

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/15/2009

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Suzanne Hilding  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 06/22/2009

ACTION REQUESTED: Extension without change of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200906-0648-008  
AGENCY ICR TRACKING NUMBER:  
TITLE: Capital Construction Fund - Deposit/ Withdrawal Report  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0041  
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 12/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	3,600	1,200	20,000
New	3,600	1,200	21,060
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	1,060
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland  
Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Capital Construction Fund - Deposit/Withdrawal Report	NOAA 34-82	Capital Construction Fund Deposit and Withdrawal Report	

# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
CAPITAL CONSTRUCTION FUND – DEPOSIT/REPORT  
OMB CONTROL NO. 0648-0041**

**A. JUSTIFICATION**

This request is for renewal of this information collection.

**1. Explain the circumstances that make the collection of information necessary.**

National Oceanic and Atmospheric Administration (NOAA) Form 34-82 is used to facilitate meeting the continuing record keeping requirements of the Fishing Vessel Capital Construction Fund (FVCCF) program, which is statutorily mandated under Section 607 of the Merchant Marine Act, 1936, as amended by Public Law (P.L.) 91-469, Sec 607(e) (which centralized monitoring and compliance authority for all cargo reservation programs in the Maritime Administration). The data collected is required pursuant to 50 CFR Part 259.35, and P.L. 99-514 (The Tax Reform Act, 1986), and is needed for responsible program administration. The FVCCF is a tax deferral program which allows participating fishermen to defer the tax on vessel income deposited into the fund and provides for the recapture of the deferred tax by reducing an agreement vessel's basis by the amount withdrawn for its construction, acquisition and/or reconstruction. Deposited income is separated into one of three bookkeeping accounts as set forth in P.L. 91-469, Sec 607(e), and is withdrawn from them on a first-in first-out basis in accordance with the nature of the withdrawal as set forth in 26 CFR Part 3 Sec 3.6(b) and 3.7(c).

If withdrawn monies are not used for allowed purposes, the withdrawn amount (a non-qualified withdrawal) is considered income to the participant in the year withdrawn, and taxed at the highest rate for the account involved.

Under a Capital Construction Fund (CCF) agreement, the participant must deposit a minimum amount per year, and cannot deposit more than a set amount. **National Marine Fisheries Service (NMFS)** must approve any withdrawals made before the withdrawal takes place. It is essential that a reasonably detailed record be kept of each participant's deposit/withdrawal activity.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information is used by the Government for the purpose of responsibly administering the FVCCF Program and for general program management purposes. NOAA Form 34-82 must be submitted by participants not later than 30 days after the deadline, with extensions, for filing the participant's tax return. A copy of the tax return must also be submitted at that time. NMFS compares the two documents to find any conflicting information on earned income, deductions taken for deposits, adjustments made to depreciation schedules, and the proper payment of additional tax for non-qualified withdrawals. The information is also checked to ensure that withdrawals have been approved, and that deposited income meets minimum and maximum

limits. There is no other way, except by direct audit, for us to check if participants are complying with deposit/withdrawal requirements and properly accounting for FVCCF activity on their tax returns. Incorrect reporting can be costly to the Government in lost rather than deferred tax revenue. The information may also be used for research to better understand the fishing industry and demands for the program.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The Program automatic data processing system has been modified to accept electronic filing, however, it's unlikely that many reports will be filed in this manner because the majority of respondents do not have access to a computer. The fillable CCF form is on line at [http://www.nmfs.noaa.gov/mb/financial\\_services/ccf\\_docs\\_and\\_forms.htm](http://www.nmfs.noaa.gov/mb/financial_services/ccf_docs_and_forms.htm)

**4. Describe efforts to identify duplication.**

There is no duplication. Information being collected is specific and relevant only to the FVCCF Program.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

The form is organized to help small entities such as small businesses keep track of their annual deposit/withdrawal activity in a manner that will aid them in the timely preparation of their tax returns. The information collected is the minimum necessary to ensure participants are complying with program regulations and statute.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The information is collected at the end of each participant's tax year. Less frequent collection would allow improper deposit/withdrawal activity to go undetected for periods of more than one year and, in some cases, could prevent the Internal Revenue Service (IRS) from protecting the Government's interest if they were not notified of tax liability situations in time to act before the expiration of the IRS 3-year statute of limitations. Not collecting the information would almost certainly result in the Government's not recovering substantial amounts of deferred taxes.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

NA.

**8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice published on December 11, 2008 (73 FR 75402) solicited public comments. No comments were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No gift or payment of any kind is provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

As stated on the form and in 50 CFR 259.38(b), all CCF information received by the Secretary of Commerce shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No sensitive questions are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

Number of respondents = 3,600

Frequency of response = once a year

Total number of responses expected = 3,600

Avg. response time per respondent = 20 minutes

Total annual response time = 1,200 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).**

Annualized costs per respondent are estimated at \$5.85 (\$3.35 for postage and \$2.50 for copying). Total annual cost to the respondents or recordkeepers based on 3,600 responses is \$21,060.

**14. Provide estimates of annualized cost to the Federal government.**

The sole cost to the Federal government is the labor necessary to process the reports and update the program database. That effort is estimated to involve 10 minutes per report for a Financial Assistance Technician, or 600 hours and \$16,874.25 in labor and benefits.

**15. Explain the reasons for any program changes or adjustments.**

No change.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The collected data are not published.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

NA.

**18. Explain each exception to the certification statement.**

NA.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

**NOAA FORM 34-82**  
 OMB Control No.: 0648-0041  
 Expiration Date: 06/30/2009

U.S. DEPARTMENT OF COMMERCE  
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
 NOAA Fisheries

**Mail report and tax return copy to:**  
 NOAA Fisheries F/SF2  
 Capital Construction Fund Program  
 1315 East-West Highway  
 Silver Spring, MD 20910-3282  
 301/713-2393 ext. 194

**Capital Construction Fund Program  
 DEPOSIT/WITHDRAWAL REPORT**  
 Due 30 days after filing date of Federal Tax Return  
 (including extensions). This report must be filed annually,  
 whether or not agreement activity took place. Attach a  
 signed copy of the Federal Income Tax Return, as filed  
 with the IRS, to this report.

Prepare a separate Form 38-42 report for each account you maintain.  
**DEPOSITORY BANK, OR INVESTMENT FIRM**

Name: \_\_\_\_\_  
 City and State: \_\_\_\_\_  
 Account Number: \_\_\_\_\_ Date Opened: \_\_\_\_\_  
 Type of Investment Account:  Savings  Money Marker  Checking  
 Other: (describe) \_\_\_\_\_

**AGREEMENT HOLDER:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone No.: \_\_\_\_\_

**CCF CASE NUMBER**

CCF-\_\_\_\_-\_\_\_\_

REPORT OF DEPOSITORY  
 ACTIVITY FOR TAX YEAR  
 ENDED:

/ /

Did you reduce taxable income for the current tax year due to CCF activity?  YES  NO  
*Amount deferred \$*  
 Was a CCF deposit made during the current year for taxes deferred in the prior year?  YES  NO  
*Clearly identify this deposit in Account Activity section.*

**CLASSIFICATION OF DEPOSITS:**

ORDINARY INCOME (tax deferred)		CAPITAL GAIN (tax deferred)		CAPITAL (funds <u>not</u> tax deferred)	
DEPOSIT	WITHDRAWAL	DEPOSIT	WITHDRAWAL	DEPOSIT	WITHDRAWAL

**SUMMARY  
 BALANCE**

Notes:

**BALANCE FORWARD-FROM PRIOR YEAR'S REPORT**  
*(Should be same as last year's "Balance - End of Year" amount.  
 If different, attach a reconciling schedule.)*

**ACCOUNT ACTIVITY FOR THE TAX YEAR**  
*Summarize interest and dividend deposits. For deposits of vessel income, provide name of vessel and Schedule A page number. For all withdrawals, provide name of vessel and Schedule B page number for project.*

DATE DESCRIBE *SCH. A OR SCH. B PAGE #*

1								1
2								2
3								3
4								4
5								5
6								6
7								7
8								8
9								9
10								10
<b>TOTAL EACH COLUMN</b> (include "Balance Forward" amount for each column)			( )	( )	( )	( )	( )	
<b>WITHDRAWALS FOR THE YEAR</b> (copy totals from adjacent column)			( )	←	( )	←	( )	←
<b>BALANCE - END OF TAX YEAR</b> (net amounts and Summary Balance)								

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NOAA Fisheries F/SF2 1315 East-West Hwy., Silver Spring, MD 20910.

