

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. § 2.

NOTES OF DECISIONS

Deference to Commission 5a

3. Purpose

By plain implication if not by express provision, this chapter affords carriers right to recover lawful charges specified in tariffs they are required to file with Federal Maritime Commission. Maritime Service Corp. v. Sweet Brokerage De Puerto Rico, Inc., C.A.1 (Puerto Rico) 1976, 537 F.2d 560. Shipping ⇨ 153

This chapter, the Intercoastal Shipping Act, 1933, section 843 et seq. of this title, and the Interstate Commerce Act, section 1 et seq. of Title 49, embody congressional policy against discriminatory rates in requirement that carrier enforce charges established in its tariff. Maritime Service Corp. v. Sweet Brokerage De Puerto Rico, Inc., C.A.1 (Puerto Rico) 1976, 537 F.2d 560. Shipping ⇨ 153

In view of fact that regulation of foreign control by Shipping Act was intended, in part, to benefit American shipowners competing economically in coastwise trade, operator of harbor tour fell within "zone of interests" protected by the Act, even though primary purpose of the Act is to ensure a strong American merchant marine. Alaska Excursion Cruises, Inc. v. U.S., D.C.D.C.1984, 603 F.Supp. 541. Shipping ⇨ 14

5a. Deference to Commission

Commission is entitled to considerable deference in examination of text, purpose and legislative history of this chapter and Intercoastal Shipping Act, sections 844 to 848 of this title. Totem Ocean Trailer Exp., Inc. v. Federal Maritime Commission, C.A.9 1981, 662 F.2d 563. Statutes ⇨ 219(6.1)

7. Common carrier by water in foreign commerce—Generally

In order to be a "common carrier by water in the foreign commerce of the United States" within this chapter, a carrier must make use of a United States port at some point on its own route or a through route in which it participates. Austasia Intermodal Lines, Ltd. v. Federal Mar-

§ 802. Corporation, partnership, or association as citizen

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

time Commission, C.A.D.C.1978, 580 F.2d 642, 188 U.S.App.D.C. 379. Shipping ⇨ 103

Shipping line which shipped cargo overland out of the United States and then solely between foreign ports was not a "common carrier by water in the foreign commerce of the United States" within this chapter so as to be subject to tariff filing requirements of this chapter. Austasia Intermodal Lines, Ltd. v. Federal Maritime Commission, C.A.D.C.1978, 580 F.2d 642, 188 U.S.App.D.C. 379. Shipping ⇨ 103

9. Common carrier by water

An extraordinary "single shot" undertaking does not automatically convert an enterprise engaged in any aspect of the shipping business into a "common carrier" accountable for tariff-filing under section 817 of this title. Ship's Overseas Service, Inc. v. Federal Maritime Commission, C.A.D.C.1981, 670 F.2d 304, 216 U.S.App.D.C. 146. Shipping ⇨ 103

In general, a common carrier under this section is one who expressly or by course of conduct holds itself out to accept goods for transport by water from whomever offered, and it is not necessary, in order to be such a carrier by water, that one either own or control means of transportation. Capitol Transp., Inc. v. U.S., C.A.1 1979, 612 F.2d 1812. Shipping ⇨ 13

10. Other person subject to chapter

Commonwealth of Puerto Rico is not a person subject to this chapter and Intercoastal Shipping Act, section 843 et seq. of this title. Sea Land Service, Inc. v. Estado Libre Asociado De Puerto Rico Departamento De Instruccion Publica, C.A.1 (Puerto Rico) 1978, 588 F.2d 812. Shipping ⇨ 14

13. Independent ocean freight forwarder

One who is licensed as an independent ocean freight forwarder cannot hold such a license if he acts as a shipper, agent for a consignee, seller, financier, or if he has obtained a beneficial interest in the goods shipped. Zanelli v. Federal Maritime Commission, C.A.5 (Tex.) 1975, 524 F.2d 1000. Shipping ⇨ 103

any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

[See main volume for text of (b) and (c)]

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

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1998 Acts. House Report No. 105-236, see 1998 U.S. Code Cong. and Adm. News, p. 794.

Amendments

1998 Amendments. Subsec. (a). Pub.L. 105-383, § 421, struck "president or other" fol-

lowing "United States, and, in the case of a corporation, unless its "; and inserted "; by whatever title," after "chief executive officer".

CROSS REFERENCES

Maritime Security Fleet Program and priorities for awarding agreements and other vessels owned by citizens and Government Contractors, see 46 App USCA § 1187a.

Maritime Security Fleet Program noncontiguous domestic trade, see 46 App. USCA § 1187e. Vessel financing and leasing, see 46 USCA § 12106.

CODE OF FEDERAL REGULATIONS

Customs provisions, application, see 19 CFR § 4.0 et seq.

Documentation requirements for vessels, see 46 CFR § 67.01-1 et seq.

Procedures for establishing citizenship, see 46 CFR § 355.1 et seq.

LIBRARY REFERENCES

American Digest System

Shipping ⇨ 5.
Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. § 3.

Forms

Affidavit of citizenship, see West's Federal Forms §§ 11854, 11854.5.

NOTES OF DECISIONS

Discretion of Maritime Administration 7
Operating vessel 8

1. Constitutionality

Congress in reenacting without substantial change the federal enrollment and licensing law would be assumed to be aware of holding in United States Supreme Court decision invalidating discriminatory state regulation of shipping as applied to vessels federally licensed to engage in the coasting trade. Douglas v. Seacoast Products, Inc., U.S.Va.1977, 97 S.Ct. 1740, 431 U.S. 265, 52 L.Ed.2d 304. Statutes ⇨ 223.5(6)

2. Citizenship of individuals

Subsec. (a) of this section did not prohibit noncitizen from operating boat tours in coastwise trade, where operator obtained approval under section 808 of this title to engage in such trade and where vessels that were operating were United States owned. Alaska Excursion Cruises, Inc. v. U.S., D.C.D.C.1984, 595 F.Supp. 14. Shipping ⇨ 14

3. Controlling interest

In light of congressional intent of Shipping Act [46 U.S.C.A. §§ 802, 808] to bar foreign control of American merchant marine and lengths to which Congress went to insure that

aliens would not gain control of U.S. vessels through interest in American corporations, Maritime Commission cannot sanction bareboat charter that would vest de facto ownership in alien who could not hold legal title and Coast Guard has authority to refuse documentation of vessel if foreign control over that vessel is so complete as to constitute de facto foreign ownership. Alaska Excursion Cruises, Inc. v. U.S., D.C.D.C.1985, 608 F.Supp. 1084. Shipping ⇨ 5

Fact that operator of sight-seeing tours operated vessels under long-term bareboat charter did not mean that operator, who was noncitizen, would be deemed "owner" of the vessel for purposes of restrictions on charters for noncitizen owners under this section. Alaska Excursion Cruises, Inc. v. U.S., D.C.D.C.1984, 595 F.Supp. 14. Shipping ⇨ 14

7. Discretion of Maritime Administration

Fact that Maritime Administration had issued general policy notice stating that it would no longer grant approval under its discretionary power to grant charters to vessels in coastwise trade to persons who did not meet citizenship standards of this section did not preclude subsequent issuance of charter to noncitizen. Alaska Excursion Cruises, Inc. v. U.S., D.C.D.C.1984, 595 F.Supp. 14. Estoppel ⇨ 62.2(4)

8. Operating vessel

Term "operating," within meaning of Shipping Act section addressing when corporation operating vessel in coastwise trade is United States

citizen, would be analyzed in terms of corporate stock control, rather than actual control over vessel. *Conoco, Inc. v. Skinner*, C.A.3 (Del.) 1992, 970 F.2d 1206, rehearing denied. Shipping ☞ 4

§ 803. Applicability of chapter to receivers and trustees

CROSS REFERENCES

Vessel financing and leasing, see 46 USCA § 12106.

