6, 52 Stat. 954, 955; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Aug. 6, 1981, Pub. L. 97-31, § 12(82), 95 Stat. 160.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in five instances. 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 instances. 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," eliminated 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, eliminated 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 title.

The Coast Guard was transferred to the Department of Transportation, and all functions, powers, and duties relating to the Coast Guard of the Secretary of the Treasury and of other officers and offices of the Department of the Treasury were transferred to the 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, the Coast Guard shall operate as part of the Navy in time of war or when the 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 the Department of the Treasury, with certain exceptions, to the 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 the Coast Guard, and the Commandant of the Coast Guard, were excepted from transfer when the Coast Guard is operating as part of the Navy under sections 1 and 3 of Title 14.

Phrase "or the Coast Guard" was inserted in subsec. (b)(3) on authority of Reorg. Plan No. 3 of 1946, §§ 101-104, set out as a note under section 1 of this title.

§ 1132. Citizenship of officers and crew

(a) Vessels documented under laws of United States

All licensed officers of vessels documented under the laws of the United States, as now required by law, shall be citizens of the United States, native-born or completely naturalized; and upon each departure from the United States of a cargo vessel in respect of which a

construction or operating subsidy has been granted all of the crew (crew including all employees of the ship) shall be citizens of the United States, native-born or completely naturalized.

(b) Passenger vessels granted subsidies

For a period of one year after the effective date of this chapter upon each departure from the United States of a passenger vessel in respect of which a construction or operation subsidy has been granted, all licensed officers shall be citizens of the United States as defined above, and no less than 80 per centum of the crew (crew including all employees of the ship other than officers) shall be citizens of the United States, native-born or completely naturalized, and thereafter the percentage of citizens, as above defined, shall be increased 5 per centum per annum until 90 per centum of the entire crew, including all licensed officers of any such vessel, shall be citizens of the United States, native-born or completely naturalized.

(c) Aliens; conditions of employment

Any member of the crew, not required by this section to be a citizen of the United States, may be an alien only if he is in possession of a valid declaration of intention to become a citizen of the United States, or other evidence of legal admission to the United States for permanent residence. Such alien, as above defined, may be employed only in the steward's department on passenger vessels.

(d) Filling vacancies while on foreign voyage

If any such vessel (as above defined) while on a foreign voyage is for any reason deprived of the services of any employee below the grade of master, his place or a vacancy caused by the promotion of another to his place may be supplied by a person other than defined in subsections (a) and (b) of this section, until the first return of such vessel to a port in the United States.

(e) Penalty for violations

The owner, agent, or officer of any such vessel who knowingly employs any person in violation of the provisions of this chapter shall, upon conviction thereof, be fined $50 for each person so employed.

(f) Enforcement; effective date; repeal of other laws

This section shall be enforced by the Secretary of the Department in which the Coast Guard is operating or the Secretary of the Treasury, for the purpose of carrying out the provisions of this section, and shall take effect ninety days after June 29, 1936.

(g) Membership of officers in United States Naval Reserve

All of the deck and engineer officers employed on vessels on which an operating-differential subsidy is paid under authority of subchapter VI of this chapter, or employed on the Transportation Department's vessels, after one year after June 29, 1936, shall, if eligible, be members of the United States Naval Reserve.

(h) Suspension of section during emergency

During a national emergency as proclaimed by the President he may, in his discretion, suspend any or all of the provisions of this section. (June 29, 1936, ch. 858, title III, § 302, 49 Stat. 1992; Aug. 6, 1981, Pub. L. 97-31, § 12(83), 95 Stat. 160.)

AMENDMENTS

1981—Subsec. (f). Pub. L. 97-31, § 12(83)(A), substituted "Secretary of the Department in which the Coast Guard is operating or the Secretary of the Treasury" for "Secretary of Commerce". For prior transfers of functions of the Secretary of Commerce, see Transfer of Functions note below.

Subsec. (g). Pub. L. 97-31, § 12(83)(B), substituted "Transportation Department'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.

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 title.

For transfer of functions of Secretary of Commerce, see sections 101 to 104 of Reorg. Plan No. 3 of 1946, set out as a note under section 1 of this title, Reorg. Plan No. 26 of 1950, set out in the Appendix to Title 5, Government Organization and Employees, and section 108 of Title 49, Transportation.

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of subsec. (h) 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.

SUBCHAPTER IV—OCEAN MAIL CONTRACTS

§§ 1141 to 1144. Omitted

CODIFICATION

Sections 1141 to 1144, related to termination and settlement of ocean mail contracts existing when this chapter became effective.

Section 1141, act June 29, 1936, ch. 858, title IV, § 401, 49 Stat. 1993, related to termination of ocean mail contracts, made prior to June 29, 1936, by June 30, 1937.

Section 1142, acts June 29, 1936, ch. 858, title IV, § 402, 49 Stat. 1993; June 1, 1938, ch. 311, 52 Stat. 606; June 23, 1938, ch. 600, § 7, 52 Stat. 955, related to adjustment of rights under terminated contracts.

Section 1143, act June 29, 1936, ch. 858, title IV, § 403, 49 Stat. 1994, related to credit of sum payable to contractor on loans and mortgage notes.

Section 1144, act June 29, 1936, ch. 858, title IV, § 404, 49 Stat. 1995, transferred powers under then existing ocean mail contracts from Postmaster General to United States Maritime Commission.

§ 1145. Repealed. Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 725, eff. Sept. 1, 1960

Section, act June 29, 1936, ch. 858, title IV, § 405, 49 Stat. 1995, related to the carriage of United States mails on vessels and to the transportation of Postal Service employees on mail-carrying vessels without charge when on duty.

Such provisions were reenacted by section 1 of Pub. L. 86-682 as sections 6104 and 6433 of Title 39, The Postal Service. Title 39 was revised and reenacted by Pub. L. 91-375, § 2, Aug. 12, 1970, 84 Stat. 719, and the provisions contained in former sections 6104 and 6433 are covered by sections 5005 and 5007 of Title 39.

SUBCHAPTER V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1161, 1191, 1193, 1204, 1212, 1244, 1274 of this title.

§ 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 title; 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; Oct. 21, 1970, Pub. L. 91-469, §§ 6, 35(a), (c), (d), 84 Stat. 1019, 1035; Dec. 31, 1970, Pub. L. 91-603, § 4(a), 84 Stat. 1675; Aug. 6, 1981, Pub. L. 97-31, § 12(84), 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) the introductory words "if the applicant is the proposed ship purchaser," struck out of subd. (3) "to replace wornout or obsolete tonnage with new and modern ships, or otherwise" following "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" preceding "determines", respectively.

Subsec. (c). Pub. L. 91-469, §§ 6(2), 35(d), inserted "or any shipyard of the United States" following "Any citizen of the United States" and substituted "his" for "its" preceding "discretion", respectively.

1952—Subsecs. (a), (c). Act July 17, 1952, §§ 1, 2, eliminated 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 4 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 commission 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1173 of this title.

§ 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 title, 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 title 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 title) 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 proportion 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 title) 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 construction-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 title 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 title, 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 title, 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 title, (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; June 12, 1960, Pub. L. 86-518, §§ 1, 2, 74 Stat. 216; July 7, 1960, Pub. L. 86-607, § 1, 74 Stat. 362; Oct. 24, 1962, Pub. L. 87-877, §§ 1, 2(a), (e), (f), 76 Stat. 1200, 1201; July 11, 1964, Pub. L. 88-370, 78 Stat. 313; Aug. 10, 1964, Pub. L. 88-410, § 1, 78 Stat. 385; Aug. 14, 1965, Pub. L. 89-127, 79 Stat. 519; Sept. 19, 1966, Pub. L. 89-589, 80 Stat. 811; Oct. 12, 1968, Pub. L. 90-572, 82 Stat. 1004; July 8, 1969, Pub. L. 91-40, 83 Stat. 44; Oct. 21, 1970, Pub. L. 91-469, §§ 7, 35(a), (e)-(g), 84 Stat. 1019, 1035, 1036; Dec. 31, 1970, Pub. L. 91-603, § 4(b), 84 Stat. 1675; July 10, 1973, Pub. L. 93-71, 87 Stat. 169; July 31, 1976, Pub. L. 94-372, §§ 2, 3, 90 Stat. 1042; Mar. 17, 1980, Pub. L. 96-210, 94 Stat. 100; Oct. 7, 1980, Pub. L. 96-387, § 3, 94 Stat. 1545; Aug. 6, 1981, Pub. L. 97-31, § 12(84), (85), 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," preceding "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) in the sentences commencing "In the allocation", "Any contract entered into", and "In the event", 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 of the first sentence ", on behalf of the applicant," following "may secure", substituted in the 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 the last sentence "for the sale" for "with the applicant for the purchase by him" preceding "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" preceding "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 title 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 instances, "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. (i). 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 title, and the Federal Maritime Board, in connection with ship construction, reconstruction, or reconditioning under this subchapter (except section 1159 of this title)," 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 instances 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 the 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 title, 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 eliminated ", with the approval of the President," which preceded "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 instances.

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 subsec. (b) of 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 subsecs. (b) and (d) of 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 title.

MODIFICATION OF CONTRACTS; CONDITIONS

Section 2 of Pub. L. 88-410 provided that: "The amendment made by this Act [amending subsec. (f) of this section] shall be effective with respect to any con-

tract 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 title.

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 title.

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 title.

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 [subsec. (c) of this section and section 1153 of this title]. 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1154 of this title.

§ 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) of 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 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 title.

(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; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216 Oct. 21, 1970, Pub. L. 91-469, §§ 8, 35(a), 84 Stat. 1021, 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(84), 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 "purchaser" for "applicant" in three instances, "sale between the purchaser and the Secretary of Commerce" for "purchase between the applicant and the Commission" in the first sentence; and "Secretary of Commerce" for "Commission", in four instances, 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, 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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1159 of this title.

§ 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 title, 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 title or under a contract negotiated by the Secretary of Transportation as provided in section 1152(b) of this title 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 title. 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; Oct. 21, 1970, Pub. L. 91-469, §§ 9, 35(a), 84 Stat. 1021, 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(84), 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

1970—Pub. L. 91-469, in revising the text, 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, added 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", eliminated "and if it is the lowest bid" which followed "fair and reasonable", and changed the term "construction subsidy" to "construction-differential subsidy".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1224 of this title.

§ 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 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; July 12, 1960, Pub. L. 86-624, § 35(a), 74 Stat. 421; Oct. 21, 1970, Pub. L. 91-469, §§ 10, 35(a), 84 Stat. 1022, 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(84), 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, 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.

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" following "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 instances, respectively.

1960—Subsec. (a). Pub. L. 86-624 inserted the definition of the term "continental limits of the United States."

1951—Subsec. (a). Act Oct. 25, 1951, in last sentence, substituted "on file until disposed of as provided by law" for "permanently on file".

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1155a, 1176 of this title.