I certify that for this tax year, there were no withdrawals or transfers other than those enumerated above for this Capital Construction Fund agreement. This report reflects true and complete statements in accordance with all applicable rules and regulations issued or adopted by the Secretary of Commerce pertaining to Section 607 of the Merchant Marine Act of 1936, as amended. Information on this report is complete, true, and correct to the best of my knowledge and belief. (Following information is required.)

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  Agreement holder or officer  Authorized representative

# NOAA FORM 34-82 - *GENERAL INFORMATION*

## CAPITAL CONSTRUCTION FUND - DEPOSIT/WITHDRAWAL REPORT

(SEE REVERSE SIDE FOR LINE-BY-LINE INSTRUCTIONS FOR FILING NOAA FORM 34-82)

### **NOAA Form 34-82 is required *each year*, even if no deposits or withdrawals are made.**

Failure to submit these required annual deposit/withdrawal reports shall be cause, after due notice, for disqualification of withdrawals or involuntary termination of the CCF agreement, at the Secretary's [of Commerce] discretion.

**CAUTION:** *Notify NOAA Fisheries in writing of any change in depository institutions. Entering this information on Form 34-82 is not sufficient notice to amend your Agreement.*

**DUE DATE:** **30 Days** after the due date of the year's tax return, including extensions.

### **SUPPORTING DOCUMENTS REQUIRED:**

- A signed and **complete** copy (even if it shows no CCF activity) of the year's federal tax return as submitted to the IRS. Attach it to Form 34-82; *always* submit the tax return copy and Form 34-82 together.
- If deposits relate to a S-corporation, partnership, or LLC, attach copy of K-1 from that entity.
- If depositing net proceeds from sale or disposition of a vessel, attach a Net Proceeds Worksheet. Contact the CCF staff to request this form.
- Transfers between agreements generally must be disclosed on transferee and transferor tax returns. Deposit/Withdrawal reports should clearly show these transfers and the related agreement number.

### **AVOID FREQUENT ERRORS:**

- Each depository account should be reported on a separate Form 34-82. If useful, add a schedule summarizing the year's transactions.
- Funds transferred between two CCF depository accounts during the year should be shown as withdrawals and deposits on the affected accounts. Explain the transfers in DESCRIPTION.
- Verify that last year's ending balance agrees with this year's beginning balance on Form 34-82. Do not use *Year-End Market Value* for balances.
- Reconcile tax return entries reducing taxable income to entries on Form 34-82. Attach schedule if necessary to explain differences, especially when they relate to pass-through entities.
- Verify all deposit and withdrawal entries against the depository statement. All deposits must be physically made to the depository account, except for those made in the first effective year of the agreement or the period before the agreement is finalized. Deposits/withdrawals made during this period are referred to as *nonconstructive*.<sup>®</sup> (Supporting depository statements should be kept as part of your permanent records.)
- All withdrawals should reference a specific *approved* project - give the type of project, vessel name, and Schedule B page number. *Example: AReconstruction of FV Dorothy; B-4*".
- Source of vessel income should appear on the report. *Example: AVessel income from FV Jack; Sch. A-2*".
- Interest and dividends earned for the year may be summarized as a single entry.
- Do not include *unrealized* gains and losses; list only *realized* gains and losses on investment transactions. Your tax advisor can assist you on this matter.

---

NOAA Form 34-82 is used to meet the continuing record keeping requirements of the Fishing Vessel Capital Construction Fund (FVCCF) program which is statutorily mandated under Section 607 of the Merchant Marine Act, 1936, as amended. The data collected is required pursuant to 50 CFR, Part 259.35, and P.L. 99-514 (The Tax Reform Act, 1986). NOAA Fisheries is required to provide information furnished on this form to the Internal Revenue Service.

The information is used by the Government for the purpose of responsibly administering the FVCCF Program and for general program management purposes. Assurance of confidentiality of information required to complete Form 34-82 is given in 50 CFR Part 259, Sec 259.38(b) of the FVCCF regulations.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

# NOAA FORM 34-82 - *LINE-BY-LINE INSTRUCTIONS*

## CAPITAL CONSTRUCTION FUND - DEPOSIT/WITHDRAWAL REPORT

(SEE REVERSE SIDE FOR GENERAL INFORMATION ON NOAA FORM 34-82)

**NOAA Form 34-82 and tax return copy are required each year, even if no deposits or withdrawals are made.**

NOAA Fisheries is required to provide information furnished on this form to the Internal Revenue Service.

**DEPOSITORY BANK, OR INVESTMENT FIRM** - Enter name, location, type of account, account number, and date opened. Use a separate Deposit/Withdrawal Report for **EACH** account at **EACH** approved depository.

**AGREEMENT HOLDER** - Enter the name exactly as shown on the agreement.

**TAXABLE YEAR ENDING** - Enter applicable calendar year (12/31/yr)... Fiscal Year taxpayers enter the ending date of the fiscal year.

**CCF CASE NUMBER** - Enter assigned case number as shown on the agreement.

**ACCOUNT ACTIVITY FOR THE TAX YEAR:** (Report transaction amounts in whole dollars)

**DATE** - Enter actual date of the deposit, withdrawal, or transfer. If reimbursing general operating funds, also show actual date of original expenditures in Description column.

Deposits: Enter the tax year for which the deposit is made, source of income (which Schedule A vessel) or details of transferred funds. EX: 1996 income - FV Dorothy. Summarize interest and dividend income. For deposit of proceeds of vessel sale, attach Net Proceeds Worksheet.

Withdrawals: Qualified withdrawals should describe Sch. B objective vessel and project. EX: Reconstruction of FV Dorothy. Every withdrawal should also be fully explained.

**SCH. A or SCH. B Page #** - Reference the appropriate page number of the Schedule A (income producing) vessel for each deposit, and the Schedule B objective vessel for each qualified withdrawal.

**CLASSIFICATION OF DEPOSITS** (and Withdrawals) - Use these columns to specify the bookkeeping classification to which each deposit and/or withdrawal relates. These bookkeeping classifications designate the ceiling defined by the Merchant Marine Act of 1936 (MMA) Sec. 607(e) and IRS Code Sec. 7518(a) under which deposits and withdrawals are made. (Also see information in IRS Publication 595). Since each ceiling classification is subject to different treatment for tax purposes, proper classification is important. Qualified withdrawals are made in the following classification order: First, from Capital; second, from Capital Gain; third, from Ordinary Income. Nonqualified withdrawals are made: First, from Ordinary Income; second, from Capital Gain; third from Capital.