§ 804. Repealed. Pub.L. 104-88, Title III, § 335(b)(1), Dec. 29, 1995, 109 Stat. 954

HISTORICAL AND STATUTORY NOTES

Section, Act Sept. 7, 1916, c. 451, § 3, as added Jan. 2, 1975, Pub.L. 93-605, § 2(a), 88 Stat. 1966, related to Federal Maritime Commission rules and regulations for filing of rates and charges for barging and affreighting of containers or containerized cargo by barges within United States.

820, 821, 822, 823, 824, 826, 828, 829, 830, 831, 832, 833a, 841a, and 841c of this Appendix, respectively] is effective Sept. 30, 1996.

Prior Provisions

A prior section 804, Acts Sept. 7, 1916, c. 451, § 3, 39 Stat. 729; June 5, 1920, c. 250, § 3, 41 Stat. 989, which established the United States Shipping Board and enumerated its duties was repealed by Act June 29, 1936, c. 858, Title IX, § 903(a), 49 Stat. 2016. Section 903 of Act June 29, 1936 was repealed by Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754.

Effective Date of Repeal

Section 335(b) of Pub.L. 104-88 provided in part that repeal of sections 3, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 35, 43, and 45 of the Shipping Act, 1916 [this section and sections 812, 814, 815, 816, 817, 818, 819,

§ 804a. Omitted

HISTORICAL AND STATUTORY NOTES

Codifications

Section, Act June 30, 1932, c. 314, § 306, 47 Stat. 408, which reorganized the United States Shipping Board, was omitted in view of abolishment of Board by Ex. Ord. No. 6166, § 12, eff.

June 10, 1933, set out as a note under section 901 of Title 5, Government Organization and Employees.

Section was not enacted as part of the Shipping Act, 1916 which comprises this chapter.

§§ 805, 806. Repealed. June 29, 1936, c. 858, Title IX, § 903(a), (b), 49 Stat. 2016

HISTORICAL AND STATUTORY NOTES

Section 903(a), (b) of Act June 29, 1936, c. 858, Title IX, 49 Stat. 2016, which repealed sections 805 and 806 of this Appendix, was repealed by

Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754.

§ 808. Vessels purchased, chartered, or leased; coastwise trade

(a) Repealed. Pub.L. 101-225, Title III, § 307(3), Dec. 12, 1989, 103 Stat. 1925

(b) Necessity of registration, etc., for operation; laws, regulations and liabilities applicable

Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

(c) Sale, lease, etc. to foreign persons; foreign registry or operation

Except as provided in section 1181 of this Appendix and in section 12106(e) of Title 46, a person may not, without the approval of the Secretary of Transportation—

(1) sell, lease, charter, deliver, or in any manner transfer, or agree to sell, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has

been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of Title 46) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d) Validity of unlawful charter, sale, etc.; penalties

(1) Any charter, sale, or transfer of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, or transfers a vessel, or interest in or control of that vessel, contrary to this section shall be fined under Title 18, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

(B) a person knowingly charters, sells, or transfers a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

(e) ¹ Placement in foreign registry without approval of Secretary

Notwithstanding subsection (c)(2) of this section, the Merchant Marine Act, 1936 [46 App. U.S.C.A. § 1101 et seq.], or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary determines that at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of Title 46 by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

(2)(A) an application for an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 [46 App. U.S.C.A. § 1187 et seq.] has been filed with respect to a vessel which is eligible to be included in the Maritime Security Fleet under section 651(b)(1) of that Act [46 App. U.S.C.A. § 1187(b)(1)]; and

(B) the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the date of that application;

(3) a contract covering the vessel under subtitle A of title VI of the Merchant Marine Act, 1936 [46 App. U.S.C.A. § 1171 et seq.] has expired, and that vessel is more than 15 years of age on the date the contract expires; or

(4) an operating agreement covering the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 [46 App. U.S.C.A. § 1187 et seq.] has expired.

(e) ¹ Approval of certain vessel transactions before documentation of the vessel

To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code, the Secretary may grant approval under subsection (c) of this section before the date the vessel is documented.

(Sept. 7, 1916, c. 451, § 9, 39 Stat. 730; July 15, 1918, c. 152, § 3, 40 Stat. 900; June 5, 1920, c. 250, § 18, 41 Stat. 994; Ex. Ord. No. 6166, § 12, June 10, 1933; June 29, 1936, c. 858, §§ 204, 904, 49 Stat. 1987, 2016; June 23, 1938, c. 600, § 42, 52 Stat. 964; 1950 Reorg. Plan No. 21, §§ 204, 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Nov. 8, 1965, Pub.L. 89-346, § 1, 79 Stat. 1305; Aug. 6, 1981, Pub.L. 97-31, § 12(26), 95 Stat. 155; Nov. 23, 1988, Pub.L. 100-710, § 104(b), 102 Stat. 4750; Dec. 12, 1989, Pub.L. 101-225, § 304(a), 307(3), 103 Stat. 1924, 1925; Oct. 8, 1996, Pub.L. 104-239, § 6, 110 Stat. 3132; Oct. 19, 1996, Pub.L. 104-324, Title XI, §§ 1113(c), (e), 1136(b), 110 Stat. 3970, 3971, 3987.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. 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 under this section.

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 1113. Repealed. Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754

HISTORICAL AND STATUTORY NOTES

Acts June 29, 1936, c. 858, Title II, § 203, 49 Stat. 1987; May 18, 1938, c. 253, 52 Stat. 408, provided for dissolution and transfer of property

of United States Shipping Board Merchant Fleet Corporation, 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 App. U.S.C.A. § 801 et seq.], the Merchant Marine Act, 1920 [46 App. U.S.C.A. § 861 et seq. and 911 et seq.], the Merchant Marine Act, 1928 [46 App. U.S.C.A. § 891 et seq.], and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive Order [No. 6166] of June 10, 1933, are hereby transferred to the Federal Maritime Commission and the Secretary of Transportation: *Provided, however*, That after June 29, 1936, no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended [46 App. U.S.C.A. § 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, c. 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; Dec. 29, 1995, Pub.L. 104-88, Title III, § 335(c)(1), 109 Stat. 954.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1952 Acts. House Report No. 2221 and Conference Report No. 2450, see 1952 U.S. Code Cong. and Adm. News, p. 2335.

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

1995 Acts. House Report No. 104-311 and House Conference Report No. 104-422, see 1995 U.S. Code Cong. and Adm. News, p. 793.

References in Text

The Shipping Act, 1916, referred to in subsec. (a), is Act Sept. 7, 1916, c. 451, 39 Stat. 728, as

amended, which is classified principally to chapter 23 (section 801 et seq.) of this Appendix. For complete classification of this Act to the Code, see section 842 of this Appendix and Tables.

The Merchant Marine Act, 1920, referred to in subsec. (a), is Act June 5, 1920, c. 250, 41 Stat. 988, as amended, which (except for sections repealed or reenacted in Title 46, Shipping) is classified principally to chapter 24 (section 861 et seq.) of this Appendix. Section 11 of the Act was repealed by Act June 29, 1936, c. 858, Title IX, § 903(b), 49 Stat. 2016. For complete classi-

fication of this Act to the Code, see References in Text note set out under section 889 of this Appendix and Tables.

The Merchant Marine Act, 1928, referred to in subsec. (a), is Act May 22, 1928, c. 675, 45 Stat. 689, as amended, which is classified principally to chapter 24A (section 891 et seq.) of this Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 891x of this Appendix and Tables.

Executive Order No. 6166 of June 10, 1933, referred to in subsec. (a), is set out under section 901 of Title 5, Government Organization and Employees.

Amendments

1995 Amendments. Subsec. (a). Pub.L. 104-88, § 335(c)(1), deleted reference to the Intercoastal Shipping Act, 1933.

1981 Amendments. 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 under this section.

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 under this section.

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 under this section.

1938 Amendments. 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.

Effective and Applicability Provisions

1995 Acts. Amendment by Pub.L. 104-88 effective Jan. 1, 1996, see section 2 of Pub.L. 104-88, set out as a note under section 701 of Title 49, Transportation.