§ 1155a. Suspension of profit limiting provisions as to certain subcontracts

(a) The provisions of section 1155(b) of this title shall not apply to any subcontract which would otherwise be within such provisions if such subcontract is entered into in any taxable year of the subcontractor to which Subchapter E of Chapter 2 of the Internal Revenue Code is applicable and if the principal contractor and the subcontractor between which such subcontract is entered into are not affiliated within the meaning of subsection (b) of this section at the time such subcontract is entered into or at any time thereafter up to and including the date of its completion; and any agreement, pursuant to which the subcontractor is required to pay to the Secretary of Transportation profit in excess of 10 per centum of the contract price of any such subcontract or pursuant to which such an agreement is required to be obtained from such subcontractor relative to such subcontract, shall be without effect. This subsection shall apply only if both the principal contractor and the subcontractor are corporations.

(b) For the purposes of this section, two or more corporations shall be deemed to be affiliated (1) if one corporation owns at least 95 per centum of the stock of the other or others, or (2) if at least 95 per centum of the stock of two or more corporations is owned by the same interests. As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(Oct. 8, 1940, ch. 757, title IV, § 402, 54 Stat. 1003; Aug. 6, 1981, Pub. L. 97-31, § 12(86), 95 Stat. 161.)

REFERENCES IN TEXT

Section 1155(b) of this title, referred to in subsec. (a), means subsec. (b) of section 1155 prior to the amendment of section 1155 by Pub. L. 91-469, § 10(2), Oct. 21, 1970, 84 Stat. 1022, which struck out subsec. (b).

Subchapter E of Chapter 2 of the Internal Revenue Code, referred to in subsec. (a), means subchapter E of chapter 2 of the Internal Revenue Code of 1939, which was comprised of sections 710 to 784 of former Title 26, Internal Revenue Code. Sections 710 to 736, 740, 742 to 744, 750, 751, 760, 761 and 780 to 784 were repealed by act Nov. 8, 1945, ch. 453, title I, § 122(a), 59 Stat. 568. Section 741 was repealed by act Oct. 21, 1942, ch. 619, title II, §§ 224(b), 228(b), 56 Stat. 920, 925. Section 752 was repealed by act Oct. 21, 1942, ch. 619, title II, § 229(a)(1), 56 Stat. 931, eff. as of Oct. 8, 1940.

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 "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 title.

§ 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; June 12, 1960, Pub. L. 86-518, § 3, 74 Stat. 216; Aug. 6, 1981, Pub. L. 97-31, § 12(87), 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 title.

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 1061, set out under section 1111 of this title.

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. 86-516, as amended, set out as a note under section 1125 of this title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1177, 1183 of this title.

§ 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; June 12, 1960, Pub. L. 86-518, § I, 74 Stat. 216; Aug. 6, 1981, Pub. L. 97-31, § 12(88), 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three instances 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, eliminated 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 title.

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 title.

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 title.

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 title.

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 title.

§ 1158. Disposition of vessels transferred to Maritime Administration of Department of Transportation

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 title, 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.

(June 29, 1936, ch. 858, title V, § 508, 49 Stat. 2000; Aug. 6, 1981, Pub. L. 97-31, § 12(89), 95 Stat. 161.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three instances 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 title.

§ 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 title, 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; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; Oct. 24, 1962, Pub. L. 87-877, § 2(b), 76 Stat. 1200; Dec. 10, 1967, Pub. L. 90-183, 81 Stat. 559; Dec. 18, 1967, Pub. L. 90-214, 81 Stat. 660; Oct. 21, 1970, Pub. L. 91-469, § 11, 84 Stat. 1022; Aug. 10, 1972, Pub. L. 92-374, 86 Stat. 528; Nov. 12, 1977, Pub. L. 95-173, § 8, 91 Stat. 1360; Oct. 24, 1978, Pub. L. 95-505, 92 Stat. 1755; Aug. 6, 1981, Pub. L. 97-31, § 12(90), 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" following "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 the sentence dealing with the percentage of cost payable by the purchaser, following "barge of more than two thousand five hundred gross tons".

1970—Pub. L. 91-469 substituted "Secretary of Commerce" for "Commission" in seven instances, "purchaser" for "applicant" in first three instances, 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" following "fourteen knots,".

1962—Pub. L. 87-877 eliminated the 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 instances.

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, eliminated "except as otherwise provided in this title" which followed "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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1274 of this title.

§ 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 title, 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 con-

structed 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 construction 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 title, 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) Acquisition of tankers for national defense reserve

The Secretary of Transportation is authorized until July 1, 1958 (subject to the provisions of this section as herein amended), to acquire a tanker or tankers, determined by him to be desirable for inclusion in the national defense reserve, in exchange for an allowance of credit to be applied upon the purchase price of a new tanker or tankers: *Provided,* That each of the tankers to be traded in (1) is not less than one thousand three hundred and fifty gross tons; (2) is not less than ten years old; (3) is owned by a citizen or citizens of the United States; (4) and preference shall be given to those tankers which have been documented under the laws of the United States for not less than three years immediately preceding; and (5) is in class with respect to hull and machinery satisfactory to the Secretary of Transportation on the date of its physical delivery to the United States and shall be considered an "obsolete vessel" for purposes of this section: *And provided further,* That only a tanker which is constructed after August 10, 1954 and documented under the laws of the United States shall be considered a "new vessel" for purposes of this section.

The Secretary of Transportation is authorized to pay the cost of national defense features incorporated in any such new tanker. In the event that the United States acquires ownership of such new tanker, the price paid therefor shall not include any amount for national defense features paid for by the United States. The foregoing provisions shall run with the title to each new tanker and be binding on all owners thereof.

The allowance of credit for a traded-in tanker which was sold under the Merchant Ship Sales Act of 1946, as amended [50 App. U.S.C. 1735 et seq.], or which was eligible for a price adjustment under section 9 of such Act [50 App. U.S.C. 1742], shall be: (1) in the case of tankers sold under such Act, the depreciated net sales price paid to the United States, and (2) in the

case of tankers which were eligible for price adjustment under such Act, the statutory sales price of such tanker as of March 8, 1946, depreciated: plus the depreciated cost of any additions or betterments to the tanker which were capitalized by the owner and allowed for Federal income tax purposes. Such allowance shall be determined as of the date the owner contracts for the construction of a new tanker. In each case, depreciation shall be computed on the basis of the life of the tanker adopted or accepted by the Internal Revenue Service for determining depreciation for income-tax purposes to the date the owner contracts for the construction of a new tanker.

The allowance of credit for any other traded-in tanker shall be determined in accordance with the provisions of subsection (d) of this section.

In no event shall the amount of credit allowed under this subsection or subsection (d) of this section for a traded-in tanker exceed the price paid by the owner for such tanker, plus the cost of any additions or betterments to the tanker capitalized by such owner and allowed for income-tax purposes.

If an owner uses any tanker traded in pursuant to this section subsequent to the date of the contract for construction of a new tanker, the allowance determined shall be reduced by an amount equal to depreciation for the period of such use and computed in accordance with the schedule adopted or accepted by the Internal Revenue Service. Title to the traded-in tanker shall in all instances vest in the United States, and the allowance of credit shall be applied at the time of physical delivery of such tanker to the United States, which shall be no later than ninety days after delivery of the new tanker. The traded-in tanker shall thereupon be placed in the national defense reserve subject to the provisions of section 11 of the Merchant Ship Sales Act of 1946, as amended [50 App. U.S.C. 1744].

(i) Exchange of vessels; valuation; scrapping of traded out vessels

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 title, 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.

(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 U.S.C. App. 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, and amended July 17, 1952, ch. 939, §§ 7, 8, 66 Stat. 762; Aug. 10, 1954, ch. 664, 68 Stat. 680; Feb. 20, 1958, Pub. L. 85-332, 72 Stat. 17; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; July 5, 1960, Pub. L. 86-575, 74 Stat. 312; Oct. 5, 1961, Pub. L. 87-401, 75 Stat. 833; Oct. 5, 1962, Pub. L. 87-755, 76 Stat. 751; Oct. 10, 1965, Pub. L. 89-254, §§ 1, 2, 79 Stat. 980; Oct. 21, 1970, Pub. L. 91-469, §§ 12, 13, 35(a), 84 Stat. 1022, 1035; Jan. 2, 1975, Pub. L. 93-605, § 1, 88 Stat. 1965; Nov. 15, 1977, Pub. L. 95-177, 91 Stat. 1368; Aug. 6, 1981, Pub. L. 97-31, § 12(91), 95 Stat. 161.)

REFERENCES IN TEXT

The Federal income-tax laws, referred to in subsec. (e), are classified generally to Title 26, Internal Revenue Code.

The Merchant Ship Sales Act of 1946, as amended, referred to in subsec. (h), is act Mar. 8, 1946, ch. 82, 60 Stat. 41, as amended, which enacted sections 1735 to 1746 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 1735 of Title 50, Appendix, and Tables.

Section 1742 of Title 50, Appendix, referred to in subsec. (h), was repealed by Pub. L. 94-412, title V, § 501(g), Sept. 14, 1976, 90 Stat. 1258.

Public Law 911, Eighty-first Congress, referred to in subsec. (i), is act Jan. 6, 1951, ch. 1213, 64 Stat. 1223. Provisions of the act relating to ship construction appear under the heading "Maritime Activities" at 64 Stat. 1225, 1226, and are not classified to the Code.

AMENDMENTS

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," following "is authorized" and "that are scheduled for scrapping" following "National Defense Reserve Fleet", inserted "and other suitable vessels, constructed in the United States, which have never been under foreign documentation," following "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 instances, respectively.

Subsec. (i). Pub. L. 91-469, § 13, in revising first sentence, substituted "1972" and "which were constructed in the United States" for "1979" 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)" preceding and following "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), reworded 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 instances.

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 title.

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 title.

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 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 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 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). 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 title.

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 title.

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 title.

SUSPENSION OF SUBSECTION (g) REPEALED

Act May 14, 1940, ch. 201, § 1, 54 Stat. 216, as extended 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.

CROSS REFERENCES

Basis for depreciation, generally, see section 167 of Title 26, Internal Revenue Code.

Basis for determining gain or loss, generally, see section 1001 et seq. of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1059; title 50 App. section 1741.

§ 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) construction 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 title, 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 vessels 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 corpo-

ration 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) Definition of "contract for the construction" and "construction contract"

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) Definition of "reconstruction and reconditioning"

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, and 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; Sept. 8, 1959, Pub. L. 86-237, § 1, 73 Stat. 471; Sept. 26, 1961, Pub. L. 87-303, § 3, 75 Stat. 661; Oct. 10, 1962, Pub. L. 87-782, § 1, 76 Stat. 796; Dec. 23, 1963, Pub. L. 88-227, § 1, 77 Stat. 470; Sept. 12, 1964, Pub. L. 88-595, § 1, 78 Stat. 943; Aug. 6, 1981, Pub. L. 97-31, § 12(92), 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 1954 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1954 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1954 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 1954 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1954 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1954 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, deleted 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 added 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 subsec. (h) of 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 subsec. (h) of 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 subsec. (h) of 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 subsec. (h) of 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 title.