**ORDINARY INCOME** - Deposits under this ceiling classification create an immediate deduction from taxable income. Generally, ordinary income deposits are limited to: (1) taxable income from operating the Schedule A vessel; (2) the ordinary income portion (depreciation recapture) on the sale of Agreement vessels; and (3) interest, dividend and short term capital gains and losses earned on investments of the FVCCF depository account.

**CAPITAL GAIN** - (long-term gains and losses). Deposits under this ceiling classification also create an immediate income tax deduction. Report long-term capital gain deposits of net proceeds made from the sale or insurance proceeds of Agreement vessels. Capital gains or losses from investment of the FVCCF deposits are also reported here.

**CAPITAL** - (non-tax deferred deposits). Valid deposits under this ceiling classification DO NOT generate a tax deduction. Generally, capital deposits are limited to vessel depreciation and the return of capital on the sale or other disposition of Schedule A vessels.

**SUMMARY BALANCE** - *IMPORTANT* Show beginning and end-of-year balance in the depository.

**SIGNATURE AND DATE** - Required certification by Agreement holder or Authorized Representative (with Power of Attorney, only) . Forms not signed will be returned for certifying signature.

**TITLE 46, APPENDIX--SHIPPING**

**CHAPTER 27--MERCHANT MARINE ACT, 1936**

**PART A--OPERATING-DIFFERENTIAL SUBSIDY PROGRAM**

**PART B--MARITIME SECURITY FLEET PROGRAM**

**CROSS REFERENCES**

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

**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 808, 865a of this Appendix; title 40 sections 270f, 484; title 42 sections 9101, 9141; title 50 App. section 1744.

- SUBCHAPTER I--DECLARATION OF POLICY
- SUBCHAPTER II--CREATION AND FUNCTIONS OF MARITIME AGENCIES
- SUBCHAPTER III--AMERICAN SEAMEN
- SUBCHAPTER V--CONSTRUCTION-DIFFERENTIAL SUBSIDY
- SUBCHAPTER VI--VESSEL OPERATING ASSISTANCE PROGRAMS
- SUBCHAPTER VII--PRIVATE CHARTER OPERATION
- SUBCHAPTER VIII--CONTRACT PROVISIONS
- SUBCHAPTER VIII-A--OFFENSES AND PENALTIES
- SUBCHAPTER IX--MISCELLANEOUS PROVISIONS
- SUBCHAPTER XI--FEDERAL SHIP MORTGAGE INSURANCE
- SUBCHAPTER XII--WAR RISK INSURANCE
- SUBCHAPTER XIII--MARITIME EDUCATION AND TRAINING

**TITLE 46, APPENDIX--SHIPPING**

**CHAPTER 27--MERCHANT MARINE ACT, 1936**

**SUBCHAPTER I--DECLARATION OF POLICY**

**SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

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

**§ 1101. Fostering development and maintenance of merchant marine**

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign waterborne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States, insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

(June 29, 1936, ch. 858, title I, § 101, 49 Stat. 1985; Pub. L. 91-469, § 1, Oct. 21, 1970, 84 Stat. 1018.)

**AMENDMENTS**

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

**SECTION REFERRED TO IN OTHER SECTIONS**

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

---

---

**SUBCHAPTER II--CREATION AND FUNCTIONS OF MARITIME AGENCIES**

**§ 1111. Powers and duties of agencies**

(a) Repealed. Pub. L. 97-31, § 12(58)(A), Aug. 6, 1981, 95 Stat. 158

(b) Repealed. Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925

(c) Records of meetings; seal; rules and regulations

The Commission shall, through its secretary, keep a true record of all its meetings and the ye-and-nay votes taken therein, on every action, order, contract, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) Expenditures

The Commission and the Secretary of Transportation may make such expenditures as are necessary in the performance of their functions from funds made available to them by this chapter or appropriated after June 29, 1936, which further appropriations are authorized.

(e) Officers and employees

The Commission and the Secretary of Transportation may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission and not more than three assistants, a clerk to the general counsel, not more than a total of twenty naval architects or marine engineers, twenty special experts, twenty-two examiners, twelve attorneys, and two inspectors for each vessel at each shipyard at which vessels are being constructed by it or under its supervision. The Commission and the Secretary of Transportation may, subject to the provisions of the civil-service laws and chapter 51 and subchapter III of chapter 53 of title 5, appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of their functions.

(f) Traveling and subsistence expenses; pay for military officer on assignment

Each member, any employee of the Commission or the Secretary of Transportation, and any person detailed to it or the Secretary of Transportation from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission or the Secretary of Transportation. Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Commission or the Secretary of Transportation, he shall receive from the Commission or the Secretary of Transportation, for the period during which he is so detailed, such compensation as added to his pay and allowances as an officer in such service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Commission or the Secretary of Transportation, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Commission or the Secretary of Transportation. Expenditures by the Commission or the Secretary of Transportation shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or the Secretary of Transportation or a designated employee thereof.

(June 29, 1936, ch. 858, title II, § 201, 49 Stat. 1985; Aug. 4, 1939, ch. 417, § 3, 4, 53 Stat. 1182; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Pub. L. 85-507, § 21(b)(4), July 7, 1958, 72 Stat. 337; Pub. L. 91-469, § 36, Oct. 21, 1970, 84 Stat. 1036; Pub. L. 97-31, § 12(58), Aug. 6, 1981, 95 Stat. 158; Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.)

#### REFERENCES IN TEXT

The civil service laws, referred to in subsec. (e), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

#### *Codification*

Provisions of the first sentence of subsec. (e) that authorized the appointment and fixing of the salaries of a secretary, etc., "without regard to the civil-service laws or the Classification Act of 1923, as amended", and provisions that prohibited such employees from receiving an annual salary at a rate in excess of that provided under the Classification Act of 1923, as amended, were omitted as obsolete and superseded.

Such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the act of Nov. 26, 1940, ch. 919, title I, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

As to the salaries of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89-554, Sept. 6, 1966, § 8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In the last sentence of subsec. (e), "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

#### AMENDMENTS

1989--Subsec. (b). Pub. L. 101-225 struck out subsec. (b) which read as follows: "No person shall hold office as a member of the Commission who, within three years prior to his appointment, shall have been employed by, or have had any pecuniary interest, in any carrier by water or substantial pecuniary interest in any other person who derives a substantial portion of his revenues from any business associated with ships or shipping. Each member shall devote his full time to the duties of his office. It shall be unlawful for any member, officer, or employee of the Federal Maritime Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Commission may have business relations."

Subsec. (g). Pub. L. 101-225 struck out subsec. (g) which provided that this section take effect June 29, 1936.

1981--Subsec. (a). Pub. L. 97-31, § 12(58)(A), struck out subsec. (a) which related to establishment, etc., of the United States Maritime Commission. For prior transfers of functions, see Transfer of Functions note below.

Subsec. (d). Pub. L. 97-31, § 12(58)(B), substituted "their" for "its" and "them" for "it" and inserted reference to Secretary of Transportation.

Subsec. (e). Pub. L. 97-31, § 12(58)(C), substituted "their" for "it", inserted reference to Secretary of Transportation, and struck out proviso which related to the transfer of employees from the United States Shipping Board Bureau or United States Shipping Board Merchant Fleet Corporation to the United States Maritime Commission and to the Acquisition of United States Civil Service status.

Subsec. (f). Pub. L. 97-31, § 12(58)(D), inserted references to Secretary of Transportation.

1970--Subsec. (b). Pub. L. 91-469 substituted in last sentence "Federal Maritime Commission" for "Commission" in two places.

1958--Subsec. (e). Pub. L. 85-507 struck out provisions which authorized detail of certain personnel for training at institutions for scientific education and research.