Transfer of Functions

Functions under this section 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, transferred from the Federal Maritime Board to the Federal Maritime Commission by section 103(e) of 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, to the extent that they relate to functions transferred to the Commission by section 103(a) to (d) of Reorg. Plan No. 7 of 1961. Section 104 of Reorg. Plan No. 7 of 1961 transferred to the Chairman of the Federal Maritime Commission the functions of the Chairman of the Federal Maritime Board, including his functions derived from the provisions of Reorg. Plan No. 6 of 1949, set out under section 1111 of this title, to the extent that they relate to the functions transferred to the Commission by the provisions of section 103 of Reorg. Plan No. 7 of 1961, and 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 Reorg. Plan No. 7 of 1961.

CODE OF FEDERAL REGULATIONS

Depositories of funds, see 46 CFR § 351.1 et seq.

Marine Administration, see 46 CFR Chap. II. National Shipping Authority, statements of policy, see 32A CFR Ch. XVIII.

Practice and procedure, see 46 CFR § 502.1 et seq.

Review procedures for Maritime Subsidy Board decision, etc., see 46 CFR § 202.1 et seq.

Speed of vessels, determination, see 46 CFR § 246.1 et seq.

Time-barred claims, processing of, see 46 CFR § 370.1 et seq.

LIBRARY REFERENCES

American Digest System

Shipping ◊3.5.
Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

Discretion of Secretary 6

2. Rules and regulations

Prior opinion of comptroller general that an operating differential subsidy was payable without reduction even though a part of cargo carried on a particular voyage in military cargo was reserved for United States flag vessels did not

preclude Maritime Subsidy Board from adopting rule requiring subsidized shipping lines to carry at least 50% nonpreference cargo and providing for proportional reduction in subsidies for vessels earning less than 50% of freight revenues from nonpreference cargo. *States Marine Intern., Inc. v. Peterson*, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊ 3

6. Discretion of Secretary

Under this section, the Secretary, and through him the Maritime Subsidy Board, has broad discretionary authority to deal with the everchanging technological and economic condi-

tions of the commercial shipping industry as long as its actions are reasonable and consistent with this chapter. *States Marine Intern., Inc. v. Peterson*, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316.

§ 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, c. 858, §§ 205, 905(e), 49 Stat. 1987; 1950 Reorg. Plan No. 21, §§ 101, 104, 105, 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273-1277; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Aug. 6, 1981, Pub.L. 97-31, § 12(62), 95 Stat. 159.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. Pub.L. 97-31 substituted "Federal Maritime Commission and the Secre-

tary of Transportation" for "Commission". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note under this section.

LIBRARY REFERENCES**Encyclopedias**

Shipping, see C.J.S. § 103.

§ 1116. Construction fund

All sums of money in the construction loan fund created by section 11 of the Merchant Marine Act, 1920, as amended, together with the proceeds of all debts, accounts, choses in action, and the proceeds of all notes, mortgages, and other evidences of indebtedness, hereby transferred to the Department of Transportation, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest thereon, and, notwithstanding any other provision of law, all money representing amounts of unclaimed wages, salvage awards and miscellaneous unclaimed items carried as liabilities on the books of the former United States Shipping Board Merchant Fleet Corporation and all money heretofore or hereafter received from the operation or leasing of lands, docks, wharves, piers, or real property shall be deposited in the Treasury of the United States and there maintained as a revolving fund, herein designated as the construction fund, and shall be available for expenditure by the Secretary of Transportation in carrying out the provisions of this chapter. All moneys received by the Department of Transportation under the provisions of this chapter shall be deposited in its construction fund, and all disbursements made by the Secretary of Transportation under authority of this chapter shall be paid out of said fund, and, notwithstanding any other provision of law, all disbursements applicable to the money referred to in this section may be made by the Secretary of Transportation out of said fund. Further appropriations by Congress to replenish said fund are hereby authorized.

(June 29, 1936, c. 858, §§ 206, 905(e), 49 Stat. 1987; Aug. 26, 1937, c. 822, § 2, 50 Stat. 839; 1950 Reorg. Plan No. 21, §§ 204, 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Aug. 6, 1981, Pub.L. 97-31, § 12(63), 95 Stat. 159.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

References in Text

Section 11 of the Merchant Marine Act, 1920, as amended, referred to in text, was classified to section 870 of former Title 46, Shipping, and was repealed by Act June 29, 1936, c. 858, Title IX, § 903(b), 49 Stat. 2016.

Amendments

1981 Amendments. 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 under this section.

LIBRARY REFERENCES**Encyclopedias**

Shipping, see C.J.S. §§ 2, 9, 10.

§ 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, c. 858, §§ 207, 905(e), 49 Stat. 1988; June 23, 1938, c. 600, § 2, 52 Stat. 954; 1950 Reorg. Plan No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; 1961 Reorg. Plan No. 7 eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Aug. 6, 1981, Pub.L. 97-31, § 12(64), 95 Stat. 159.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. 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 under this section.

Suspension of Hours of Labor Provisions on Work Covered by Maritime Commission Contracts

Act Oct. 10, 1940, c. 838, 54 Stat. 1092, was repealed by Act July 25, 1947, c. 327, § 1, 61 Stat. 449.

CODE OF FEDERAL REGULATIONS

Availability of records, see 46 CFR § 380.30 et seq.

Capital and Special Reserve Funds, establishment, etc., see 46 CFR § 286.1 et seq.

LIBRARY REFERENCES**American Digest System**

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Shipping, see C.J.S. §§ 2, 9, 10.

§ 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

Section 1144, Act June 29, 1936, c. 858, Title IV, § 404, 49 Stat. 1995, transferred powers under then existing ocean mail contracts from

Postmaster General to United States Maritime Commission.

SUBCHAPTER V—CONSTRUCTION—DIFFERENTIAL SUBSIDY

§ 1151. Subsidy authorized for vessels to be operated in foreign trade

(a) Application for subsidy for construction; conditions precedent to granting

Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this chapter. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high 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 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, c. 858, §§ 501, 905(c), 49 Stat. 1995; June 23, 1938, c. 600, § 8, 52 Stat. 955; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; July 17, 1952, c. 939, §§ 1, 2, 66 Stat. 760; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat.

See 2004 Special Pamphlet for Partially Revised Title 46

840; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

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

CODE OF FEDERAL REGULATIONS

Applications, see 46 CFR § 251.1 et seq.
Forms, see 46 CFR § 290.1.
Insurance, see 46 CFR § 289.1 et seq.

Requirements for subsidies, see 46 CFR § 253.1 et seq.

LIBRARY REFERENCES

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Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

Discretion of Secretary 1
Showing of need 2

Alaska Bulk Carriers, Inc. v. Baldrige, D.C.D.C. 1982, 541 F.Supp. 770. Shipping ⇨ 3

1. Discretion of Secretary

The Secretary of Commerce [now Secretary of Transportation], in making determination in connection with awarding a construction differential subsidy, exercises considerable discretion.

2. Showing of need

There is no requirement under this chapter that granting of construction differential subsidy be necessary to meet foreign-flag competition. Alaska Bulk Carriers, Inc. v. Baldrige, D.C.D.C. 1982, 541 F.Supp. 770. Shipping ⇨ 3

§ 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 a 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

See 2004 Special Pamphlet for Partially Revised Title 46

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 the 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 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 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, c. 858, §§ 502, 905(e), 49 Stat. 1996; June 23, 1938, c. 600, §§ 9-14, 52 Stat. 955-957; Aug. 4, 1939, c. 417, § 6, 53 Stat. 1183; 1950 Reorg. Plan No. 21, §§ 102(d), 105(1), 204, 306, eff. May

24, 1950, 15 F.R. 3178, 64 Stat. 1274-1277; July 26, 1956, c. 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; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1976 Acts. Senate Report No. 94-1013, see 1976 U.S. Code Cong. and Adm. News, p. 1879.

1980 Acts. House Report No. 96-739, see 1980 U.S. Code Cong. and Adm. News, p. 139.

House Report No. 96-1221, see 1980 U.S. Code Cong. and Adm. News, p. 3342.