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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 543, 1023, 1059; title 50 App. section 1741.

SUBCHAPTER VI—OPERATING-DIFFERENTIAL SUBSIDY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1131, 1132, 1152, 1191, 1204, 1222, 1223, 1226, 1227, 1228, 1244 of this title.

§ 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 title. 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 title or in bulk cargo carrying service described in section 1121(b) of this title. 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 title, 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 title, 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; May 27, 1961, Pub. L. 87-45, § 2, 75 Stat. 90; Oct. 21, 1970, Pub. L. 91-469, §§ 14, 35(a), (h), 84 Stat. 1023, 1035, 1036; Dec. 31, 1970, Pub. L. 91-603, § 4(c), (d), 84 Stat. 1675; Aug. 6, 1981, Pub. L. 97-31, § 12(93), 95 Stat. 161.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two instances and for "Commission" in one in-

stance. 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 instances. 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 instances; and substituted "he" for "it" in the 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 title, 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1152 of this title.

§ 1172. Determination of necessity of subsidy to meet competition

Except with respect to cruises authorized under section 1183 of this title, 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; May 27, 1961, Pub. L. 87-45, § 3, 75 Stat. 91; Oct. 21, 1970, Pub. L. 91-469, § 35(a), 84 Stat. 1035; Aug. 6, 1981, Pub. L. 97-31, § 12(94), 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 instances.

1961—Pub. L. 87-45 excepted cruises authorized under section 1183 of this title.

1938—Act June 23, 1938, amended section, substituting "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 title 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 title, 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 title) 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 title, 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 title, 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 title) 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) Definitions of "collective bargaining costs", "base period costs", "base period", and "subsidizable wage costs of United States officers and crews"; 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 title 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 decreased 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; May 27, 1961, Pub. L. 87-45, § 4, 75 Stat. 91; Sept. 14, 1961, Pub. L. 87-243, 75 Stat. 513; Oct. 21, 1970, Pub. L. 91-469, §§ 15-17, 35(a), (i), 84 Stat. 1023, 1024, 1035, 1036; Aug. 6, 1981, Pub. L. 97-31, § 12(94), 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 instances, and "he" for "it" preceding "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 title," 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 title had been paid to ships personnel.

1961—Subsec. (a). Pub. L. 87-45, § 4(a), inserted words "and in cruises authorized under section 1183 of this title" following "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 title.

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 title] 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 title], 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 title], 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 title], 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 title] 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 title], as it existed immediately before the enactment of this Act [Oct. 21, 1970] shall not apply."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1183 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(95), 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 title.

§ 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 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.

(c) Vessels to be operated in an essential service served by citizens of the 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; Mar. 18, 1959, Pub. L. 86-3, § 18(b)(2), 73 Stat. 12; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; Nov. 8, 1965, Pub. L. 89-348, § 1(9), 79 Stat. 1310; Oct. 21, 1970, Pub. L. 91-469, §§ 18, 19, 26(b), 35(a), (j), 84 Stat. 1025, 1026, 1034-1036; Aug. 6, 1981, Pub. L. 97-31, § 12(96), 95 Stat. 162.)

AMENDMENTS

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), deleted "on the Great Lakes or" following "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 title 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" preceding "is inadequate" in first sentence; substituted "Secretary of Commerce" for "Commission" in four instances; and substituted "he" for "it" preceding "may deem" in last sentence, respectively.

1965—Subsec. (b). Pub. L. 89-348 deleted 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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1213 of this title.

§ 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 title, 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 title, 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; July 12, 1960, Pub. L. 86-624, § 35(b), 74 Stat. 421; May 27, 1961, Pub. L. 87-45, § 5, 75 Stat. 91; Oct. 21, 1970, Pub. L. 91-469, §§ 20, 35(a), (k), 84 Stat. 1026, 1035, 1036; Aug. 6, 1981, Pub. L. 97-31, § 12(96), 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 instances, "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 instances, respectively.

Cl. (5). Pub. L. 91-469, § 20(4), (5), (6)-(9), struck out former cl. (5) providing that when at the end of any ten-year period 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 former 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.

Cl. (6). Pub. L. 91-469, § 20(10), (11), redesignated former 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" preceding "outside the United States" and definition of "continental limits of the United States" as including States of Alaska and Hawaii, respectively.

Cl. (7). Pub. L. 91-469, § 20(10) redesignated former cl. (7) as (6).

1961—Cl. (6). Pub. L. 87-45 inserted words ", and any cruises authorized under section 1183 of this title," following "services, routes, and lines".

1960—Pub. L. 86-624 inserted the definition of the term "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 title" 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 instances, 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."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1177 of this title.

§ 1177. Capital construction fund

(a) Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fisbery 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 1954 [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 1954 [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 sueh 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 sueh 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) Nontaxabiiity of deposits; eligible deposits

(1) For purposes of the Internal Revenue Code of 1954—

(A) taxable income (determined without regard to this section) 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 .nto 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 aecount,

(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

(E) in applying the tax imposed by section 531 of such Code [26 U.S.C. 531] (relating to the aceumulated earnings tax), amounts while held in the fund shali 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) 85 percent 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 1954 [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) 15 percent of any dividend referred to in paragraph (2)(C).

(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—

(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 [26 U.S.C. 1371]), or

(B) One-half of such portion, in the case of any other person.

(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

(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 1954—

(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 title 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.

(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 1954 [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 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) 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 title.

(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.

(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; Aug. 14, 1958, Pub. L. 85-637, 72 Stat. 592; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; May 27, 1961, Pub. L. 87-45, § 6, 75 Stat. 91; Sept. 21, 1961, Pub. L. 87-271, 75 Stat. 570; Oct. 21, 1970, Pub. L. 91-469, § 21(a), 84 Stat. 1026; Oct. 1, 1973, Pub. L. 93-116, 87 Stat. 421; Aug. 6, 1981, Pub. L. 97-31, § 12(97), 95 Stat. 162.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsecs. (d)(1) and (h)(3), is classified generally to Title 26, Internal Revenue Code.

Section 1371 of the Internal Revenue Code of 1954, referred to in subsec. (g)(3)(A), means section 1371, which was classified to section 1371 of Title 26, Internal Revenue Code, as it existed prior to the general amendment of subchapter S (§ 1371 et seq.) of chapter 1 of Title 26 by Pub. L. 97-354, § 2, Oct. 19, 1982, 96 Stat. 1669. For definition of an S corporation, see section 1361 of Title 26.

AMENDMENTS

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 witbdrawals 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 words "and on cruises, if any, authorized under section 1183 of this title" following "route or service approved by the Secretary" in the second paragraph.

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 the first and second paragraphs as subdivisions (1) and (2), and added subdivision (3).

1952—Subsec. (b). Act July 17, 1952, § 17, 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.

Subsec. (d). Act July 17, 1952, § 18, substituted "as provided for in section 1177(b) of this title" following "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 the first paragraph, 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 the second paragraph.

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 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 title.

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 this title], 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 title.

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(e) of Pub. L. 86-518, set out as a note under section 1125 of this title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1177-1, 1185, 1244 of this title; title 26 sections 46, 132, 543; title 42 section 9141.

§ 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 title, 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 title.

(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; Aug. 6, 1981, Pub. L. 97-31, § 12(98), 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three instances 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 title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(99), 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 cancelation 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 title.

§ 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 Transpor-

tation 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; Aug. 6, 1981, Pub. L. 97-31, § 12(99), 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1152 of this title.

§ 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, and amended Aug. 28, 1958, Pub. L. 85-791, § 17, 72 Stat. 947; June 12, 1960, Pub. L. 86-518, § 4, 74 Stat. 216; Aug. 6, 1981, Pub. L. 97-31, § 12(100), 95 Stat. 162.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31, § 12(100)(A), (B), substituted "Secretary of Transportation" for "Commission" in three instances 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 instances 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", eliminated "upon" preceding "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 title.

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 title.

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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 808 of this title.

§ 1182. Subordination of Secretary's interest to Reconstruction Finance Corporation

The Secretary of Transportation is authorized to subordinate his interest as mortgagee in any vessel subsidized under the provisions of this subchapter in favor of any loan for working capital made by the Reconstruction Finance Corporation under the Reconstruction Finance Corporation Act, as amended [15 U.S.C. 601 et seq.], if the Secretary of Transportation finds that the making of such loan by the Reconstruction Finance Corporation would be in furtherance of the policies of this chapter or would, in his opinion, preserve or protect his mortgage interest in said subsidized vessel: *Provided,* That the obligations evidencing such loans by the Reconstruction Finance Corporation shall not be transferred, except to some other governmental agency.

(June 29, 1936, ch. 858, title VI, § 612, as added June 23, 1938, ch. 600, § 30, 52 Stat. 961, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(101), 95 Stat. 162.)

REFERENCES IN TEXT

The Reconstruction Finance Corporation Act, as amended, referred to in text, is act Jan. 22, 1932, ch. 8, 47 Stat. 5, as amended, which was classified to chapter 14 (§ 601 et seq.) of Title 15, Commerce and Trade, and has been eliminated from the Code. For complete classification of this Act prior to its elimination from the Code, see Tables.

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances and "his" for "its" in three instances. 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 title.

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out under section 601 of Title 15, Commerce and Trade, abolished the Reconstruction Finance Corporation.

§ 1183. Off-season cruises by passenger vessels

(a) Definition

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 title 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 car-

rier, 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 title.

(4) Any other provisions of this chapter or of the Shipping Act, 1916 [46 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 title shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of sections 1175(c) and 1156 of this title requiring the reduction of operating differential subsidy and the partial payback of construction differential 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 title, 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 May 27, 1961, Pub. L. 87-45, § 1, 75 Stat. 89, and amended June 22, 1968, Pub. L. 90-358, §§ 1, 2, 82 Stat. 248; May 14, 1970, Pub. L. 91-250, 84 Stat. 215; June 30, 1972, Pub. L. 92-323, 86 Stat. 389; Aug. 6, 1981, Pub. L. 97-31, § 12(102), 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 principally to chapter 23 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see section 842 of this title 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 the words "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 eliminated.

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 title 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 title, 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865a, 1171, 1172, 1173, 1176, 1183a of this title.

§ 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 title 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, § 614, as added Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1603, 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 title, and section 391a(7) of this title: *Provided*, That the provisions of section 1177 of this title 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, § 615, as added Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1610, 95 Stat. 753.)

SUBCHAPTER VII—PRIVATE CHARTER OPERATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1131, 1152, 1160, 1161, 1222, 1223, 1226, 1227, 1228 of this title; title 50 section 198; title 50 App. section 1738.