1949--Subsec. (e). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923, as amended,".

1939--Subsec. (e). Act Aug. 4, 1939, § 3, authorized the appointment of a clerk to the general counsel, increased the number of naval architects and special experts from 12 to 20 each, and the number of examiners from 12 to 22, and permitted not more than 5 members to be detailed annually for engineering, technical, or other scientific education and training.

Subsec. (f). Act Aug. 4, 1939, § 4, provided for the payment of compensation to officers of the Army, Navy, Marine Corps, or Coast Guard.

#### EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85-507, see section 21(a) of Pub. L. 85-507.

#### REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out below.

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

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

#### FEDERAL MARITIME COMMISSION; TERM OF OFFICE; VACANCIES; CONTINUITY OF SERVICE

Pub. L. 89-56, June 30, 1965, 79 Stat. 195, provided; "That Commissioners of the Federal Maritime Commission, provided for by section 102 of Reorganization Plan Numbered 7 of 1961 (75 Stat. 849), shall hereafter be appointed for a term of five years except that one of the two terms which commence July 1, 1965, shall initially be for four years and thereafter shall be for five years: *Provided, however*, That a person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds: *Provided, further*, That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified."

#### COMPENSATION OF FEDERAL MARITIME COMMISSIONERS AND MARITIME ADMINISTRATOR

Annual basic compensation of Chairman of Commission, members of Commission, and Administrator, Maritime Administration, see sections 5314 and 5315 of Title 5, Government Organization and Employees.

#### EX. ORD. NO. 11156. MARITIME ADVISORY COMMITTEE

Ex. Ord. No. 11156, eff. June 17, 1964, 29 F.R. 7855, which established the Maritime Advisory Committee, was revoked by Ex. Ord. No. 11427, eff. Sept. 4, 1968, 33 F.R. 12617.

- REORGANIZATION PLAN NO. 7 OF 1961
- REORGANIZATION PLAN NO. 21 OF 1950

REORGANIZATION PLAN NO. 6 OF 1949

---

---

### SUBCHAPTER III--AMERICAN SEAMEN

#### § 1131. Manning and wage scales; subsidy contracts

(a) Investigation of wages and working conditions; establishment of wage and manning scales; incorporation in subsidy contracts

The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under subchapters VI and VII of this chapter minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: *Provided, however*, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) Subsidy contracts; provisions relative to officers and crew

Every contract executed under authority of subchapters VI and VII or this chapter shall require--

- (1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;
- (2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;
- (3) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation or the Coast Guard;
- (4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;
- (5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

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

#### AMENDMENTS

1981--Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in five places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b)(2). Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note set out below.

1938--Subsec. (a). Act June 23, 1938, § 5, substituted "minimum working conditions" for "reasonable working conditions," struck out provisions which required a formal complaint before any change in scales or working conditions, and permitted representatives of organizations certified as the proper collective bargaining agencies to represent employees at hearings.

Subsec. (b). Act June 23, 1938, § 6, struck out provisions which permitted complaints and recommendations to be made to the Coast Guard or the Department of Labor, and which required licensed officers to take their meals in the main dining salon of the vessel.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

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

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

Employees, Functions of Coast Guard, and Commandant of Coast Guard, excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14.

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

### **§ 1132. Reemployment rights for certain merchant seamen**

(a) In general

An individual who is certified by the Secretary of Transportation under subsection (c) of this section shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38 for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) Time for application

An individual may submit an application for certification under subsection (c) of this section to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) of this section with respect to which the application is submitted.

(c) Certification determination

Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall--

(1) determine whether or not the individual--

(A) was employed in the activation or operation of a vessel--

(i) in the National Defense Reserve Fleet maintained under section 1744 of Title 50, Appendix, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

(ii) that is requisitioned or purchased under section 1242 of this Appendix; or

(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46; and

(2) if the Secretary makes affirmative determinations under paragraph (1)(A) and (B), certify that individual under this subsection.

(d) Equivalence to Military Selective Service Act certificate

For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) of this section shall be considered to be the equivalent of a certificate referred to in paragraph (1) of section 4301(a) of title 38.<sup>1</sup>

<sup>1</sup> See References in Text note below.

(June 29, 1936, ch. 858, title III, § 302, as added Pub. L. 104-239, § 10(a), Oct. 8, 1996, 110 Stat. 3133.)

#### **REFERENCES IN TEXT**

A certificate referred to in paragraph (1) of section 4301(a) of title 38, referred to in subsec. (d), probably means a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)), which was referred to in section 4301(a)(1) of Title 38, Veterans' Benefits, prior to the general amendment of that section by section 2(a) of Pub. L. 103-353. For text of former section 4301 of Title 38, see Codification note set out preceding section 4301 of Title 38.

#### **PRIOR PROVISIONS**

A prior section 1132 of former Title 46, Shipping, acts June 29, 1936, ch. 858, title III, § 302, 49 Stat. 1992; Aug. 6, 1981, Pub. L. 97-31, § 12(83), 95 Stat. 160, related to citizenship of officers and crew prior to repeal by Pub. L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 603. See sections 7102 and 8103 of Title 46, Shipping.

#### **EFFECTIVE DATE**

Section 10(b) of Pub. L. 104-239 provided that: "The amendment made by subsection (a) [enacting this section], shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936 [subsec. (c)(1)(A) of this section], as amended by subsection (a), occurring after the date of enactment of this Act [Oct. 8, 1996]."

#### **REGULATIONS**

Section 10(c) of Pub. L. 104-239 provided that: "Not later than 120 days after the date of the enactment of this Act [Oct. 8, 1996], the Secretary of Transportation shall issue regulations implementing this section [enacting this section and provisions set out as a note above]."

---

---

## **SUBCHAPTER V--CONSTRUCTION-DIFFERENTIAL SUBSIDY**

### **SUBCHAPTER REFERRED TO IN OTHER SECTIONS**

This subchapter is referred to in sections 1161, 1191, 1193, 1204, 1212, 1228, 1244, 1274 of this Appendix.

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

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

Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this chapter. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of higher transport capability and productivity.

(b) Submission of plans to Navy Department; certification of approval

The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(c) Application for subsidy for reconstruction or reconditioning; conditions precedent to granting; contracts

Any citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this chapter, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this subchapter and under such further conditions and limitations as may be prescribed in the rules and regulations of the Secretary of Transportation has adopted as provided in section 1114(b) of this Appendix; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this chapter.

(June 29, 1936, ch. 858, title V, § 501, 49 Stat. 1995; June 23, 1938, ch. 600, § 8, 52 Stat. 955; July 17, 1952, ch. 939, § 1, 2, 66 Stat. 760, 761; Pub. L. 91-469, § 6, 35(a), (c), (d), Oct. 21, 1970, 84 Stat. 1019, 1035; Pub. L. 91-603, § 4(a), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97-31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

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

1970--Pub. L. 91-469, § 35(a), substituted "Secretary of Commerce" for "Commission", twice in subsecs. (a) and (b) and five times in subsec. (c).

Subsec. (a). Pub. L. 91-603 substituted "for the operation and maintenance of" for "to enable it to operate and maintain" in cl. (2).

Pub. L. 91-469, § 6(1), 35(c), substituted "Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States" for "Any citizen of the United States", inserted in subd. (2) "if the applicant is the proposed ship purchaser," struck out of cl. (3) "to replace wornout or obsolete tonnage with new and modern ships, or otherwise" after "reasonably calculated", and authorized the Secretary of Commerce to give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity; and substituted "he" for "it" before "determines", respectively.