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. 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 Amendments. Subsec. (a). Pub.L. 96-210 struck out ", at any time prior to June 30, 1979," preceding "to accept a price for".

Subsec. (h), (i). Pub.L. 96-387 added subsecs. (h) and (i).

1976 Amendments. 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) and (1), (2), and (3), respectively.

CODE OF FEDERAL REGULATIONS

Material and equipment purchase subsidies, see 46 CFR § 275.1 et seq.

LIBRARY REFERENCES

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Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

1. Construction contracts

Approach taken by Maritime Administration in response to sudden budget decrease, whereby

construction-differential subsidy payments, authorized by Merchant Marine Act of 1936, were denied where not approved by certain date, was

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.

Transfer of Functions

Any reference in any provision of law enacted before Jan. 4, 1995, to a function, duty, or authority of the Clerk of the House of Representatives treated as referring, with respect to that function, duty, or authority, to the officer of the House of Representatives exercising that function, duty, or authority, as determined by the Committee on House Oversight of the House of Representatives, see section 2(1) of Pub.L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

Short Title

1976 Amendments. Section 1 of Pub.L. 94-372 provided: "That this Act [amending this section] may be cited as the 'Negotiated Shipbuilding Contracting Act of 1976'."

Note 1

within discretion of Administration. *Suwannee River Finance, Inc. v. U.S.*, Cl.Ct.1985, 7 Cl.Ct. 556. Shipping ⇨ 3

Where, under construction-differential subsidy contracts for construction of vessels, whereby government was to pay percentage of private purchasers' design costs, as inducement to utilize United States shipyard and to use design suitable for merchant marine purposes, purchasers' design expenses were determined in arm's length negotiations leading to fixed-price subcontracts and such expenses were part of purchasers' "required" costs; thus, government was obligated to make subsidy payments in accordance therewith, regardless of whether subsequent audit of subcontractor revealed possible improprieties as to classification of certain overhead as direct costs chargeable to purchaser. *Delta S.S. Lines, Inc. v. U.S.*, Cl.Ct.1983, 3 Cl.Ct. 559. United States ⇨ 70(18)

2. Interpretation of contracts

Sun Shipbuilding & Dry Dock Co. v. U. S., Ct.Cl.1968, [main volume] 393 F.2d 807, 183 Ct.Cl. 358.

§ 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 their remains due the United States any principal or interest on account of the purchase 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, c. 858, §§ 503, 905(e), 49 Stat. 1997; June 23, 1938, c. 600, § 15, 52 Stat. 957; 1950 Reorg. Plan No. 21 §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; July 17,

4. Procedural safeguards

Regulation providing that construction-differential subsidy payments, authorized by Merchant Marine Act of 1936, would be allowed "only if" certain restrictions were met did not entitle shipping company to subsidy if they met eligibility standards, but left matter within discretion of Maritime Subsidy Board. *Suwannee River Finance, Inc. v. U.S.*, Cl.Ct.1985, 7 Cl.Ct. 556. Shipping ⇨ 3

5. Fair and reasonable estimates

Shipyards do not have unbridled discretion in cost estimates that they submit to United States Maritime Administration in support of construction differential subsidy on American-built ships; estimates cannot contain information which is factually incorrect, or which is not objectively reasonable. *U.S. v. Davis*, S.D.N.Y.1992, 803 F.Supp. 830, affirmed in part, reversed in part on other grounds 19 F.3d 770. Shipping ⇨ 3

1952, c. 939, § 3, 66 Stat. 761; June 12, 1960, Pub.L. 86-518, § 1, 74 Stat. 216; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

101-225, Title III, § 307(12), Dec. 12, 1989, 103 Stat. 1925.

References in Text

Section 1737 of the Appendix to Title 50, referred to in text, was repealed by Pub.L.

Amendments

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

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 3, 9, 10.

§ 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, c. 858, §§ 504, 905(e), 49 Stat. 1998; June 23, 1938, c. 600, § 16, 52 Stat. 958; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; July 17, 1952, c. 939, § 4, 66 Stat. 761; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 940; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

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

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10, 19.

§ 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

Amendment to Subsecs. (a) and (b)(1)

Pub.L. 108-136, Div. C, Title XXXV, §§ 3532(b), 3537, Nov. 24, 2003, 117 Stat. 1818, 1819, provided that, effective October 1, 2004, subsecs (a) and (b)(1), are amended as follows:

(1) by striking "Notwithstanding" and inserting "(a) Except as provided in subsection (b) of this section, notwithstanding"; and

(2) by adding at the end the following:

"(b)(1) Except as provided in paragraph (2), the restrictions and requirements of section 1156 of this Appendix shall terminate upon the expiration of the 20-year period beginning on the date of the original delivery of the vessel from the shipyard for operation of a vessel in any domestic trade in which it has operated at any time since 1996.

"(2) Paragraph (1) shall not affect any requirement to make payments under section 1156 of this Appendix."

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. House Report No. 104-229, see 1996 U.S. Code Cong. and Adm. News, p. 3521.

2003 Acts. House Conference Report No. 108-354 and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 1407.

Amendments

2003 Amendments. Subsec. (a). Pub.L. 108-136, § 3532(b)(1), in the existing text, struck

out "Notwithstanding" and inserted "(a) Except as provided in subsection (b), notwithstanding".

Subsec. (b). Pub.L. 108-136, § 3532(b)(2), added subsec. (b).

Effective and Applicability Provisions

2003 Acts. Except as otherwise provided, amendments by Pub.L. 108-136, §§ 3531 to 3537, to take effect Oct. 1, 2004, see Pub.L. 108-136, § 3537, set out as a note under 46 U.S.C.A. § 53101.

SUBCHAPTER VI—VESSEL OPERATING ASSISTANCE PROGRAMS

PART A—OPERATING-DIFFERENTIAL SUBSIDY PROGRAM

§ 1171. Subsidy authorized for operation of vessels in foreign trade or in off-season cruises

(a) Application for subsidy; conditions precedent to granting

The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 1183 of this 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, c. 858, §§ 601, 905(e), 49 Stat. 2001; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; May 27, 1961, Pub.L. 87-45, § 2, 75 Stat. 90; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Oct. 21, 1970, Pub.L. 91-469, §§ 14, 35(a), (h), 84 Stat. 1023, 1085, 1086; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. Subsec. (a). Pub.L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two instances and for "Commission" in one instance. For prior transfers of functions of the Commission,

meaning the United States Maritime Commission, see Transfer of Functions note under this section.

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 under this section.

CROSS REFERENCES

Vessels eligible for documentation owned by trusts and owned by U.S. citizen, see 46 USCA § 12102.

CODE OF FEDERAL REGULATIONS

Applications, see 46 CFR § 251.1 et seq.
Award and payment policies, see 46 CFR § 280.1 et seq.

Fees for statistical or economic data, see 46 CFR § 206.1 et seq.
Forms, see 46 CFR § 290.11.

LIBRARY REFERENCES

American Digest System

Shipping ◊3.5.
Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

Judicial review 1
Purpose ½

½. Purpose

This subchapter was intended to help develop an American merchant fleet that would be competitive with foreign flag fleets. *States Marine Intern., Inc. v. Peterson*, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

Operating differential subsidy established in this subchapter was intended to be paid in order to meet foreign competition, and was not intended to compensate shippers which had no actual or potential competition from foreign lines.