§ 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 title, and the objectives set forth in section 1120 of this title, 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; Aug. 6, 1981, Pub. L. 97-31, § 12(103), 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances. 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 title.

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 title and the objectives set forth in section 1120 of this title 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.

CROSS REFERENCES

Operational and charter authority for vessels acquired under emergency powers, see section 198 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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; Aug. 28, 1957, Pub. L. 85-191, 71 Stat. 471; July 12, 1960, Pub. L. 86-624, § 35(c), 74 Stat. 421; Aug. 6, 1981, Pub. L. 97-31, § 12(104), 95 Stat. 162.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances 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 the definition of the term "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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(105), 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(106), 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 title.

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 title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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 866 of this title, and in strict accordance with the provisions of section 864 of this title, or by demising his vessels on bare-boat 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; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216; Aug. 6, 1981, Pub. L. 97-31, § 12(107), 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in four instances, "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 instances.

1939—Act Aug. 4, 1939, prohibited the 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 title.

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 title.

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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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 bare-boat 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 title) 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 title.

(June 29, 1936, ch. 858, title VII, § 706, 49 Stat. 2009; Aug. 4, 1939, ch. 417, § 11(b), 53 Stat. 1186; Aug. 6, 1981, Pub. L. 97-31, § 12(108), 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31, § 12(108)(A) to (C), substituted "Secretary of Transportation" for "Commission" in three instances, "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 instances 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 the 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 title.

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 title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(109), 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31, § 12(109)(A), substituted "Secretary of Transportation" for "Commission" in two instances. 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 instances 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 instances. 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(110), 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" and "his" for "its" in two instances. 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," preceding "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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title; title 50 App. section 1738.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(111), 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1196, 1205 of this title; title 50 App. section 1738.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(112), 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title; title 50 App. section 1738.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(113), 95 Stat. 163.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in four instances. 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title.

§ 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 taste 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; Aug. 6, 1981, Pub. L. 97-31, § 12(114), 95 Stat. 163.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances, 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 the 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 title.

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. 6, 1939, and May 27, 1941.

CROSS REFERENCES

War risk insurance, see section 1281 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title; title 50 App. section 1738.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(115), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1196 of this title; title 50 App. section 1738.

§ 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 title) 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; Mar. 18, 1959, Pub. L. 86-3, § 18(b)(3), 73 Stat. 12; June 12, 1960, Pub. L. 86-518, § 5, 74 Stat. 216; Oct. 21, 1970, Pub. L. 91-469, § 22, 84 Stat. 1032; Aug. 6, 1981, Pub. L. 97-31, § 12(116), 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 instances, "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 title 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 the 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 title.

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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1160, 1196 of this title.

§ 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 title. 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 title, 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, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(117), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

§ 1206. Construction of nuclear-powered merchant ship; appropriations; special services; cooperation with other Federal agencies

There is authorized to be appropriated to the Department of Transportation, Maritime Administration, and the Atomic Energy Commission, such sums as may be necessary, to remain available until expended, for the construction, outfitting, and preparation for operation, including training of qualified personnel, of a nuclear-powered merchant ship capable of providing shipping services on routes essential for maintaining the flow of the foreign commerce of the United States. The Maritime Administration, and the Atomic Energy Commission, in carrying on activities and functions under this section, may collaborate with and employ persons, firms, and corporations on a contract or fee basis for the performance of special services deemed necessary by such agencies in carrying on such activities and functions. The Administration may, for the same purposes, with the approval of the Secretary of Transportation and where appropriate the Atomic Energy Commission, avail itself of the use of licenses, information, services, facilities, offices, and employees of any executive department, independent establishment, or other agency of the Government, including any field service thereof.

(June 29, 1936, ch. 858, title VII, § 716, as added July 30, 1956, ch. 792, 70 Stat. 731, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(118), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Department of Transportation" for "Department of Commerce" and "Secretary of Transportation" for "Secretary of Commerce".

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 2210.

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; Aug. 6, 1981, Pub. L. 97-31, § 12(119), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in six instances 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 title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(120), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two instances. 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, eliminated words "fair actual" in first sentence which followed "owner shall be paid therefor the".

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 the end of the first sentence, and the word "depreciated" following "In computing the" in the 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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241a, 1242 of this title.

§ 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 title, 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 title, 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 title 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; Oct. 21, 1970, Pub. L. 91-469, § 26(a), 84 Stat. 1034; Mar. 23, 1975, Pub. L. 94-10, § 3, 89 Stat. 16; Nov. 13, 1975, Pub. L. 94-127, § 4, 89 Stat. 680; Oct. 19, 1980, Pub. L. 96-470, title II, § 201(a), 94 Stat. 2241; Aug. 6, 1981, Pub. L. 97-31, § 12(121), 95 Stat. 164; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1604, 95 Stat. 751.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-35 added 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 title" 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.

§ 1214. Omitted

CODIFICATION

Section, act Feb. 6, 1941, ch. 5, § 3, 55 Stat. 6, which authorized the United States Maritime Commission to enter into contracts for the purpose of carrying out this chapter, was omitted in view of the abolition of the United States Maritime Commission by section 306 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out under section 1111 of this title.

ANNUAL APPROPRIATIONS

Aug. 25, 1937, ch. 757, title I, § 101, 50 Stat. 759—$115,000,000.

Mar. 16, 1939, ch. 11, § 1, 53 Stat. 543—$230,000,000.

June 27, 1940, ch. 437, title I, § 101, 54 Stat. 634—$50,000,000.

Feb. 6, 1941, ch. 5, § 3, 55 Stat. 6—$65,000,000.

Apr. 5, 1941, ch. 40, § 1, 55 Stat. 119—$180,000,000.

Aug. 25, 1941, ch. 409, title III, § 301, 55 Stat. 682—$1,296,650,000.

June 27, 1942, ch. 450, § 1, 56 Stat. 419—$90,000,000.

SUBCHAPTER VIII-A—OFFENSES AND PENALTIES

§ 1221. Repealed. Pub. L. 91-469, § 23, Oct. 21, 1970, 84 Stat. 1033

Section, acts June 29, 1936, ch. 858, title VIII, § 803, 49 Stat. 2012; June 23, 1938, ch. 600, § 34, 52 Stat. 963, restricted employment of persons, concerns, etc. (in which contractor or charterer is financially interested) furnishing supplies and services to operator's subsidized or chartered vessel and exemption therefrom where enforcement is unnecessary and agreement provides for accounting and payment of all profits to contractor, etc.

§ 1222. Operating competing foreign-flag vessel forbidden

(a) Operating-differential subsidy; competition with essential American-flag service

Except as provided in subsections (b) and (c) of this section, 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, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 1121 of this title.

(b) Waiver; special circumstances

Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

(c) Exceptions

Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under subchapter VI of this chapter, or those in the foregoing specified relationship to him, who was not such a contractor on April 15, 1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

(1) Until April 15, 1990—

(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in the foregoing specified relationship to him, were acting as agent or broker on April 15, 1970;

(2) Until April 15, 1972, the continued acting as agent or broker for a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk (other than one described in subsection (c)(1)(A)), for which the contractor, or those in the foregoing specified relationship to him, were acting as agent or broker on April 15, 1970.

(d) Statement to be filed with Secretary

No contractor under subchapter VI of this chapter, whether he shall have become such a contractor before or after October 21, 1970, shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after October 21, 1970, there shall have been filed with the Secretary of Transportation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

(e) Report to Congress

During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 1118 of this title, a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 1101 of this title; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

(June 29, 1936, ch. 858, title VIII, § 804, 49 Stat. 2012; June 23, 1938, ch. 600, § 35, 52 Stat. 963; Oct. 21, 1970, Pub. L. 91-469, § 24, 84 Stat. 1033; Oct. 19, 1980, Pub. L. 96-470, title II, § 201(b), 94 Stat. 2241; Aug. 6, 1981, Pub. L. 97-31, § 12(121), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

1980—Subsec. (e). Pub. L. 96-470 substituted "shall include in the annual report pursuant to section 1118 of this title, a report" for "shall, at the beginning of each regular session, make a report to the Congress".

1970—Subsecs. (a) to (d). Pub. L. 91-469 designated existing provisions as subsecs. (a) and (b) and added subsecs. (c) to (e).

1938—Act June 23, 1938, inserted words "for a specific period of time" following "contractor,".

§ 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 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 subchapters VI or 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 subchapters VI or 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) Employing Member of Congress

It shall be unlawful for any contractor or charterer who holds any contract made under authority of any provision in this chapter to employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director of such person.

(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; Oct. 21, 1970, Pub. L. 91-469, § 25, 84 Stat. 1034; Dec. 31, 1970, Pub. L. 91-603, § 4(e), 84 Stat. 1675; Aug. 6, 1981, Pub. L. 97-31, § 12(122), 95 Stat. 164.)

AMENDMENTS

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 eliminated 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 title.

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 title".

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1183 of this title.

§ 1224. Collusion with respect to bidding

Whoever shall consult with, or enter into an agreement with, or inform any other bidder, or officer, director, executive, agent, or employee of any such other bidder, as to the amount, the terms, or the conditions of any bid submitted to the Commission or the Secretary of Transportation prior to the public opening of such bids, or enter into any combination, understanding, agreement, or arrangement whatsoever, to prevent the making of any bona-fide bid for any contract or charter under this chapter, to induce any other person not to bid for any such contract or charter, or to deprive the United States in any way of the benefit of full, free, and secret competition in the awarding of any such contract or charter shall be guilty of a misdemeanor: *Provided*, That this section shall also apply to bidding for contracts under the provisions of section 1154 of this title.

(June 29, 1936, ch. 858, title VIII, § 806(a), 49 Stat. 2014; Aug. 6, 1981, Pub. L. 97-31, § 12(123), 95 Stat. 164.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Commission or 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.

CODIFICATION

Section is comprised of subsec. (a) of section 806 of act June 29, 1936. Subsecs. (b) to (d) of section 806 are classified to section 1228 of this title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1228 of this title.

§ 1225. Employment of persons to appear before Congress or governmental agency; filing statement of employment

It shall be unlawful for any person employed or retained by any shipbuilder or ship operator holding or applying for a contract under the provisions of this chapter, or employed or retained by any subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator, to present, advocate, or oppose any matter within the scope of the Shipping Act, 1916, as amended [46 U.S.C. 801 et seq.], the Merchant Marine Act, 1920, as amended [46 U.S.C. 861 et seq. and 911 et seq.], the Merchant Marine Act, 1928, as amended [46 U.S.C. 891 et seq.], the Intercoastal Shipping Act, 1933 [46 U.S.C. 843 et seq.], or this chapter, before the Congress or any committee thereof, or before the Commission or the Secretary of Transportation, unless such shipbuilder or ship operator shall have previously filed with the Secretary of Transportation in such form and detail as the Secretary of Transportation shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Secretary of Transportation within thirty days after the close of each calendar month during such retainer or employment, in such form and detail as the Secretary of Transportation shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment. Whosoever shall violate this provision shall be guilty of a misdemeanor.