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

1952--Subsecs. (a), (c). Act July 17, 1952, § 1, 2, struck out requirements as to essentiality of the service, route, or line to be served by the vessel and provided that the lawful or proper use of the vessel may not be restricted.

1938--Subsec. (c). Act June 23, 1938, inserted reference to section 1114(b).

#### COMMISSION ON AMERICAN SHIPBUILDING

Section 41 of Pub. L. 91-469 established a Commission on American Shipbuilding, provided for the appointment and compensation of an Executive Director of the commission and other personnel, empowered the commission to study American shipbuilding with a view toward increased productivity and reduced costs, and to make a report to the President and Congress no later than three years after Oct. 21, 1970 of the commission's findings and recommendations, and provided that the commission was to terminate sixty days after filing its report.

#### SECTION REFERRED TO IN OTHER SECTIONS

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

#### § 1152. Construction of vessels; bids; subsidies

(a) Approval of bids; contract with bidder; acceptance of negotiated price; shipyard records, availability; contract with applicant or qualified citizen for purchase of vessel

If the Secretary of the Navy certifies his approval under section 1151(b) of this Appendix, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 1155 of this Appendix with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this chapter, of building such vessel in a foreign shipyard.

(b) Basis for fixing subsidy; cost of construction in foreign yards; annual recomputation and publication of foreign cost; limitation on construction differential; report on American shipbuilding industry

The amount of reduction in selling price which is herein termed "construction differential subsidy" shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of that type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary's consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 1155 of this Appendix) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

(c) Terms of sale of vessel to purchaser

In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to

cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

(d) Repealed. Pub. L. 87-877, § 2(a), Oct. 24, 1962, 76 Stat. 1200

(e) Construction in navy yards; sales to citizens; terms

If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b) of this section, such sale to be in accordance with all the provisions of this subchapter.

(f) Survey of shipbuilding capability; correction of inadequacies; reimbursement of certain vessel construction and delivery expenses

The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this chapter, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconstruction, reconstruction, 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, reconstruction, 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, reconstruction, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this chapter, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this chapter, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under this subchapter, except section 1159 of this Appendix) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the 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 Appendix the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

(g) Sale of vessels acquired by Secretary

Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 1125 of this Appendix, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b) of this section, such sale to be in accordance with all the provisions of this subchapter. Such vessel shall thereupon be eligible for an operating-differential subsidy under subchapter VI of this chapter, notwithstanding the provisions of section 1171(a)(1), and section 1180(1) of this Appendix, or any other provision of law.

(h) Installation or removal of national defense features; title to such features

The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 1744(a) of the Appendix to title 50, (2) which is requisitioned, purchased, or chartered under section 1242 of this Appendix, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under subchapter XI of this chapter, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this subchapter.

(i) Plans, specifications, and proposals for national defense features; certification of approval

The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(June 29, 1936, ch. 858, title V, § 502, 49 Stat. 1996; June 23, 1938, ch. 600, § 9-14, 52 Stat. 955-957; Aug. 4, 1939, ch. 417, § 6, 53 Stat. 1183; July 26, 1956, ch. 737, 70 Stat. 657; Pub. L. 86-518, § 1, 2, June 12, 1960, 74 Stat. 216; Pub. L. 86-607, § 1, July 7, 1960, 74 Stat. 362; Pub. L. 87-877, § 1, 2(a), (e), (f), Oct. 24, 1962, 76 Stat. 1200, 1201; Pub. L. 88-370, July 11, 1964, 78 Stat. 313; Pub. L. 88-410, § 1, Aug. 10, 1964, 78 Stat. 385; Pub. L. 89-127, Aug. 14, 1965, 79 Stat. 519; Pub. L. 89-589, Sept. 19, 1966, 80 Stat. 811; Pub. L. 90-572, Oct. 12, 1968, 82 Stat. 1004; Pub. L. 91-40, July 8, 1969, 83 Stat. 44; Pub. L. 91-469, § 7, 35(a), (e)-(g), Oct. 21, 1970, 84 Stat. 1019, 1035, 1036; Pub. L. 91-603, § 4(b), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 93-71, July 10, 1973, 87 Stat. 169; Pub. L. 94-372, § 2, 3, July 31, 1976, 90 Stat. 1042; Pub. L. 96-210, Mar. 17, 1980, 94 Stat. 100; Pub. L. 96-387, § 3, Oct. 7, 1980, 94 Stat. 1545; Pub. L. 97-31, § 12(84), (85), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

1981--Subsecs. (a), (b). Pub. L. 97-31, § 12(84), substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

Subsec. (c). Pub. L. 97-31, § 12(84), (85), substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing, and "Secretary of Transportation's" for "Secretary of Commerce's".

Subsecs. (e) to (i). Pub. L. 97-31, § 12(84), substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

1980--Subsec. (a). Pub. L. 96-210 struck out ", at any time prior to June 30, 1979," before "to accept a price for".

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

1976--Subsec. (a). Pub. L. 94-372, § 2, in third sentence, substituted "at any time prior to June 30, 1979" for "at any time prior to June 30, 1976", struck out former par. (i) relating to a negotiated price resulting in a construction-differential subsidy equal to or less than 45%, 43%, 41%, 39%, 37% and 35% for fiscal years 1971, 1972, 1973, 1974, 1975 and 1976, respectively, and redesignated former pars. (ii), (iii), and (iv) as (1), (2), and (3), respectively.

Subsec. (b). Pub. L. 94-372, § 3, substituted provisions limiting the construction differential to 50% (excluding costs for national defense features), and allowing the Secretary, where such differential is exceeded, to contract with any bidder (notwithstanding section 1155) to reduce the differential to within such percentage for provisions limiting the differential to 55% except for passenger vessels having characteristics set forth in section 1153, which shall be 60%, limiting the differential after June 30, 1970 to 50%, permitting the Secretary to negotiate and contract with any bidder, regardless of section 1155 if in the years 1972, 1973, 1974, 1975 and 1976 a specified percentage is exceeded, prohibiting contracts commencing in 1972, where such differential exceeds such limits unless consideration has been given to the possibility that the commitment to ship construction programs may not be continued under existing limits, and requiring notification to the Commission on American Shipbuilding if the Secretary finds it necessary to enter into such contracts.

1973--Subsec. (a). Pub. L. 93-71 in third sentence, substituted "June 30, 1976" for "June 30, 1973" and limited vessel construction subsidy to 39 per centum in fiscal 1974, 37 per centum in fiscal 1975, and 35 per centum in fiscal 1976.

1970--Pub. L. 91-469, § 35(a), substituted "Secretary of Commerce" for "Commission", six times in subsec. (a), four times in subsec. (c), five times in subsec. (e), four times in subsec. (f), and four times in subsec. (g).

Subsec. (a). Pub. L. 91-603 substituted "for the operation and maintenance of" for "to enable it to operate and maintain".

Pub. L. 91-469, § 7(1), 35(e), struck out in first sentence ", on behalf of the applicant," after "may secure", substituted in second sentence "proposed ship purchaser, the Secretary of Commerce" for "applicant, the Commission", inserted conditions precedent to acceptance of negotiated price for ship construction in fiscal years 1971, 1972, and 1973, including availability of shipyard records in connection therewith, substituted in last sentence "for the sale" for "with the applicant for the purchase by him" before "of such vessel", and authorized sale of vessel upon its completion to the applicant if he is the proposed ship purchaser and if not to another citizen, if the Secretary determines that such citizen possesses the necessary qualifications to enable it to operate and maintain the vessel; and substituted "he" for "it" before "may secure", respectively.