States Marine Intern., Inc. v. Peterson, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

Policy of Merchant Marine Act is to foster development of American merchant marine by providing new method of subsidizing American-flag ships to enable them to compete with foreign-flag lines. *Safir v. U.S. Lines, Inc.*, E.D.N.Y.1985, 616 F.Supp. 613, affirmed as modified on other grounds 792 F.2d 19, certiorari denied 107 S.Ct. 1323, 479 U.S. 1099, 94 L.Ed.2d 175. Shipping ◊3

1. Judicial review

Reviewing court would not substitute its judgment for that of fact-finding Maritime Subsidy

Note 1

Board concerning need for a subsidy to shipping line to operate vessels acquired as replacements for subsidized fleet vessels, where Board made appropriate findings of fact concerning need for a subsidy to operate the vessels, including that shipping line was competing with a fleet of recently built and technologically advanced foreign vessels, particularly where the board had conducted extensive and continuous review of the operations of the subsidized shipping line. *Sea-Land Service, Inc. v. Dole*, D.D.C.1986, 631 F.Supp. 1345. Shipping ⇨ 3

Vessel operator was entitled to operating differential subsidy pursuant to agreement with

federal Government, though foreign customer purchasing agricultural commodities under cash transfer program had offered to reserve at least half the shipments for United States flagged vessels, as they would have been had the cargo been subject to cargo preference statutes; cargoes were not subject to cargo preference statutes and purchaser's agreement was voluntary foreign policy gesture, rather than fixed shipping obligation. *American Maritime Transport, Inc. v. U.S.*, Cl.Ct.1989, 18 Cl.Ct. 283. Shipping ⇨ 3

§ 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, c. 858, §§ 602, 905(e), 49 Stat. 2002; June 23, 1938, c. 600, § 40(b), 52 Stat. 964; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; May 27, 1961, Pub.L. 87-45, § 3, 75 Stat. 91; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Oct. 21, 1970, Pub.L. 91-469, § 35(a), 84 Stat. 1035; Aug. 6, 1981, Pub.L. 97-31, § 12(94), 95 Stat. 161.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

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

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 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 collectible 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 employment 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 decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: *Provided*, That in no event shall the base period costs be such that the difference between the base period costs 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.

[See main volume for text of (C) and (D)]

an operating-differential subsidy under this subchapter, is necessary in the accomplishment of the purposes of this chapter, he 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, c. 858, §§ 606, 905(e), 49 Stat. 2004; June 23, 1938, c. 600, § 22, 52 Stat. 960; 1950 Reorg. Plan. No. 21, §§ 105(1), 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274-1277; July 17, 1952, c. 939, § 16, 66 Stat. 764; May 10, 1956, c. 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; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

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

CODE OF FEDERAL REGULATIONS

Audit appeals, see 46 CFR § 205.1 et seq.
Informational and procedural requirements, see 46 CFR § 281.1 et seq.

LIBRARY REFERENCES

American Digest System

Shipping ◊3½.
Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

Hearing 7

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Rules and regulations 6

2. Split and unsubsidized voyages

Pacific Far East Line, Inc. v. U. S., Ct.Cl. 1968, 394 F.2d 990, [main volume] 184 Ct.Cl. 169.

5. Preference cargo

This subchapter does not prohibit the carriage of preference cargo by subsidized carriers. States Marine Intern., Inc. v. Peterson, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

6. Rules and regulations

Maritime Administration's rule reducing operating differential subsidies if subsidized vessel derived substantial revenue from preference cargo carriage under present market conditions reasonably responded to Congress' expectation, as reflected in 1970 amendments to Merchant Marine Act [46 U.S.C.A. §§ 1101-1295g], that operating differential subsidy bulk vessels would compete with foreign ships in world market. American Maritime Ass'n v. U.S., C.A.D.C.1985, 766 F.2d 545, 247 U.S.App.D.C. 55. Shipping ◊3

Maritime Subsidy Board's proposed rule requiring subsidized shipping lines to carry at least 50% nonpreference cargo and providing for proportional reduction in subsidies for vessels earning less than 50% of freight revenues from

nonpreference cargo could be applied prospectively to both existing and new operating differential subsidy contracts. States Marine Intern., Inc. v. Peterson, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

7. Hearing

Hearings, which were conducted by Maritime Subsidy Board in connection with rule-making proceedings to consider relationship between operating differential subsidy and preference cargo, which were extensive, and in which all interested parties presented evidence and briefs in support of their respective positions, constituted a "proper hearing" within this section. States Marine Intern., Inc. v. Peterson, C.A.D.C.1975, 518 F.2d 1070, 171 U.S.App.D.C. 132, certiorari denied 96 S.Ct. 1108, 424 U.S. 912, 47 L.Ed.2d 316. Shipping ◊3

§ 1177. Capital construction fund

(a) Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1) of this section) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f) of this section. The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A) of this section) which is attributable to the operation of the agreement vessels.

(b) Ceiling on deposits; lessees; "agreement vessel" defined

(1) The amount deposited under subsection (a) of this section in the fund for any taxable year shall not exceed the sum of:

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 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 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is

required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) Investment requirements; depositories; fiduciary requirements; interest-bearing securities; stock: percentage for domestic issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues

Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary: except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability of deposits; eligible deposits

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

(A) taxable income (determined without regard to this section and section 7518 of such Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A) of this section,

(B) gain from a transaction referred to in subsection (b)(1)(C) of this section shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section and section 7518 of such Code, and

(E) in applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses

For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

- (A) the capital account,
- (B) the capital gain account, and
- (C) the ordinary income account.

(2) The capital account shall consist of—

(A) amounts referred to in subsection (b)(1)(B) of this section,

(B) amounts referred to in subsection (b)(1)(C) of this section other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B) of this section,

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 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, and

(D) interest income exempt from taxation under section 103 of such Code.

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A) of this section,

(B)(i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D) of this section, reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less.

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C) of this section, and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary, subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) Tax treatment of qualified withdrawals; basis: reduction

(1) Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) of this section which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate

(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 and no addition to the tax shall be payable under section 6651 of such Code,

(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.

(5) Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal

(A) In general

The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	The applicable percentage is—
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) Earnings treated as deposits

The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) Amounts committed treated as withdrawn

For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) Authority to treat excess funds as withdrawn

If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) Amounts in fund on January 1, 1987

For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) Nonqualified withdrawals taxed at highest marginal rate

(A) In general

In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined—

(i) by excluding such withdrawal from gross income, and

(ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 15 percent (34 percent in the case of a corporation).

(B) Tax benefit rule

If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

- (i) such portion shall not be taken into account under subparagraph (A), and
- (ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

(C) Coordination with deduction for net operating losses

Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2) of the Internal Revenue Code of 1986.

(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 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).

(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.

(m) Departmental reports and certification

(1) In general

For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) Contents of reports

Each report shall set forth the name and taxpayer identification number of each person—

- (A) establishing a capital construction fund during such calendar year;
- (B) maintaining a capital construction fund as of the last day of such calendar year;
- (C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

(June 29, 1936, c. 858, §§ 607, 905(e), 49 Stat. 2005; June 23, 1938, c. 600, §§ 23 to 28, 52 Stat. 960, 961; Aug. 4, 1939, c. 417, § 10, 53 Stat. 1185; 1950 Reorg. Plan No. 21, §§ 105(1), 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274 to 1277; July 17, 1952, c. 939, §§ 17 to 19, 66 Stat. 764; 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; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; 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; Oct. 22, 1986, Pub.L. 99-514, Title II, § 261(d), (e), 100 Stat. 2214, 2215; Nov. 10, 1988, Pub.L. 100-647, Title I, § 1002(m)(2), 102 Stat. 3382; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11101(d)(7)(B), 104 Stat. 1388-405; Aug. 5, 1997, Pub.L. 105-34, Title III, § 311(c)(2), 111 Stat. 835; May 28, 2003, Pub.L. 108-27, Title III, § 301(a)(2)(E), 117 Stat. 758.)

Termination of Amendments

For provisions directing that amendments by Title III of Pub.L. 108-27 not apply to taxable years beginning after December 31, 2008, see Sunset Provision set out under 26 U.S.C.A. § 1.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

1986 Acts. House Conference Report No. 99-841 and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 4075.

1990 Acts. House Report No. 101-881, House Conference Report No. 101-964, and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

1997 Acts. House Report No. 105-148, Senate Report No. 105-33, House Conference Report No. 105-220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

2003 Acts. House Conference Report No. 108-126 and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 730.

References in Text

Sections of the Internal Revenue Code, referred to throughout text, are classified to identical sections of Title 26, Internal Revenue Code.