(June 29, 1936, ch. 858, title VIII, § 807, 49 Stat. 2014; June 23, 1938, ch. 600, § 38, 52 Stat. 963; Aug. 6, 1981, Pub. L. 97-31, § 12(124), 95 Stat. 164.)

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 principally to chapter 23 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see section 842 of this title and Tables.

The Merchant Marine Act, 1920, referred to in text, is act June 5, 1920, ch. 250, 41 Stat. 988, as amended, which is classified generally to chapters 24 (§ 861 et seq.) and 25 (§ 911 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 889 of this title 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 title. For complete classification of this Act to the Code, see References in Text note set out under section 891x of this title and Tables.

The Intercoastal Shipping Act, 1933, referred to in text, is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of this title. For complete classification of this Act to the Code, see section 848 of this title and Tables.

Amendments

1981—Pub. L. 97-31 substituted "Commission or the Secretary of Transportation" for "Commission" and "Secretary of Transportation" for "Commission" in four instances. 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, amended section generally, and among other changes, inserted provisions to include matters within the scope of the Shipping Act, 1916, the Merchant Marine Act, 1920, the Merchant Marine Act, 1928, and the Intercoastal Shipping Act, 1933, and substituted "thirty days" for "ten days".

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 title.

§ 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.)

FEDERAL RULES OF CIVIL PROCEDURE

Effect of rule 54 on this section, see note by Advisory Committee under rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.
Judgment and costs, see rule 54.

§ 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 of this title, 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; Aug. 6, 1981, Pub. L. 97-31, § 12(125), 95 Stat. 164.)

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 title.

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 No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1276 of this title.

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: *Provided,* That the Comptroller General of the United States shall not credit any allowance 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-I of this title. 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; Sept. 21, 1961, Pub. L. 87-266, 75 Stat. 565; Oct. 21, 1970, Pub. L. 91-469, § 27, 84 Stat. 1034; Aug. 6, 1981, Pub. L. 97-31, § 12(126), 95 Stat. 165.)

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

1981—Subsec. (b)(2). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two instances.

1970—Subsec. (b). Pub. L. 91-469 redesignated subsec. (b) as (b)(1), substituted "this paragraph" for "this subsection" following "temporary waiver of the provisions of" therein, and added subsec. (b)(2).

1961—Subsec. (b). Pub. L. 87-266 excluded from the 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.

CROSS REFERENCES

Free transportation of Government personnel in American vessels prohibited; exceptions; reduction of Government rate; penalty, see section 817b of this title.

Motor vehicles belonging to members of armed forces, transportation on Government-owned vessels, see section 2634 of Title 10, Armed Forces.

Transportation at Government expense of automobiles owned by civilian officers and employees prohibited, see section 5727 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1185 of this title; title 22 sections 2223, 2353, 2399d.

§ 1241-I. 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; Aug. 6, 1981, Pub. L. 97-31, § 12(127), 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 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 were assumed by United States Maritime Commission on Oct. 26, 1936, under provisions of act June 29, 1936, set out as section 1114 of this title. 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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1241 of this title.

§ 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 title is applicable) is computed in accordance with subsection (a) of section 1242 of this title, as that subsection is interpreted by the General Accounting 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; Aug. 6, 1981, Pub. L. 97-31, § 12(128), 95 Stat. 165.)

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" in four instances and "Department of Transportation" for "Department of Commerce".

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the 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 the Bureau of the Budget as the 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 1736 of Appendix to Title 50, War and National Defense.

CROSS REFERENCES

Emergency foreign vessel acquisition, see sections 196 to 198 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1241c, 1280 of this title.

§ 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; Aug. 6, 1981, Pub. L. 97-31, § 12(129), 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".

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

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 title, 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; Aug. 6, 1981, Pub. L. 97-31, § 12(130), 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 instances.

§ 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, or 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 title, 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 title 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 title.

(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; Aug. 6, 1981, Pub. L. 97-31, § 12(131), 95 Stat. 165.)

CODIFICATION

In subsec. (d), "sections 1346 and 1491 of title 28" were 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

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 instances 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 the 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 added 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).

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 title.

For transfer of functions of other officers, employees, and agencies of the Department of the Treasury, with certain exceptions, to the 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 Treasurer of the United States, referred to in this section, is an officer of the Treasury department.

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.

FEDERAL RULES OF CIVIL PROCEDURE

Admiralty and maritime rules of practice (which included libel procedures) were superseded, and civil and admiralty procedures in United States district courts were unified, effective July 1, 1966, see rule 1 and Supplemental Rules for Certain Admiralty and Maritime Claims, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Emergency foreign vessel acquisition, see sections 196 to 198 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865a, 1152, 1160, 1241a, 1289 of this title; title 50 sections 196, 197; title 50 App. section 1744.

§ 1242-1. Omitted

CODIFICATION

Section, Pub. L. 85-469, title I, § 101, June 25, 1958, 72 Stat. 231, which required computation of funds spent in payment for requisitioned or purchased vessels in accordance with section 1242(a) of this title was not repeated in subsequent appropriation acts.

§ 1242a. Maintenance of and adjustment of obligations with respect to essential vessels affected by Neutrality Act

(a) Definition of "essential vessel"

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; Aug. 6, 1981, Pub. L. 97-31, § 12(132), 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 title.

§ 1243. Omitted

CODIFICATION

Section, act June 29, 1936, ch. 858, title IX, § 904, 49 Stat. 2016, which amended prior acts by substituting "United States Maritime Commission" for "United States Shipping Board" or "the Board", was omitted in view of the abolition of the United States Maritime Commission by section 306 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1277, set out under section 1111 of this title.

§ 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 title 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 title.

(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 section 802 of this title, 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; Sept. 21, 1959, Pub. L. 86-327, § 4, 73 Stat. 597; Oct. 21, 1970, Pub. L. 91-469, § 28, 84 Stat. 1034; Aug. 22, 1972, Pub. L. 92-402, § 2, 86 Stat. 617; Oct. 15, 1980, Pub. L. 96-453, § 3(b), 94 Stat. 2008; Aug. 6, 1981, Pub. L. 97-31, § 12(133), 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 the terms "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 title 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 title 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 the terms "United States Maritme Commission" and "Commission".

1938—Subsec. (a). Act June 23, 1938, added words "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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1274 of this title; title 30 section 1412; title 42 section 9141; title 50 App. section 1745.

§ 1245. Separability of provisions; 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 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 title.

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 title] 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 title, repealing sections 1276a, 1277, and 1278 of this title, and enacting provisions set out as notes under sections 1177 and 1273 of this title] may be cited as the 'Federal Ship Financing Act of 1972'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-469, § 1, Oct. 21, 1970, 84 Stat. 1018, provided that: "This Act [enacting section 1507a of Title 15, Commerce and Trade, and section 270f of 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 title, repealing section 1221 of this title, and enacting provisions set out as notes under sections 1151, 1173, and 1177 of this title] may be cited as the 'Merchant Marine Act of 1970'."

§ 1246. Effective date of chapter

Except as otherwise provided in this chapter it shall take effect thirty days after a majority of the members of the Commission have taken the oath of office.

(June 29, 1936, ch. 858, title IX, § 907, 49 Stat. 2017.)

TRANSFER OF FUNCTIONS

The Commission, referred to in text, was, in the original, a reference to the United States Maritime Commission, which was abolished and its functions transferred to the Federal Maritime Board and the Secretary of Commerce by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, set out under section 1111 of this title. Reorg. Plan No. 21 of 1950 was, in turn, superseded by Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out under section 1111 of this title. Reorg. Plan No. 7 of 1961 abolished the Federal Maritime Board, including the offices of the members thereof, and transferred its functions either to the newly created Federal Maritime Commission or to the Secretary of Commerce. See also section 1244 of this title. Sections 1601 and 1602 of this title transferred the Maritime Administration of the Department of Commerce to the Department of Transportation and transferred the functions of the Secretary of Commerce relating to the Administration to the Secretary of Transportation.

§ 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 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 Nov. 6, 1978, Pub. L. 95-598, title III, § 334, 92 Stat. 2680, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(134), 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 amend-

ed, which is classified generally to chapter 20 (§ 741 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this title 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 Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1605, 95 Stat. 752.)

SUBCHAPTER X—MARITIME LABOR RELATIONS

WORKING HOURS AND OVERTIME OF EMPLOYEES

Act May 2, 1941, ch. 84, § 4, 55 Stat. 150, as extended by act June 16, 1942, ch. 416, 56 Stat. 370, relating to working hours and overtime of employees engaged in United States Maritime Commission ship construction and national defense work, formerly set out as note under this subchapter, was repealed by act May 7, 1943, ch. 93, § 5, 57 Stat. 77.

§§ 1251 to 1255. Omitted

CODIFICATION

Sections 1251 to 1255 expired at the end of 4 years from June 23, 1938, pursuant to former section 1262 of this title.

Section 1251, act June 29, 1936, ch. 858, title IX, § 1001, as added June 23, 1938, ch. 600, § 45, 52 Stat. 965, declared the policy of this subchapter to be the elimination of obstruction to free flow of water-borne commerce by means of collective bargaining.

Section 1252, act June 29, 1936, ch. 858, title IX, § 1002, as added June 23, 1938, ch. 600, § 45, 52 Stat. 965, related to the effect of this subchapter on other laws.

Section 1253, act June 29, 1936, ch. 858, title IX, § 1003, as added June 23, 1938, ch. 600, § 45, 52 Stat. 965, related to definitions.

Section 1254, act June 29, 1936, ch. 858, title IX, § 1004, as added June 23, 1938, ch. 600, § 45, 52 Stat. 966, and amended June 23, 1941, ch. 228, § 2, 55 Stat. 259, related to the duty of the Maritime Labor Board to encourage employer-employee agreements and settlements.

Section 1255, act June 29, 1936, ch. 858, title IX, § 1005, as added June 23, 1938, ch. 600, § 45, 52 Stat. 967, related to the filing of copies of labor contracts with the Maritime Labor Board and the penalty for failure to file.

§ 1256. Repealed. June 23, 1941, ch. 228, § 3, 55 Stat. 259

Section, act June 29, 1936, ch. 858, title X, § 1006, as added June 23, 1938, ch. 600, § 45, 52 Stat. 967, related to adjustment of agreements and disputes between maritime employers and employees.

SAVINGS PROVISIONS

Last portion of section 3 of act June 23, 1941, ch. 228, 55 Stat. 259, repealing this section and sections 1258, 1259, and last sentence of 1260 provided: "That the Maritime Labor Board may continue to act as mediator in any disputes wherein its mediation services have been requested and the mediation of which the Board has actively undertaken prior to the date of the enactment of this Act [June 23, 1941]."