Subsec. (b). Pub. L. 91-469, § 7(2), provided for recomputation of estimated foreign cost annually, publication of notice to compute or recompute such estimated foreign cost, offer of opportunity to interested persons to file written statements, consideration of relevant matter so filed, explanation of basis of determination, prohibition commencing with fiscal year 1972 of construction contracts requiring construction-differential in excess of prescribed percentages unless there is no likelihood of attaining the percentages and the commitment to the ship construction program may not be continued, notice to Commission on American Shipbuilding of execution of such a contract, and submission of a Commission report on the American shipbuilding industry within six months of the notice, substituted "may equal" for "shall equal", "construction of that type vessel" for "construction of the proposed vessel", "exceeds the following percentages: in fiscal year 1971, 45 per centum; in fiscal year 1972, 43 per centum; in fiscal year 1973, 41 per centum; in fiscal year 1974, 39 per centum; in fiscal year 1975, 37 per centum; in fiscal year 1976 and thereafter, 35 per centum" for "in any case exceeds the foregoing applicable percentage of such cost", and "with such bidder, notwithstanding the provisions of the first sentence of section 1155 of this Appendix with respect to competitive bidding," for "on behalf of the applicant", and inserted "with any bidder, whether or not such bidder is the lowest bidder," after "the Secretary may negotiate" and ", or as close thereto as possible" before "or less".

Subsec. (c). Pub. L. 91-469, § 7(3), 35(f), inserted "of sale" after introductory phrase "In such contract", in revising interest rate substituted provision for a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior rate of 3<sup>1/2</sup> per centum per annum, substituted in last sentence "rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel" for "rate of 3<sup>1/2</sup> per centum per annum", "purchaser" for "applicant" in six places, "purchaser's portion of the price" for "applicant's purchase price", and "purchaser's" for "applicant's"; and substituted "Secretary of Commerce's" for "Commission's", respectively.

Subsec. (e). Pub. L. 91-469, § 7(4), 35(g), substituted "a citizen of the United States" for "the applicant" in first sentence and for "an applicant" in third sentence and "his" for "its" in second sentence, respectively.

Subsec. (f). Pub. L. 91-469, § 7(5), in first par., substituted "this subchapter and subchapter VII of this chapter" for "subchapter VII of this chapter and section 1159 of this Appendix, and the Federal Maritime Board, in connection with ship construction, reconstruction, or reconditioning under this subchapter (except section 1159 of this Appendix)," and "in such manner as he may determine" for "in such manner as it may be determined" in second sentence; and in second par., substituted "purchaser" for "applicant" in six places and "United States port in an essential service" for "United States port on any essential service of the operator" in fourth sentence.

Subsec. (g). Pub. L. 91-469, § 7(6), substituted "application" and "any citizen of the United States" for "agreement" and "an applicant under this subchapter" in first sentence.

1969--Subsec. (b). Pub. L. 91-40 substituted "June 30, 1970" for "June 30, 1969".

1968--Subsec. (b). Pub. L. 90-572 substituted "June 30, 1969" for "June 30, 1968".

1966--Subsec. (b). Pub. L. 89-589 substituted "June 30, 1968" for "June 30, 1966".

1965--Subsec. (b). Pub. L. 89-127 substituted "June 30, 1966" for "June 30, 1965".

1964--Subsec. (b). Pub. L. 88-370 substituted "June 30, 1965" for "June 30, 1964".

Subsec. (f). Pub. L. 88-410 provided for reimbursement of expenses incurred during construction and the delivery voyage of a vessel, if as a result of allocation under this subsection, they are in excess of the estimated expenses that would have been incurred if the vessel had been constructed by the lowest responsible bidder, less one-half of any gross income allocable to the delivery voyage, minus one-half the extra expenses incurred to produce such income, and that such reimbursement shall not be part of the construction-differential subsidy, that no interest be paid on any refund authorized, that if the vessel is constructed under section 1159 the price of the vessel is to be reduced by such excess expenses less such gross income, calculated as above, obtained on the delivery voyage, that if the vessel is not to receive the operating-differential subsidy the delivery voyage shall be deemed terminated at the port where the vessel begins loading, and if it does receive the subsidy, when the vessel begins loading at a United States port on any essential service of the operator, but in either case there is to be no compensation greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the one of the lowest bidder, that if the allocation results in a saving of expenses for the applicant, the applicant shall pay an equal amount to the Secretary, and if the vessel was built with the subsidy, such payment shall not be considered a reduction of the subsidy.

1962--Subsec. (b). Pub. L. 87-877, § 1, among other changes, substituted references to the Secretary, for references to the Federal Maritime Board, wherever appearing, and provided that in the reconstruction or reconditioning of a passenger vessel having the characteristics set forth in section 1153 of this Appendix, the construction differential shall not exceed 60 per centum of the cost, excluding national defense features, however, after June 30, 1964, the construction differential approved by the Secretary for any vessel shall not exceed 50 per centum of such cost.

Subsec. (d). Pub. L. 87-877, § 2(a), repealed subsec. (d) which provided for giving a preference to Pacific coast bidders in obtaining a subsidy and specified the conditions to be met therefor.

Subsec. (f). Pub. L. 87-877, § 2(e), (f), substituted "at least once each year" for "periodically", "existing or impending inadequacy" for "existing inadequacy", and struck out ", with the approval of the President," before "allocate such construction".

1960--Subsec. (b). Pub. L. 86-607, § 1(1), increased the limitation on construction differential from 50 to 55 per centum of the construction cost of a vessel and provided for such percentage limitation in lieu of former 33<sup>1/3</sup> per centum of construction cost, increased to 50 per centum on affirmative vote of two Board members.

Subsec. (c). Pub. L. 86-518, § 1, substituted "twenty-five" for "twenty" in two places.

Subsec. (d). Pub. L. 86-607, § 1(2), increased the limitation on construction-differential from 50 to 55 per centum of the construction cost of a vessel.

Subsec. (g). Pub. L. 86-518, § 2, substituted "at the rate of 4 per centum per annum" for "based on a twenty-year life expectancy".

1956--Subsec. (f). Act July 26, 1956, substituted provisions that required Secretary of Commerce, with advice of Secretary of the Navy, to make periodic survey of privately owned shipyards to determine adequacy for providing mobilization base, and that any inadequacies would be corrected by Secretary of Commerce or Federal Maritime Board with the approval of the President by allocating work to such yards, for former provisions allowing periodic survey by the Federal Maritime Board of both Navy and privately owned shipyards.

1939--Subsec. (b). Act Aug. 4, 1939, substituted "a foreign shipbuilding center which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed" for "a principal foreign shipbuilding center which may reasonably be availed of by the principal foreign competitors in the service in which the vessel is to be operated, and which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated cost of construction in foreign countries of vessels of the type proposed to be constructed".

1938--Subsec. (a). Act June 23, 1938, § 9, substituted "of the contract price of the vessel" for "the cost of the vessel".

Subsec. (b). Act June 23, 1938, § 10, permitted negotiations and contracts to build vessels in domestic shipyards in cases where the construction differential exceeds 33<sup>1/3</sup> per centum or 50 per centum of the cost, and to require a report where there is reason to believe that the bidding is collusive.

Subsec. (c). Act June 23, 1938, § 11, among other changes, substituted "of not less than 25 per centum of the price at which the vessel is sold to the applicant" for "a sum equal to 25 per centum of the construction cost of the vessel paid by the Commission (excluding cost of national-defense features as above provided)", and required the applicant to pay, not less frequently than annually, interest at the rate of 3<sup>1/2</sup> per centum per annum on those portions of payments made to the shipbuilder which are chargeable to the applicant's purchase price of the vessel (after deduction of the applicant's cash payments).