Amendments

2003 Amendments. Subsec. (h)(6)(A). Pub.L. 108-27, § 301(a)(2)(E), in the undesignated paragraph at the end, struck out "20 percent" and inserted "15 percent".

1997 Amendments. Subsec. (h)(6)(A). Pub.L. 105-34 substituted "20 percent" for "28 percent" in the second sentence.

1990 Amendments. Subsec. (h)(6)(A). Pub.L. 101-508 substituted "section 1(h)" for "section 1(j)".

1988 Amendments. Subsec. (h)(6)(A). Pub.L. 100-647, § 1002(m)(2), substituted "section 1(j)" for "section 1(i)".

1981 Amendments. 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.

Effective and Applicability Provisions

2003 Acts. Amendment by Pub.L. 108-27, § 301, applicable to tax years ending on or after May 6, 2003, see Pub.L. 108-27, § 301(d), set out as a note under 26 U.S.C.A. § 1.

1997 Acts. Amendment by Pub.L. 105-34 applicable to taxable years ending after May 6, 1997, see Section 311(d)(1) of Pub.L. 105-34, set out as a note under section 1 of Title 26, Internal Revenue Code.

1990 Acts. Amendment section by 11101(d)(7)(B) of Pub.L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub.L. 101-508, set out as a note under section 1 of Title 26, Internal Revenue Code.

1986 Acts. Amendment by Pub.L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 261(g) of Pub.L. 99-514, set out as a note under section 7518 of Title 26, Internal Revenue Code.

Sunset Provisions

Amendments made to this section by Pub.L. 108-27, Title III, not applicable to tax years beginning after Dec. 31, 2008, and Internal Revenue Code of 1986 to apply and be administered as if such amendments had never been enacted, see Pub.L. 108-27, § 303, set out as a Sunset Provision under 26 U.S.C.A. § 1.

Election to Recognize Gain on Assets Held on January 1, 2001

For provisions allowing a taxpayer other than a corporation, for purposes of the Internal Revenue Code of 1986, to elect to treat any readily tradable stock (which is a capital asset) held by

the taxpayer on January 1, 2001, and any other capital asset or property used in the trade or business (as defined in section 1231(b) of Title 26) held by the taxpayer on January 1, 2001, as having been sold on such date for an amount equal to its fair market value on such date (and as having been reacquired on such date for an amount equal to such fair market value), and the treatment of gain or loss resulting from such an

election, see section 311(e) of Pub.L. 105-34, set out as a note under section 1 of Title 26.

Merchant Marine Capital Construction Funds

For coordination of application of Internal Revenue Code of 1986 with capital construction program under this chapter, see section 261(a) of Pub.L. 99-514, set out as a note under section 7518 of Title 26, Internal Revenue Code.

CODE OF FEDERAL REGULATIONS

Capital and Special Reserve Funds, establishment, etc., see 46 CFR § 286.1 et seq.

Capital construction fund agreements, see 26 CFR § 3.1; 46 CFR § 390.1 et seq.; 50 CFR § 259.1 et seq.

Dividends, declaration and payment, see 46 CFR § 283.1 et seq.

Payment policies and procedures, see 46 CFR § 255.1 et seq.

Uniform system of accounts, see 46 CFR § 282.00 et seq.

Valuation of vessels, see 46 CFR § 284.1 et seq.

LIBRARY REFERENCES

American Digest System

Shipping ☞ 3.5.

Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

NOTES OF DECISIONS

Child support 5 Investment tax credit 4

4. Investment tax credit

For purposes of determining investment tax credit, barge line's qualified investment in reconstruction of its vessels included that portion of such investment representing tax-deferred earnings deposited in capital construction fund maintained pursuant to this section. *O. L. Schmidt Barge Lines, Inc. v. U. S., Ct.Cl.1979, 610 F.2d 728, 221 Ct.Cl. 793. Internal Revenue ☞ 3525*

Owner-operator of bulk ore ships on Great Lakes was entitled to claim investment credit on amounts expended for "improvements" made to three ore ships even though such improvements were paid for entirely by qualified withdrawals from ordinary income account of interim capital construction fund maintained in accordance with this section; such expenditures constituted "qualified investment" within meaning of investment credit provisions of section 46 of Title 26. *Oglebay Norton Co. v. U. S., Ct.Cl.1979, 610 F.2d 715, 221 Ct.Cl. 749. Internal Revenue ☞ 3525*

Inasmuch as this section and the investment tax credit both deal with subsidized vessels, the investment tax credit was intended to fit into the existing system which necessarily included the

special depreciation arrangement. *Pacific Far East Line, Inc. v. U. S., Ct.Cl.1976, 544 F.2d 478, 211 Ct.Cl. 71. Internal Revenue ☞ 3525*

Where taxpayer, who was self-employed as fisherman in 1977, deposited his entire net profit from such business into capital construction fund established under this section, Tax Court determined that taxpayer was not entitled to reduce his net earnings from self-employment by amount deposited into capital construction fund, since literal language of subsec. (d)(1)(A) of this section, which provides that deposits into capital construction fund shall reduce defined taxable income, does not allow net earnings from self-employment to be reduced by such deposits; furthermore, Congress intended subsec. (f) of this section to provide deferral of taxes but not permanent exemption, and Congress never intended such deferral to apply to self-employment tax. *Eades v. Commissioner of Internal Revenue, U.S.Tax Ct.1982, 79 T.C. 985.*

5. Child support

Funds husband placed in capital construction fund pursuant to Merchant Marine Act for construction or reconstruction of vessel used in his occupation as commercial fisherman were properly included in husband's income for purposes of calculating child support. *Zimin v. Zimin, Alaska 1992, 837 P.2d 118. Child Support ☞ 91*

§ 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1976 Acts. House Report Nos. 94-658 and 94-1380, Senate Report No. 94-938(Parts I and

II), and House Conference Report No. 94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

§ 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 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 hereby vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.

(June 29, 1936, c. 858, §§ 608, 905(e), 49 Stat. 2007; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Aug. 6, 1981, Pub.L. 97-31, § 12(98), 95 Stat. 162.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. 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 under this section.

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 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, c. 858, §§ 609, 905(e), 49 Stat. 2007; June 23, 1938, c. 600, § 29, 52 Stat. 961; 1950 Reorg. Plan No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Aug. 6, 1981, Pub.L. 97-31, § 12(99), 95 Stat. 162.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission".

For prior transfers of functions of the Commission, see Transfer of Functions note under this section.

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 1180. Vessels eligible to subsidy

An operating-differential subsidy shall not be paid under authority of this subchapter on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after June 29, 1936 it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

(June 29, 1936, c. 858, §§ 610, 905(e), 49 Stat. 2007; 1950 Reorg. Plan No. 21, §§ 105(1), 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1274, 1275, 1277; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; Aug. 6, 1981, Pub.L. 97-31, § 12(99), 95 Stat. 162.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note under this section.

Amendments

1981 Amendments. Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission".

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 1181. Transfer of vessels to foreign registry on default of United States

(a) 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 cancellation 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 cancellation. 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) 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 the Secretary of Transportation 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 cancellation 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.

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

[See main volume for text of (a)]

(b) 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.A. § 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) 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;

[See main volume for text of (2) to (4)]

(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) 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) 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, c. 442, 54 Stat. 684; 1950 Reorg. Plan. No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Aug. 6, 1981, Pub.L. 97-31, § 12(132), 95 Stat. 165.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

References in Text

The Neutrality Act of 1939, referred to in subsec. (b), is Act Nov. 4, 1939, c. 2, 54 Stat. 4, as amended, which is classified generally to subchapter II (section 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.

Amendments

1981 Amendments. 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 under this section.

Subsecs. (c) to (e). Pub.L. 97-31, § 12(132)(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 under this section.

LIBRARY REFERENCES

Encyclopedias

Shipping, see C.J.S. §§ 2, 9, 10.