§ 1257. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 650

Section, act June 29, 1936, ch. 858, title X, § 1007, as added June 23, 1938, ch. 600, § 45, 52 Stat. 967, provided for appointment, composition, tenure, pay, travel, conflict of interest, removal, and delegation of functions of Maritime Labor Board.

§§ 1258, 1259. Repealed. June 23, 1941, ch. 228, § 3, 55 Stat. 259

Section 1258, act June 29, 1936, ch. 858, title X, § 1008, as added June 23, 1938, ch. 600, § 45, 52 Stat. 968, related to mediation and assistance relating to agreements.

Section 1259, act June 29, 1936, ch. 858, title X, § 1009, as added June 23, 1938, ch. 600, § 45, 52 Stat. 968, related to arbitration of disputes.

SAVINGS PROVISIONS

Savings provisions for act June 23, 1941, ch. 228, 55 Stat. 259, see Savings Provisions note set out under section 1256 of this title.

§§ 1260 to 1262. Omitted

CODIFICATION

Sections 1260 to 1262 expired at the end of 4 years from June 23, 1938, pursuant to former section 1262 of this title.

Section 1260, act June 29, 1936, ch. 858, title X, § 1010, as added June 23, 1938, ch. 600, § 45, 52 Stat. 969 and amended June 23, 1941, ch. 228, § 3, 55 Stat. 259, related to a report of a plan for permanent labor policy.

Section 1261, act June 29, 1936, ch. 858, title X, § 1011, as added June 23, 1938, ch. 600, § 45, 52 Stat. 969, authorized appropriations.

Section 1262, act June 29, 1936, ch. 858, title X, § 1012, as added June 23, 1938, ch. 600, § 45, 52 Stat. 969, and amended June 23, 1941, ch. 228, § 1, 55 Stat. 259, provided that the provisions of this subchapter expire at the end of four years from June 23, 1938.

SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1152, 1160, 1161 of this title.

§ 1271. Definitions

As used in this subchapter—

(a) The term "mortgage" includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended [46 U.S.C. 911 et seq.], 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;

(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 con-

version 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 section 802 of this title, 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 owned by citizens of the United States;

(e) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary pursuant to section 1275(d) of this title and obligations eligible for investment of funds under sections 1272 and 1279(d) of this title), issued for one of the purposes specified in section 1274(a) of this title;

(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;

(f) 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;

(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, 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, 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.

(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 section 802 of this title;

(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); or

(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;

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 section 802 of this title, and for purposes of applying such section 802 of this title 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) 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

vessels or fishery facilities includes all States referred to in subsection (k)(i) of this section.

(n) The term "Secretary" means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this subchapter, and the Secretary of Transportation with respect to all other vessels.

(June 29, 1936, ch. 858, title XI, § 1101, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969, and amended Sept. 3, 1954, ch. 1265, § 1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, § 1(a), (b), 70 Stat. 1087; July 31, 1959, Pub. L. 86-127, § 1(1), 73 Stat. 272; Sept. 2, 1960, Pub. L. 86-685, § 1, 74 Stat. 733; Sept. 26, 1961, Pub. L. 87-303, § 2, 75 Stat. 661; Oct. 21, 1970, Pub. L. 91-469, § 29, 84 Stat. 1035; Oct. 19, 1972, Pub. L. 92-507, § 1, 86 Stat. 909; Aug. 3, 1980, Pub. L. 96-320, title II, § 202(a), 94 Stat. 992; Dec. 22, 1980, Pub. L. 96-561, title II, § 220(1), 94 Stat. 3291; Aug. 6, 1981, Pub. L. 97-31, § 12(135), 95 Stat. 165.)

REFERENCES IN TEXT

The Ship Mortgage Act, 1920, referred to in subsec. (a), is section 30 of act June 5, 1920, ch. 250, 41 Stat. 1000, as amended, which is classified generally to chapter 25 (§ 911 et seq.) of this title. For complete classification of this Act to the Code, see section 984 of this title and Tables.

AMENDMENTS

1981—Subsec. (c). Pub. L. 97-31, § 12(135)(A), struck out "of Commerce" following "Secretary".

Subsec. (f). Pub. L. 97-31, § 12(135)(A), struck out "of Commerce" following "Secretary".

Subsec. (g). Pub. L. 97-31, § 12(135)(A), struck out "of Commerce" following "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), added reference to ocean thermal energy conversion facilities or plantships.

Subsec. (i). Pub. L. 96-320, § 202(a)(2)-(4), added subsec. (i).

Subsecs. (j) to (m). Pub. L. 96-561 added subsecs. (j) to (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 the definition of "mortgagor".

Subsec. (f). Pub. L. 92-507 struck out the 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 the proviso the words "in respect of the unpaid balance of the principal of a mortgage or loan" and the exception clause.

1956—Subsec. (f). Act Aug. 7, 1956, eliminated ", except for certain special purpose vessels as provided for in subsections (a) and (b) of section 1273 of this title," in the proviso following the words "That in no event", and eliminated "90 per centum of" both preceding and following "75 per centum, or".

1954—Act Sept. 3, 1954, defined "loan" and "actual cost" and redefined "mortgagee".

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1279c of this title; title 30 section 1412.

§ 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 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 under the appropriation authorized by section 1279 of this title. 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, and amended Sept. 3, 1954, ch. 1265, § 2, 68 Stat. 1268; July 31, 1959, Pub. L. 86-123, § 1(2), 73 Stat. 269; Oct. 19, 1972, Pub. L. 92-507, § 2, 86 Stat. 910; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97-31 struck out "of Commerce" following "Secretary" in two instances.

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 title".

1954—Act Sept. 3, 1954, omitted provisions relating to the purchase of debentures and substituted "Secretary of Commerce" for "Commission".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1274, 1275, 1279c of this title.

§ 1273. Authorization of Secretary to guarantee obligations

(a) Principal and interest

The Secretary, upon application by a citizen of the United States, 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.

(b) Security interest

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary 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 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 of this title, of the amount, as determined by the Secretary 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, unless the obligor creates an escrow fund as authorized by section 1279a of this title, in which case the Secretary may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this title, 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 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 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.

(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 $1,650,000,000 shall be limited to obligations pertaining to commerical demonstration ocean thermal energy conversion facilities or plantships guaranteed under section 1279c of this title, and of which $850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter. 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.

(June 29, 1936, ch. 858, title XI, § 1103, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969, and 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; Oct. 21, 1970, Pub. L. 91-469, § 30, 84 Stat. 1035; Oct. 19, 1972, Pub. L. 92-507, § 3, 86 Stat. 910; July 10, 1973, Pub. L. 93-70, § 3, 87 Stat. 168; Nov. 13, 1975, Pub. L. 94-127, § 5, 89 Stat. 681; June 26, 1978, Pub. L. 95-298, § 5, 92 Stat. 340; Aug. 3, 1980, Pub. L. 96-320, title II, § 203(b)(1), 94 Stat. 994; Dec. 22, 1980, Pub. L. 96-561, title II, § 220(2), 94 Stat. 3292; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1606(a), (b), 95 Stat. 752; Jan. 6, 1983, Pub. L. 97-424, title IV, § 425, 96 Stat. 2167.)

AMENDMENTS

1983—Subsec. (f). Pub. L. 97-424 added 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" following "Secretary" wherever appearing.

Subsec. (f). Pub. L. 97-35, § 1606(b), increased the 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 title" 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 insuranee contracts.

Subsec. (d). Pub. L. 92-507 substituted provisions pledging the full faith and eredit 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 redes-

ignated, 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), eliminated "90 per centum of" preceding "the unpaid balance" and eliminated 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), eliminated "90 per centum of" preceding "the unpaid balance" and eliminated 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), eliminated "the" preceding "interest on and" and the words "90 per centum of" following 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 after "provided" the words "90 per centum of the unpaid balance" and struck out the last sentence relating to aggregate amount of mortgage obligations, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1956 AMENDMENT

Act June 25, 1956, which amended subsec. (d) of this section, provided in part that the amendment of subsec. (d) should be 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 title, was repealed by Pub. L. 97-35, title XVI, § 1606(a), Aug. 13, 1981, 95 Stat. 752.

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 title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1279c of this title.

§ 1274. Eligibility for guarantee

(a) Purpose of obligations

Pursuant to the authority granted under section 1273(a) of this title, the Secretary, 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 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 title for purposes of subchapter V of this chapter;; or (D) [1] 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: *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 of vessels heretofore acquired by the Fund under the provisions of section 1275 of this title and reconditioning and reconstructing such vessels;

(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 the purchase of fishing vessels or fishery facilities, the construction, reconstruction, reconditioning, or purchase of which was guaranteed under this subchapter,

[1] So in original. Probably should be "chapter; (D)".

that are sold at foreclosure instituted by the Seeretary, or are sold by the Secretary following purchase at foreclosure, and the reconstruction or reconditioning thereof.

Any obligation guaranteed under paragraph (6) 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 as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vesseis which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of paragraph (1) of subsection (c) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: *Provided, however,* That in the case of a vessel, the size and speed of which are approved by the Secretary; and which is or would have been eligible for mortgage aid for construction under section 1159 of this title (or would have been ellgible for mortgage aid under section 1159 of this title 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 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: *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;

(3) shall have maturity dates satisfactory to the Secretary 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, 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;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(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 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;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary 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, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary 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 Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in subchapter V of this chapter, and if the Secretary 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 Secretary 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 Secretary 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 recon-

ditioning 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 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 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 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 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) No commitment to guarantee an obligation shall be made by the Secretary unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the obligation will be executed will be, in his 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, and no obligation, unless made pursuant to a prior commitment, shall be guaranteed unless the Secretary finds, at or prior to the time the guarantee becomes effective, that the property or project with respect to which the obligation is executed will be, in his 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.

(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 title with respect to, an underutilized fishery.

(e) Guarantee fees

The Secretary is authorized to fix a fee for the guarantee of an obligation under this subchapter. If the security for the guarantee of an obligation under this subchapter relates to a delivered vessel, such fee shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title. If the security for the guarantee of an obligation under this subchapter relates to a vessel to be constructed, reconstructed, or reconditioned, such fee shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of such obligation outstanding, excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title. For purposes of this subsection (e), if the security for the guarantee of an obligation under this subchapter relates both to a delivered vessel or vessels and to a vessel or vessels to be constructed, reconstructed, or reconditioned, the principal amount of such obligation shall be prorated in accordance with regulations prescribed by the Secretary. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least sixty days prior to each anniversary date thereafter. All fees shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe.

(f) Investigation of applications

The Secretary 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 title 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.