Subsec. (d). Act June 23, 1938, § 12, substituted "construction-differential subsidy" for "construction subsidy", and inserted provisions relating to limitation on approval of construction-differential in excess of 50 per centum of the construction cost of the vessel paid by the Commission.

Subsec. (f). Act June 23, 1938, § 13, added subsec. (f).

Subsec. (g). Act June 23, 1938, § 14, added subsec. (g).

#### **EFFECTIVE DATE OF 1962 AMENDMENT**

Section 5 of Pub. L. 87-877 provided that: "The amendment made by the first section of this Act [amending this section] shall be effective only with respect to contracts entered into with respect to (a) the construction of a vessel the keel of which was laid after June 30, 1959, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Secretary may, with the consent of the parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Oct. 24, 1962] to the extent authorized by the amendment made by this Act."

#### **EFFECTIVE DATE OF 1960 AMENDMENTS**

Section 2 of Pub. L. 86-607, as amended by Pub. L. 87-222, Sept. 13, 1961, 75 Stat. 494, provided that: "The amendment made by this Act [amending this section] shall be effective only with respect to any contract entered into not later than two years after the date of enactment of this Act [July 7, 1960] under the provisions of section 502 of the Merchant Marine Act, 1936 [this section], with respect to (a) the construction of a vessel the keel of which was laid, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Federal Maritime Board may, with the consent of the parties thereto, modify any such contract entered into prior to the date of enactment of the first amendment to Public Law 86-607 (74 Stat. 362) [Sept. 13, 1961], to the extent authorized by the amendment made by this Act, as amended."

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **MODIFICATION OF CONTRACTS; CONDITIONS**

Section 2 of Pub. L. 88-410 provided that: "The amendment made by this Act [amending this section] shall be effective with respect to any contract entered into under the provisions of section 502 of the Merchant Marine Act, 1936, as amended [this section], and the Secretary of Commerce shall, with the consent of the other parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Aug. 10, 1964] to the extent authorized by the amendment made by this Act, except that the Secretary shall not agree to any such modification which would result in a payment by the United States unless, within one year after enactment of this Act, application is made for such modification. No payment shall be made by the Secretary under the provisions of the amendment made by this Act with respect to any contract entered into after the date of enactment of this Act unless the recipient of such payment has agreed to the modification of any contract which was entered into prior to the date of enactment of this Act and to which such recipient was a party, and which, if modified under the authority of this section, would result in a payment to the United States."

#### **CONTRACTS FOR NEW SHIP CONSTRUCTION AWARDED ON BIDS OPENED PRIOR TO OCTOBER 24, 1962**

Section 2(a) of Pub. L. 87-877 provided in part: "That the repeal of subsection (d) of section 502 of the Merchant Marine Act, 1936 [subsec. (d) of this section], shall not be effective with respect to contracts for new ship construction under title V of said Act [this subchapter] awarded on the basis of bids opened prior to the date of the enactment of this Act. [Oct. 24, 1962]."

#### **RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960**

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960**

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS**

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **CONSTRUCTION AND SALE OF SUPERLINER PASSENGER VESSELS**

Pub. L. 85-521, July 15, 1958, 72 Stat. 359, provided: "That it is necessary, in order to carry out the merchant marine policy declared in the Merchant Marine Act, 1936, as amended [this chapter], to have (a) a superliner passenger vessel equivalent to the steamship United States, to replace the steamship America for operation on an essential trade route in the North Atlantic, and (b) a superliner passenger vessel with capacity of approximately one thousand four hundred passengers for operation on an essential trade route in the Pacific Ocean. Nothing herein shall preclude the operation of either of these vessels in other areas, subject to the approval of the Federal Maritime Board. There is hereby authorized to be appropriated to the Department of Commerce such sums as may be necessary, to remain available until expended, for the construction, outfitting, and equipping of such vessels.

"Sec. 2. Concurrently with entering into contracts with shipbuilders for the construction of said vessels, the Board is authorized to enter into contracts for the sale of the vessels, fully outfitted and equipped, upon their completion, (a) with respect to the superliner passenger vessel equivalent to the steamship United States, to the United States Lines Company, for the fixed price of \$47,000,000, and (b) with respect to the superliner passenger vessel for operation in the Pacific Ocean, to the American President Lines, Limited, for the fixed price of \$34,000,000, or 45 per centum of the domestic construction cost of the vessel fully outfitted and equipped (excluding national defense features and escalation) whichever is the greater. The sales prices stated herein shall include the cost of stabilizers, all outfit and equipment not covered by the shipbuilders' bids, customary architects' and interior decorators' fees for design, inspection during construction, and all escalation provided for in the shipbuilders' bids: *Provided, however,* That such prices shall be increased in an amount equal to 45 per centum of any net change in the cost of the vessels (other than national defense

features) arising out of any changes in the bid specifications approved by the Federal Maritime Board or any changes in the usual outfitting and equipping of the vessels if such changes are requested by the purchasers and approved by the Federal Maritime Board after the enactment hereof. Terms and conditions of payment of the purchase price shall be as provided for in sections 502(c) and 503 of the Merchant Marine Act, 1936, as amended [sections 1152(c) and 1153 of this Appendix]. In order that such construction of the superliner passenger vessel equivalent to the steamship United States may be accomplished promptly, the Federal Maritime Board, in its discretion, may have such a vessel constructed, without further bidding, under outstanding bids which have hitherto been made by United States shipbuilders on a similar vessel.

"Sec. 3. Except as otherwise provided in this Act, the construction and sale of the superliner passenger vessels authorized by this Act shall be in accordance with the provisions of the Merchant Marine Act, 1936, as amended [this chapter].

"Sec. 4. For the purposes of this Act the words 'construction differential subsidy' used in the Merchant Marine Act, 1936, as amended [this chapter], shall mean the difference between the sales price paid by the purchaser hereunder and the cost of the vessel (less national defense features) including the cost of stabilizers, all outfit and equipment not covered by the shipbuilders' bids, customary architects' and interior decorators' fees for design, inspection during construction, and all escalation provided for in the shipbuilders' bids.

"Sec. 5. Any contract for an operating differential subsidy on the operation of a vessel constructed and sold under this Act shall be subject to the provisions of title VI of the Merchant Marine Act, 1936, as amended [subchapter VI of this chapter]: *Provided, however,* That such contract shall provide that, if at the end of any recapture period, the net profits on the operation of such vessel for such recapture period, computed without regard to profits or losses on other vessels operated by the contractor, exceed 10 per centum per annum on a cumulative basis upon the contractor's capital necessarily employed in the operation of such vessel, as determined by the Federal Maritime Board, the contractor shall account to the United States for an amount equal to 75 per centum of such excess profits."

#### SECTION REFERRED TO IN OTHER SECTIONS

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

#### **§ 1153. Documentation of completed vessel under laws of United States; delivery to purchaser; first mortgage to secure deferred payments**

Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this subchapter and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchaser price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: *Provided,* That notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 1737(b) <sup>1</sup> of the Appendix to title 50, reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under subchapter V of this chapter, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation, such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 868 of this Appendix.

<sup>1</sup> See References in Text note below.

(June 29, 1936, ch. 858, title V, § 503, 49 Stat. 1997; June 23, 1938, ch. 600, § 15, 52 Stat. 957; July 17, 1952, ch. 939, § 3, 66 Stat. 761; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 91-469, § 8, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97-31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

#### REFERENCES IN TEXT

Section 1737 of the Appendix to title 50, referred to in text, was repealed by Pub. L. 101-225, title III, § 307(12), Dec. 12, 1989, 103 Stat. 1925.