§ 1243. Repealed. Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754

HISTORICAL AND STATUTORY NOTES

Section, Act June 29, 1936, c. 858, Title IX, § 904, 49 Stat. 2016, amended prior acts by substituting "United States Maritime Commis-

sion" for "United States Shipping Board" or "the Board".

§ 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.

[See main volume for text of (b) to (d)]

(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, c. 858, § 905, 49 Stat. 2016; June 23, 1938, c. 600, § 39, 52 Stat. 964; July 17, 1952, c. 939, § 21, 66 Stat. 765; Sept. 21, 1959, Pub.L. 86-327, § 4, 73 Stat. 597; 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840; 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1980 Acts. House Report No. 96-1139, see 1980 U.S. Code Cong. and Adm. News, p. 4246.

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. Subsec. (a). Pub.L. 97-31, § 12(133)(A), substituted "Transportation" for "Commerce".

Subsec. (c). Pub.L. 97-31, § 12(133)(B), struck out subsec. (c), 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 may require.

1980 Amendments. Subsecs. (f), (g). Pub.L. 96-453 added subsecs. (f) and (g).

Effective and Applicability Provisions

1980 Acts. Amendment by Pub.L. 96-453 effective Oct. 1, 1981, see section 4 of Pub.L. 96-453, set out as a note under section 1295 of this title.

CODE OF FEDERAL REGULATIONS

Requirements for establishment of citizenship, see 46 CFR § 355.1 et seq.

LIBRARY REFERENCES

American Digest System

Shipping ⇐1.
Key Number System Topic No. 354.

Encyclopedias

Shipping, see C.J.S. § 1.

§ 1245. Separability; short title of chapter

HISTORICAL AND STATUTORY NOTES

Short Title

1999 Amendments. Pub.L. 106-65, Div. C, Title XXXVI, § 3601, Oct. 5, 1999, 113 Stat. 975, provided that: "This title [amending section 1294 of Title 46 App., amending section 3302 of Title 46, and enacting a provision not classified to the Code] may be cited as the 'Maritime Administration Authorization Act for Fiscal Year 2000'."

1996 Amendments. Pub.L. 104-297, Title III, § 301, Oct. 11, 1996, 110 Stat. 3615, provided that: "This title [enacting sections 1279f and 1279g of this Appendix, amending section 1274 of this Appendix and enacting provisions set out as notes under this section and section 1274 of this Appendix] may be cited as the 'Fisheries Financing Act.'"

Pub.L. 104-239, § 1, Oct. 8, 1996, 110 Stat. 3118, provided that: "This Act [enacting sections 1132, 1162, 1185a, and 1187 to 1187e of this Appendix, amending sections 808, 1175, 1222, 1223, 1241f, 1271, 1273, 1274, 1274a, 1279c, and 1294 of this Appendix and section 1744 of the Appendix to Title 50, War and National Defense, and enacting provisions set out as notes under sections 1132, 1187, 1222, and 1273 of this Appendix and section 1744 of the Appendix to Title

50] may be cited as the 'Maritime Security Act of 1996.'"

1980 Amendments. For provisions authorizing the citation of Pub.L. 96-453, Oct. 15, 1980, 94 Stat. 1997, as the Maritime Education and Training Act of 1980, see short title note set out under section 1295 of this title.

1976 Amendments. Pub.L. 94-372, § 1, July 31, 1976, 90 Stat. 1042, provided: "That this Act [amending section 1152 of this Appendix] may be cited as the 'Negotiated Shipbuilding Contracting Act of 1976.'"

1972 Amendments. Pub.L. 92-507, § 8, Oct. 19, 1972, 86 Stat. 917, provided that: "This Act [amending sections 1271 to 1276, 1279a, and 1279b of this Appendix, repealing sections 1276a, 1277, and 1278 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1177 and 1273 of this Appendix] may be cited as the 'Federal Ship Financing Act of 1972.'"

1970 Amendments. Pub.L. 91-469, § 44, Oct. 21, 1970, 84 Stat. 1018, provided that: "This Act [enacting 15 U.S.C.A. § 1507a and former 40 U.S.C.A. § 270f (see now 40 U.S.C.A. § 3134(b)), amending 5 U.S.C.A. § 5315, 33 U.S.C.A. §§ 985 and 988, sections 1101, 1111, 1119 to 1121, 1151 to 1155, 1159, 1160, 1171 to 1173, 1175 to 1177,

1204, 1213, 1222, 1223, 1241, 1244, 1271, 1273 to 1275, and 1294 of this Appendix, repealing section 1221 of former Title 46, Shipping, and en-

acting provisions set out as notes under sections 1151, 1173, and 1177 of this Appendix] may be cited as the 'Merchant Marine Act of 1970.'"

LIBRARY REFERENCES

American Digest System

Shipping ⇐3.5.
War and National Emergency ⇐35.

§ 1246. Repealed. Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754

HISTORICAL AND STATUTORY NOTES

Section, Act June 29, 1936, c. 858, Title IX, § 907, 49 Stat. 2017, provided that this chapter was to take effect thirty days after a majority of

the members of the Commission took the oath of office, unless otherwise provided.

§ 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.A. § 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, c. 858, § 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95-989 and House Report No. 95-595, see 1978 U.S. Code Cong. and Adm. News, p. 5787.

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

References in Text

The Suits in Admiralty Act, referred to in subsec. (b), is Act Mar. 9, 1920, c. 95, § 1, 41 Stat. 525, which is classified to section 741 et seq. of this title.

Amendments

1981 Amendments. Subsec. (a). Pub.L. 97-31 substituted reference to Secretary of Transportation, for reference to Secretary of Commerce.

Forms

Bankruptcy and admiralty jurisdiction, see West's Federal Forms § 10673 Comment, § 11351 Comment.

§ 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, c. 858, § 909, as added Aug. 13, 1981, Pub.L. 97-35, Title XVI, § 1605, 95 Stat. 752.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1981 Acts. Senate Report No. 97-139 and House Conference Report No. 97-208, see 1981 U.S. Code Cong. and Adm. News, p. 396.

LIBRARY REFERENCES**Encyclopedias**

Shipping, see C.J.S. §§ 2, 9, 10.

SUBCHAPTER X—MARITIME LABOR RELATIONS [REPEALED]**§§ 1251 to 1255. Repealed. Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754****HISTORICAL AND STATUTORY NOTES**

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

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

Section 1253, Act June 29, 1936, c. 858, Title IX, § 1003 as added June 23, 1938, c. 600, § 45, 52 Stat. 965, related to definitions.

§§ 1260 to 1262. Repealed. Pub.L. 100-710, Title II, § 202(8), Nov. 23, 1988, 102 Stat. 4754**HISTORICAL AND STATUTORY NOTES**

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

Section 1261, Act June 29, 1936, c. 858, Title X, § 1011, as added June 23, 1938, c. 600, § 45, 52 Stat. 969, authorized appropriations.

Effective and Applicability Provisions

1978 Acts. 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.

LIBRARY REFERENCES

Foreclosures, see West's Federal Forms § 11881 et seq.

SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE**§ 1271. Definitions**

As used in this subchapter—

(a) The term "mortgage" includes—

(1) a preferred mortgage as defined in section 31301 of Title 46; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of Title 46.