(g) Disposition of moneys

All moneys received by the Secretary under the provisions of sections 1271 to 1276 and 1279 of this title 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 and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(June 29, 1936, ch. 858, title XI, § 1104, as added June 23, 1938, ch. 600, § 46, 52 Stat. 970, and 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; July 31, 1959, Pub. L. 86-123, §§ 1(3), 2, 73 Stat. 269, 271; July 31, 1959, Pub. L. 86-127, § 1(3), (4), 73 Stat. 273; June 12, 1960, Pub. L. 86-518, § 1, 74 Stat. 216;

Sept. 2, 1960, Pub. L. 86-685, §§ 2, 3, 74 Stat. 733; June 15, 1968, Pub. L. 90-341, 82 Stat. 180; Oct. 21, 1970, Pub. L. 91-469, §§ 31, 32, 84 Stat. 1035; Oct. 19, 1972, Pub. L. 92-507, § 3, 86 Stat. 910; Apr. 7, 1978, Pub. L. 95-257, 92 Stat. 194; Aug. 3, 1980, Pub. L. 96-320, title II, § 202(b), (c), 94 Stat. 992; Dec. 22, 1980, Pub. L. 96-561, title II, § 220(3), 94 Stat. 3292; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1606(c), (d), 95 Stat. 752.)

AMENDMENTS

1981—Subsecs. (a) to (c). Pub. L. 97-31 struck out "of Commerce" following "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" following "Secretary" wherever appearing.

Subsecs. (e), (f). Pub. L. 97-31 struck out "of Commerce" following "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" following "Secretary".

Subsec. (h). Pub. L. 97-31 struck out "of Commerce" following "Secretary" in two instances.

1980—Subsec. (a). Pub. L. 96-561, § 220(3)(A)(vi), inserted provision following 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 in par. (4) as so redesignated, 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 in par. (5) as so redesignated, substituted "(3), or (4)" for "or (3)" and a semicolon for a period at the end thereof.

Subsec. (a)(6), (7). Pub. L. 96-561, § 220(3)(A)(vi), added pars. (6) and (7).

Subsec. (b)(2). Pub. L. 96-320, § 202(c), added 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. (b). Pub. L. 96-561, § 220(3)(B), inserted provision following 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. (d). Pub. L. 96-561, § 220(3)(C), designated existing provision as par. (1), and in par. (1), as so designated, 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 added 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 title. 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" preceding "commercial use".

Subsec. (b). Pub. L. 91-469, § 32, inserted in par. (2) "researeh, or for" preceding "commercial use", substituted 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 title 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 the proviso.

Subsec. (d). Pub. L. 86-127, § 1(3), inserted in two instances "excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this title".

Subsec. (e). Pub. L. 86-127, § 1(4), inserted after "commitments" the words "for services in connection with the escrow fund authorized by section 1279a of this title".

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 title".

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), added "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), added "construction of vessels under subchapter V of this chapter".

Subsecs. (a)(8), (c). Act Aug. 15, 1953, § 2(3), extended coverage to vessels engaged in foreign 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 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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1273, 1279a, 1279c of this title.

§ 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, 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 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 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 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, the Secretary may notify the obligee or his agent of such default and the obligee or his 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 sixty days from the date of such notice, payment by the Secretary 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 thirty days from the date of such demand, the Secretary 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.

(c) Secretary to complete, sell or operate property

In the event of any payment by the Secretary under subsection (a) or (b) of this section, the Secretary 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 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.

(d) Cash payments; issuance of notes or obligations

Any amount required to be paid by the Secretary 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 title are not sufficient to pay any amount the Secretary is required to pay by subsection (a) or (b) of this section, the Secretary 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, 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 Seeretary 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 from such Fund.

(e) Actions against obligor

In the event of a default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required 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 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, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Secretary shall receive through the sale of property an amount of cash in excess of any payment made to an obligee under subsection (a) or (b) of this section and the expenses of collection of such amounts, he shall pay such excess to the obligor.

(June 29, 1936, ch. 858, title XI, § 1105, as added June 23, 1938, ch. 600, § 46, 52 Stat. 971, and 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; July 15, 1958, Pub. L. 85-520, 72 Stat. 358; Oct. 21, 1970, Pub. L. 91-469, § 33, 84 Stat. 1035; Oct. 19, 1972, Pub. L. 92-507, § 3, 86 Stat. 914; Dec. 22, 1980, Pub. L. 96-561, title II, § 220(4), 94 Stat. 3294; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1606(e), 95 Stat. 752.)

CODIFICATION

In subsec. (d), "chapter 31 of title 31" and "such chapter" were 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

1981—Subsecs. (a) to (c). Pub. L. 97-31 struck out "of Commerce" following "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 title.

Pub. L. 97-31 struck out "of Commerce" following "Secretary" in five instances.

Subsec. (e). Pub. L. 97-31 struck out "of Commerce" following "Secretary" in four instances.

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 title" following "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 added 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 maketable 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), eliminated "the insured portion of" preceding "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 the words "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. 2099, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1274, 1279c, 1280 of this title.

§ 1276. Offenses and penalties

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Secretary to be guaranteed, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the said Secretary, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of said Secretary under this subchapter, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income shall be guilty of a misdemeanor and punished as provided under the first paragraph of section 1228 of this title.

(June 29, 1936, ch. 858, title XI, § 1106, as added June 23, 1938, ch. 600, § 46, 52 Stat. 972, and amended Sept. 3, 1954, ch. 1265, § 6, 68 Stat. 1275; July 31, 1959, Pub. L. 86-123, § 1(4), 73 Stat. 269; June 12, 1960, Pub. L. 86-518, § 6, 74 Stat. 216; Oct. 19, 1972, Pub. L. 92-507, § 3, 86 Stat. 915; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97-31 struck out "of Commerce" following "Secretary" in three instances.

1972—Pub. L. 92-507 substituted provisions relating to offenses and penalties, for provisions relating to insurance of mortgages securing existing loans and refinancing of existing mortgages.

1960—Pub. L. 86-518 substituted "twenty-five years from the date of the original mortgage" for "the maturity date of the original mortgage" in clauses (1), (2), and (3).

1959—Pub. L. 86-123 inserted "as provided in section 1276a of this title or" following "except" in opening provisions.

1954—Act Sept. 3, 1954, limited a new mortgage for refinancing to the same maturity date as the old mortgage, and added par. (4).

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 title.

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 title.

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 title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1279c of this title.

§§ 1276a to 1278. Repealed. Pub. L. 92-507, § 3, Oct. 19, 1972, 86 Stat. 910

Section 1276a, act June 29, 1936, ch. 858, title XI, § 1107, as added July 31, 1959, Pub. L. 86-123, § 1(5), 73 Stat. 269, and amended June 12, 1960, Pub. L. 86-518,

§§ 1, 7, 74 Stat. 216, related to the authority of the Secretary to make commitments to insure mortgages.

Section 1277, act June 29, 1936, ch. 858, title XI, § 1108, formerly § 1107, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 7, 68 Stat. 1275, and renumbered July 31, 1959, Pub. L. 86-123, § 1(1), 73 Stat. 269, related to offenses and set the penalties therefor. See section 1276 of this title.

Section 1278, act June 29, 1936, ch. 858, title XI, § 1109, formerly § 1108, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 8, 68 Stat. 1276, and renumbered July 31, 1959, Pub. L. 86-123, § 1(1), 73 Stat. 269, authorized the promulgation of rules and regulations. See section 1279b of this title.

§ 1279. Authorization of appropriations

There is authorized to be appropriated the sum of $1,000,000 and such further sums as may be necessary to carry out the provisions of this subchapter.

(June 29, 1936, ch. 858, title XI, § 1107, formerly § 1109, as added June 23, 1938, ch. 600, § 46, 52 Stat. 973, amended Sept. 3, 1954, ch. 1265, § 9, 68 Stat. 1276; renumbered § 1110, July 31, 1959, Pub. L. 86-123, § 1(1), 73 Stat. 269, and renumbered § 1107, Oct. 19, 1972, Pub. L. 92-507, § 4, 86 Stat. 916.)

Amendments

1954—Act Sept. 3, 1954, reenacted section without change.

Section Referred to in Other Sections

This section is referred to in sections 1272, 1274, 1279c of this title.

§ 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, the Secretary 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 of this title, 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 may require: *Provided,* That in the event the security for the guarantee of an obligation by the Secretary 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.

(b) Disbursement prior to termination of escrow agreement

The Secretary 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 under this subchapter, to redeem such obligations in connection with a refinancing under paragraph (4) of section 1274(a) of this title 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 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 of this title, 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 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 may consider necessary to protect fully the interests of the United States.

(June 29, 1936, ch. 858, title XI, § 1108, formerly § 1111, as added July 31, 1959, Pub. L. 86-127, § 1(2), 73 Stat. 272, and renumbered and amended Oct. 19, 1972, Pub. L. 92-507, § 5, 86 Stat. 916; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166.)

References in Text

Paragraph (4) of section 1274(a) of this title, referred to in subsec. (b), was redesignated paragraph (5) of section 1274(a) of this title by Pub. L. 96-561, title II, § 220(3)(A)(iii), Dec. 22, 1980, 94 Stat. 3292.

AMENDMENTS

1981—Subsecs. (a), (b), (d), (f). Pub. L. 97-31 struck out "of Commerce" following "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".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1273, 1274 of this title.

§ 1279b. Rules and regulations

The Secretary is authorized and directed to make such rules and regulations as may be deemed necessary or appropriate to carry out the purposes and provisions of this subchapter.

(June 29, 1936, ch. 858, title XI, § 1109, formerly § 1112, as added Dec. 14, 1967, Pub. L. 90-194, 81 Stat. 580, and renumbered and amended Oct. 19, 1972, Pub. L. 92-507, § 5, 86 Stat. 916, 917; Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97-31 struck out "of Commerce" following "Secretary".

1972—Pub. L. 92-507 substituted authority of the Secretary to make rules and regulations, for provisions relating to insurance of mortgage securing loan for restoration and return of merchant vessel, Kaiulani.

§ 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 title, the Secretary, 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 owned by citizens of the United States. 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) of this title, except that—

(1) no guarantees or commitments to guarantee may be made by the Secretary under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1274 of this title 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 Secretary, certifies to the Secretary 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 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) of this title, (1) all moneys received by the Secre-

tary pursuant to sections 1271 through 1276 and 1279 of this title 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 Secretary pursuant to section 1275(d) of this title with respect to the OTEC Demonstration Fund, all moneys received by the Secretary pursuant to sections 1271 through 1276 and 1279 of this title 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 Secretary pursuant to section 1275(d) of this title 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 title shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: *Provided, however,* That any notes or obligations issued by the Secretary pursuant to section 1275(d) of this title 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 title 26.

(June 29, 1936, ch. 858, § 1110, as added Aug. 3, 1980, Pub. L. 96-320, title II, § 203(a), 94 Stat. 992, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(136), 95 Stat. 166; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1606(f), 95 Stat. 752.)

AMENDMENTS

1981—Subsecs. (a), (b). Pub. L. 97-31 struck out "of Commerce" following "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" following "Secretary" wherever appearing.

Subsec. (d). Pub. L. 97-31 struck out "of Commerce" following "Secretary".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1273 of this title.