(b) The term "vessel" includes all types, whether in existence or under construction, of passenger cargo and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of 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;

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

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) **Actual cost defined.**—The term "actual cost" means the sum of—

(1) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 1279a(g)(1) of this Appendix; and

(2) all amounts that the Secretary reasonably estimates that the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 1274(e) of this Appendix in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(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);
 - (2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or
 - (3) for aquaculture, including operations on land or elsewhere—
 - (A) any structure or appurtenance thereto designed for aquaculture;
 - (B) the land necessary for any such structure or appurtenance described in subparagraph (A);
 - (C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and
 - (D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 802 of this title, and for purposes of applying such section 802 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 title, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this title).
- (o) The term "eligible export vessel" means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon

delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(June 29, 1936, c. 858, §§ 905(e), 1101, as added June 23, 1938, c. 600, § 46, 52 Stat. 969, and amended 1950 Reorg. Plan No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Sept. 3, 1954, c. 1265, § 1, 68 Stat. 1267; Aug. 7, 1956, c. 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; Nov. 23, 1988, Pub.L. 100-710, Title I, § 104(d), 102 Stat. 4750; Oct. 29, 1992, Pub.L. 102-567, Title III, § 304, 106 Stat. 4283; Nov. 30, 1993, Pub.L. 103-160, Div. A, Title XIII, §§ 1356(1), 1357(b), 107 Stat. 1812, 1815; Sept. 30, 1996, Pub.L. 104-208, Div. A, Title I, § 101(a) [Title II, § 211(b)], 110 Stat. 3009-41; Oct. 8, 1996, Pub.L. 104-239, § 11(1), 110 Stat. 3134; Nov. 24, 2003, Pub.L. 108-136, Div. C, Title XXXV, § 3521(b), 117 Stat. 1799.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1980 Acts. Senate Report No. 96-721, see 1980 U.S. Code Cong. and Adm. News, p. 2407.

House Report No. 96-1243(Parts I and II), see 1980 U.S. Code Cong. and Adm. News, p. 6793.

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

1988 Acts. House Report No. 100-918, see 1988 U.S. Code Cong. and Adm. News, p. 6104.

1992 Acts. House Report No. 102-133(Parts I and II) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3612.

1993 Acts. House Report No. 103-200 and House Conference Report No. 103-357, see 1993 U.S. Code Cong. and Adm. News, p. 2013.

1996 Acts. House Report No. 104-229, see 1996 U.S. Code Cong. and Adm. News, p. 3521.

2003 Acts. House Conference Report No. 108-354 and Statement by President, see 2003 U.S. Code Cong. and Adm. News, p. 1407.

References in Text

Section 1274(a) of this Appendix, referred to in subsec. (c), was in the original a reference to subsection (a) of section 1104 of this title, meaning section 1104 of Title XI of the Merchant Marine Act, 1936, Act June 29, 1936, c. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub.L. 101-380, Title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Section 1802 of Title 16, referred to in subsec. (l), was subsequently amended, and section 1802(11) no longer defines the term "fishing vessel". However, that term is defined in 16 U.S.C.A. § 1802(17).

Amendments

2003 Amendments. Subsec. (f). Pub.L. 108-136, § 3521(b), rewrote subsec. (f), which formerly read: "The term 'actual cost' of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;".

1996 Amendments. Subsec. (b). Pub.L. 104-239, § 11(1), struck out "owned by citizens of the United States" following "abatement or control vessels".

Subsec. (l). Pub.L. 104-208, § 101(a) [§ 211(b)], substituted reference to the Magnuson-Stevens Fishery Conservation and Management Act for reference to the Magnuson Fishery Conservation and Management Act, which, due to prior editorial translation, required no further change in text.

1993 Amendments. Subsec. (n). Pub.L. 103-160, § 1357(b), expanded provision defining the term Secretary as meaning the Secretary of Transportation to cover general shipyard facilities (as defined in section 1279e(d)(3) of this title).

Subsec. (o). Pub.L. 103-160, § 1356(1), added subsec. (o).

1992 Amendments. Subsec. (k)(3). Pub.L. 102-567, § 304, added par. (3).

1988 Amendments. Subsec. (a). Pub.L. 100-710 substituted provision that "mortgage" includes a preferred mortgage as defined in section 31301 of Title 46 and a mortgage on a vessel that will become preferred when filed or recorded under chapter 313 of Title 46 for provision that "mortgage" includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, on any vessel of the United States, other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel 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.

1981 Amendments. 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 Amendments. Subsec. (b). Pub.L. 96-320, § 202(a)(1), added reference to ocean thermal energy conversion facilities or plants.

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

Subsec. (j) to (m). Pub.L. 96-561 added subsecs. (j) to (m).

Effective and Applicability Provisions

1996 Acts. Amendment by Pub.L. 104-208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009-41, effective 15 days after Oct. 11, 1996, see Pub.L. 104-208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009-41, set out as a note under section 1801 of Title 16, Conservation.

1988 Acts. Amendment to this section by Title I of Pub.L. 100-710 to take effect Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub.L. 100-710, set out as a note under section 30101 of Title 46, Shipping.

Review of Program

Pub.L. 108-136, Div. C, Title XXXV, § 3528(a), Nov. 24, 2003, 117 Stat. 1802, provided that: "The Secretary of Transportation shall conduct a comprehensive assessment of the human capital and other resource needs in connection with the title XI loan guarantee program under the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) [this subchapter]. In connection with this assessment, the Secretary shall develop an organizational framework for the program offices that insures that a clear separation of duties is established among the loan

application, project monitoring, and default management functions."

Promulgation of Regulations to Implement Title XIII of Pub.L. 103-160

Pub.L. 103-160, Div. A, Title XIII, § 1362, Nov. 30, 1993, 107 Stat. 1817, provided that:

"(a) In general.—Within 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Transportation shall prescribe regulations as necessary to carry out the Secretary's responsibilities under this title [Pub.L. 103-160, Div. A, Title XIII, 107 Stat. 1783] (including the amendments made by this title) [For complete classification of Pub.L. 103-160, Div. A, Title XIII, to the Code, see Short Title note set out under section 2491 of Title 10, Armed Forces].

"(b) Interim regulations.—The Secretary of Transportation may prescribe interim regulations necessary to carry out this title [Pub.L. 103-160, Div. A, Title XIII] and for accepting applications under title XI of the Merchant Marine Act, 1936, as amended by this title [this subchapter]. For that purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code [section 553 of Title 5, Government Organization and Employees]. All regulations prescribed under this subsection that are not earlier superseded by final rules shall expire 270 days after the date of the enactment of this Act [Nov. 30, 1993]."

LIBRARY REFERENCES

American Digest System

Insurance ◊13.1.
Key Number System Topic No. 217.

Encyclopedias

Insurance, see C.J.S. § 60.

NOTES OF DECISIONS

Vessel 1

1. Vessel

Self-elevating offshore drilling unit which was capable of navigation but which was placed above surface of ocean and was resting on supports embedded in ocean floor at time of collision

with diesel supply vessel was not a "vessel" within meaning of supply vessel's liability policy applying a \$100,000 deductible to collisions with a fixed object and a \$200,000 deductible to collisions with other vessels. *Dresser Industries, Inc. v. Fidelity & Cas. Co. of New York*, C.A.5 (Tex.) 1978, 580 F.2d 806. Insurance ◊ 2282; Insurance ◊ 2367

§ 1272. Federal Ship Financing Fund

There is hereby 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 Appendix. Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

(June 29, 1936, c. 858, §§ 905(e), 1102, as added June 23, 1938, c. 600, § 46, 52 Stat. 969, and amended 1950 Reorg. Plan No. 21, §§ 204, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; Sept. 3, 1954, c. 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.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1981 Acts. House Report No. 97-199, see 1981 U.S. Code Cong. and Adm. News, p. 92.

Amendments

1981 Amendments. Pub.L. 97-31 substituted references to Secretary, for references to Secretary of Commerce wherever appearing.

References in Text

Section 1279 of this Appendix, referred to in text, was repealed by Pub.L. 101-225, Title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

CROSS REFERENCES

Fisheries Loan Fund, accrued proceeds credited to fisheries portion of Federal Ship Financing Fund under this section, see 16 USCA § 742c-1.

LIBRARY REFERENCES

Encyclopedias

Insurance, see C.J.S. § 60.

§ 1273. Authorization of Secretary to guarantee obligations

(a) Principal and interest

The Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this subchapter. A guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) Security interest

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary 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 Appendix, 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 Appendix, in which case the Secretary may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this Appendix, of the actual cost of such vessel or vessels.

[See main volume for text of (d)]

(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. Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect.

(f) Limitation on outstanding amount

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which (1) \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter, and (2) \$3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export