§ 1280. Advances to fund

The Secretary is authorized to advance to the Federal Ship Financing Fund from the "Vessel operations revolving fund" (46 U.S.C. 1241a), such amounts as may be required for the payment, pursuant to section 1275 of this title, 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.)

CODIFICATION

"Federal Ship Financing Fund" was substituted for "Federal Ship Mortgage Insurance Fund" to conform to change of name in the amendment of section 1272 of this title 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

1981—Pub. L. 97-31 struck out "of Commerce" following "Secretary".

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.

(c) 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.

(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; Aug. 6, 1981, Pub. L. 97-31, § 12(138), 95 Stat. 166.)

AMENDMENTS

1981—Subsec. (e). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce".

§ 1282. Authority to provide insurance; consideration of risk

(a) 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) 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.

(June 29, 1936, ch. 858, title XII, § 1202, as added Sept. 7, 1950, ch. 906, 64 Stat. 773.)

Cross References

Expiration of authority to provide insurance, see section 1294 of this title.

Insurance of interests of United States, see sections 869 and 1202 of this title.

Section Referred to in Other Sections

This section is referred to in section 1283 of this title.

§ 1283. Persons, property, and interests insurable

The Secretary may provide the insurance and reinsurance authorized by section 1282 of this title 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 loaded 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, and amended Oct. 17, 1976, Pub. L. 94-523, §§ 1-3, 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".

Section Referred to in Other Sections

This section is referred to in section 1284 of this title.

§ 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 title, 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 721 and 722 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 ageney 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.

(June 29, 1936, ch. 858, title XII, § 1205, as added Sept. 7, 1950, ch. 906, 64 Stat. 774.)

§ 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, and amended Aug. 3, 1956, ch. 929, § 5, 70 Stat. 986.)

AMENDMENTS

1956—Act Aug. 3, 1956, deleted from first sentence following "authorized" the words "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".

§ 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. 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 Fiscal Service, Treasury Department. 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, and amended Oct. 3, 1962, Pub. L. 87-743, 76 Stat. 740; Aug. 6, 1981, Pub. L. 97-31, § 12(139), 95 Stat. 166.)

AMENDMENTS

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.

TRANSFER OF FUNCTIONS

"Fiscal Service" was substituted for "Division of Disbursement" in subsec. (a) on authority of section 1(a)(1) of 1940 Reorg. Plan No. III, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into the Fiscal Service of the Treasury Department. See section 306 of Title 31, Money and Finance.

§ 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. VI, § 601, 65 Stat. 746; Aug. 6, 1981, Pub. L. 97-31, § 12(140), 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 title 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 title 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 of this title, 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.

(h) 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.

(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, and amended Aug. 3, 1956, ch. 929, § 1, 70 Stat. 984; Aug. 22, 1964, Pub. L. 88-478, § 1, 78 Stat. 587; Oct. 17, 1976, Pub. L. 94-523, § 4, 90 Stat. 2474.)

REFERENCES IN TEXT

Section 1242-1 of this title, referred to in subsec. (a)(2), 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 eliminated 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 title.

1956—Subsec. (a). Act Aug. 3, 1956, eliminated 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 subsec. (a)(2) of 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, and amended Nov. 8, 1965, Pub. L. 89-348, § 1(7), 79 Stat. 1310.)

AMENDMENTS

1965—Pub. L. 89-348 repealed provisions of this section 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 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 title. For complete classification of this Act to the Code, see Short Title note set out under section 741 of this title 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, and

amended Aug. 6, 1981, Pub. L. 97-31, § 12(141), 95 Stat. 166.)

AMENDMENTS

1981—Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two instances.

§ 1294. Expiration of authority to provide insurance

The authority of the Secretary to provide insurance and reinsurance under this subchapter shall expire September 30, 1984.

(June 29, 1936, ch. 858, title XII, § 1214, as added Sept. 7, 1950, ch. 906, 64 Stat. 777, and amended Aug. 3, 1955, ch. 492, 69 Stat. 440; July 31, 1959, Pub. L. 86-120, 73 Stat. 266; July 27, 1965, Pub. L. 89-89, 79 Stat. 264; Oct. 21, 1970, Pub. L. 91-469, § 34, 84 Stat. 1035; Oct. 17, 1976, Pub. L. 94-523, § 5, 90 Stat. 2474; Feb. 25, 1980, Pub. L. 96-195, 94 Stat. 63.)

AMENDMENTS

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 the authority of the Secretary to provide insurance and reinsurance for an additional five years.

1959—Pub. L. 86-120 extended the authority of the Secretary to provide insurance and reinsurance for an additional five years.

1955—Act Aug. 3, 1955, extended the authority of the Secretary to provide insurance and reinsurance for an additional five years.

SUBCHAPTER XIII—MARITIME EDUCATION AND TRAINING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1119 of this title.

§ 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, § 1301, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 1997, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(142), 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 title, and repealing sections 1126, 1126a-1 to 1126d, 1331 to 1334, and 1381 to 1388 of this title] 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 title, and repealing sections 1126, 1126a-1 to 1126d, 1331 to 1334, and 1381 to 1388 of this title] may be cited as the 'Maritime Education and Training Act of 1980'."

§ 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 title;

(3) the term "State maritime academy" means any maritime academy or college which is assisted under section 1295c of this title 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; and

(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 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.

(June 29, 1936, ch. 858, § 1302, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 1997, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(143), 95 Stat. 166.)

AMENDMENTS

1981—Par. (1). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce".

§ 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 the Trust Territory of the Pacific Islands, Western Hemisphere nations and nations other than the 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 Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office) may nominate for appointment as a cadet at the Academy any individual who is [1]

(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, a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands, or a resident of American Samoa if the individual is nominated by the Governor of American Samoa.

(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 Governor of American Samoa (until a delegate to the House of Representatives from American Samoa takes office).

(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

[1] So in original. Probably should be followed by a dash.

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 Naval Reserve (including the Merchant Marine Reserve, United States Naval 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) Any individual appointed as a cadet to the Academy under paragraph (3), or receiving instruction at the Academy under paragraph (4), (5), or (6), is 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.

(c) Appointment of cadet as midshipman in the United States Naval Reserve

Any citizen of the United States who is appointed as a cadet at the Academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(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, unless the individual is separated by 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 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;

(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 Naval Reserve (including the Merchant Marine Reserve, United States Naval 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 Secre-

tary), 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 or in the National Oceanic and Atmospheric Administration; 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) 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.

(3) 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.

(4) 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) Bachelor of science degrees awarded

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.

(h) Board of Visitors

(1) 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.

(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, in-

cluding 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.

(June 29, 1936, ch. 858, § 1303, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 1998, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(144), 95 Stat. 166; Aug. 13, 1981, Pub. L. 97-35, title XVI, § 1607, 95 Stat. 752.)

REFERENCES IN TEXT

The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), 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

1981—Subsec. (e)(3). Pub. L. 97-31, § 12(144)(A), struck out "and the Secretary of Transportation" following "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" preceding "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".

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law, see section 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Grganization and Employees.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1295a, 1295f, 1295g of this title.

§ 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) The Secretary may pay to any 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.

(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 allow-

ances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

(d) Annual payments

(1) 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. 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.

(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; and

(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.

(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 $1,200 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 to the individual in such payments as the Secretary shall prescribe while such individual is attending such academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval 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, unless the individual is separated by such academy;

(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 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;

(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 Naval Reserve (including the Merchant Marine Reserve, United States Naval 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 or in the National Oceanic and Atmospheric Administration; 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) If the Secretary determines that any individual who has attended a State maritime academy for not less than 2 years has failed to fulfill the part of the acreement (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.

(5) 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.

(6) 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.

(7) 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 Naval 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 Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(June 29, 1936, ch. 858, § 1304, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 2003, and amended Aug. 6, 1981, Pub. L. 97-31, § 12(145), 95 Stat. 166.)

AMENDMENTS

1981—Subsec. (g). Pub. L. 97-31 in par. (5) struck out "and the Secretary of Transportation" following "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" preceding "the Secretary of Commerce".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119, 1295a, 1295f, 1295g of this title.

§ 1295d. Additional training

(a) 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) 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.

(June 29, 1936, ch. 858, § 1305, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 2006.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119 of this title.

§ 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 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.

(June 29, 1936, ch. 858, § 1306, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 2006.)

§ 1295f. Civilian nautical school

(a) Definition

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 title, any State maritime academy assisted under section 1295c of this title, 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) Inspection of vessels

(1) Any vessel or other floating equipment, other than a vessel of the United States Navy or the United States Coast Guard, used by or in connection with any civilian nautical school (whether such vessel or other floating equipment is being navigated or not) shall be subject to the vessel inspection laws of the United States under the same terms as is a passenger carrying vessel or a vessel carrying passengers for hire.

(2) The Secretary of the department in which the United States Coast Guard is operating shall issue regulations to carry out the inspection of such vessels and floating equipment.

(d) Fines and penalties

Whoever—

(1) violates this section or any regulations promulgated to implement this section;

(2) is an owner of a vessel or floating equipment which is in violation of the requirements of this section;

(3) is an officer or member of the Board of Directors of a school, organization, association, partnership, or corporation which owns a vessel or floating equipment which is used in violation of the requirements of this section or which uses such a vessel or floating equipment in violation of this section,

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, § 1307, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 2007.)

§ 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).

(e) Inspection of vessels

(1) The Secretary of the department in which the United States Coast Guard is operating shall inspect, and prescribe regulations for the inspection of, any vessel of more than 15 gross tons, other than a vessel of the United States Navy or the United States Coast Guard, which is used primarily for training or instruction provided by the Academy under section 1295b of this title or by a State maritime academy assisted under section 1295c of this title. Any such vessel shall not be subject to inspection under any other law or regulation requiring the inspection of such vessel by the United States Coast Guard.

(2) Any inspection under paragraph (1) shall include inspections of lifesaving and firefighting equipment, structure and arrangement generally, safe loading, and living and working conditions.

(3) Any regulations prescribed under paragraph (1) shall take into account the function, purpose, and use of such vessels, the routes of

such vessels, and the number of individuals who may be carried on such vessels.

(4) Any vessel which is described in paragraph (1) may not be used in connection with any training or instruction provided by the Academy under section 1295b of this title or by a State maritime academy assisted under section 1295c of this title as long as such vessel is in violation of any regulations prescribed pursuant to this subsection or does not pass any inspection conducted pursuant to this subsection.

(5) Whoever—

(A) refuses to allow, or impedes or interferes with, any inspection required by this subsection; or

(B) violates any regulations prescribed under this subsection,

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, § 1308, as added Oct. 15, 1980, Pub. L. 96-453, § 2, 94 Stat. 2007.)

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.

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, 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, § 1, 49 Stat. 1208.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1313 of this title.

§ 1302. Duties and rights of carrier

Subject to the provisions of section 1306 of this title, 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 title.

(Apr. 16, 1936, ch. 229, § 2, 49 Stat. 1208.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1313 of this title.

§ 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.