#### AMENDMENTS

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

1970--Pub. L. 91-469 substituted "purchaser" for "applicant" in three places, "sale between the purchaser and the Secretary of Commerce" for "purchase between the applicant and the Commission" in first sentence; and "Secretary of Commerce" for "Commission", in four places, respectively.

1960--Pub. L. 86-518 substituted "twenty-five years" for "twenty years".

1952--Act July 17, 1952, amended section to provide that as to passenger vessels delivered after Mar. 8, 1946, the balance of the payments shall be secured by a first preferred mortgage, that the purchasers' obligation to pay will be discharged by surrender of the vessel and all rights to the Government, and to set up conditions governing type of vessel.

1938--Act June 23, 1938, amended section generally, substituting "construction-differential subsidy" for "construction subsidy", and "or so long as there remains due" for "and so long as there remains due".

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960**

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS**

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1154, 1159, 1162 of this Appendix.

#### **§ 1154. Purchase of vessel constructed in accordance with application for subsidy; bid or negotiated price basis for subsidy and payments for cost of national defense features; documentation**

If a qualified purchaser under the terms of this subchapter desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this subchapter, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 1152 of this Appendix, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and

payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 1152(a) of this Appendix or under a contract negotiated by the Secretary of Transportation as provided in section 1152(b) of this Appendix in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this subchapter to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 1153 of this Appendix. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

(June 29, 1936, ch. 858, title V, § 504, 49 Stat. 1998; June 23, 1938, ch. 600, § 16, 52 Stat. 958; July 17, 1952, ch. 939, § 4, 66 Stat. 761; Pub. L. 91-469, § 9, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97-31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

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

1970--Pub. L. 91-469, provided a negotiated price as an alternative basis for payment of subsidy and cost of national defense features, and substituted "Secretary of Commerce" for "Commission", respectively.

1952--Act July 17, 1952, inserted provision that the lawful or proper use of the vessel may not be restricted.

1938--Act June 23, 1938, substituted "domestic shipyards" for "American shipyards", struck out "and if it is the lowest bid" after "fair and reasonable", and changed "construction subsidy" to "construction-differential subsidy".

#### **§ 1155. Eligible shipyards; materials; conditions of contracts; limitation to American shipyards; American materials, waiver; ability of bidders; filing bids and data**

All construction in respect of which a construction-differential subsidy is allowed under this subchapter shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K<sup>1</sup> of section 1401 of title 19; *Provided, however*, That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise explanation of the basis therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this subchapter V, the term "shipyard of the United States" means shipyards within any of the United States and the Commonwealth of Puerto Rico.

<sup>1</sup> See References in Text note below.

(June 29, 1936, ch. 858, title V, § 505, 49 Stat. 1998; June 23, 1938, ch. 600, § 17, 40(a), 52 Stat. 958, 964; Oct. 25, 1951, ch. 562, § 3(4), 65 Stat. 639; Pub. L. 86-624, § 35(a), July 12, 1960, 74 Stat. 421; Pub. L. 91-469, § 10, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 97-31, § 12(84), Aug. 6, 1981, 95 Stat. 161.)

#### REFERENCES IN TEXT

Paragraph K of section 1401 of title 19, referred to in text, which was classified to par. (k) of section 1401 of Title 19, Customs Duties, was redesignated par. (h) of section 1401 of Title 19 by Pub. L. 91-271, title III, § 301(c)(1), June 2, 1970, 84 Stat. 288.

#### AMENDMENTS

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

1970--Pub. L. 91-469 struck out subsec. (a) designation, struck out of first sentence "within the continental limits" and "the applicant to reject, and in" after "shipyard" and "right reserved in", provided for waiver of use of American materials, substituted definition of "shipyard of the United States" for definition of "continental limits of the United States", and struck out: subsec. (b) provisions for conditions of contracts, reports as to costs and net profits, limitation on profit, payment to Secretary of excess profit, subdivision of contracts, inspection of records and premises, and contracts for scientific equipment; subsec. (c) provisions as to method of determining profit and limitation on salaries; subsec. (d) provisions for utilization of Treasury Department employees; and subsec. (e) provisions for rescinding approval of bid on refusal of bidder to comply with conditions, new bids, and construction in navy yards; and substituted "Secretary of Commerce" for "Commission" in three places, respectively.

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

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

1938--Subsec. (a). Act June 23, 1938, § 40(a), substituted "construction-differential subsidy is allowed" for "subsidy is allowed".

Subsec. (b). Act June 23, 1938, § 17, made section inapplicable to contracts or other arrangements entered into under this subchapter by the terms of which the United States undertakes to pay only for national-defense features.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1176 of this Appendix.

#### **§ 1156. Operation of subsidy constructed vessel limited to foreign trade; repayments to Secretary for deviations**

Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this chapter. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

(June 29, 1936, ch. 858, title V, § 506, 49 Stat. 1999; June 23, 1938, ch. 600, § 18, 52 Stat. 958; Mar. 18, 1959, Pub. L. 86-3, § 18(b)(1), 73 Stat. 12; Pub. L. 86-518, § 3, June 12, 1960, 74 Stat. 216; Pub. L. 97-31, § 12(87), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

1981--Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" the first time it appeared and "Secretary" for "Commission" the next four times it appeared. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960--Pub. L. 86-518 substituted "one-twenty-fifth" for "one-twentieth".

1959--Pub. L. 86-3 included stops at the State of Hawaii for vessels operated on voyages in foreign trade.

1938--Act June 23, 1938, made changes in phraseology and substituted "construction-differential subsidy" for "construction subsidy".

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960, AMENDMENT OF CONTRACTS DEALING WITH VESSELS HAVING EXTENDED LIFE

For provisions authorizing revision and amendment of certain contracts, see section 8(c) of Pub. L. 86-518, as amended, set out as a note under section 1125 of this Appendix.

#### COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1162, 1177, 1183 of this Appendix.

#### § 1157. Construction of new vessel to replace obsolete; purchase of old vessel by Secretary; bond of seller against liens

If a contract is made by the Secretary of Transportation under authority of this subchapter for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided*, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further*, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

(June 29, 1936, ch. 858, title V, § 507, 49 Stat. 2000; June 23, 1938, ch. 600, § 19, 52 Stat. 959; July 17, 1952, ch. 939, § 5, 66 Stat. 761; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 97-31, § 12(88), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

1981--Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three places and "his" for "its". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1960--Pub. L. 86-518 substituted "twenty-five-year life" for "twenty-year life".

1952--Act July 17, 1952, made section applicable to vessels in domestic trade.

1938--Act June 23, 1938, struck out provisions which authorized a deduction for obsolescence.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

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

If the Secretary of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 1112 of this Appendix, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisal and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: *Provided*, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

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

#### AMENDMENTS

1981--Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in three places and "the Maritime Administration of the Department of Transportation" for "it". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2218; title 16 section 5405.

### § 1159. Vessels to be operated in domestic trade; terms and conditions of construction aid and sale to purchaser

Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this subchapter, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12<sup>1/2</sup> per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: *Provided*, That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 1153 of this Appendix, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

(June 29, 1936, ch. 858, title V, § 509, 49 Stat. 2000; June 23, 1938, ch. 600, § 20, 52 Stat. 959; June 6, 1939, ch. 186, 53 Stat. 810; July 17, 1952, ch. 939, § 6, 66 Stat. 761; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87-877, § 2(b), Oct. 24, 1962, 76 Stat. 1200; Pub. L. 90-183, Dec. 10, 1967, 81 Stat. 559; Pub. L. 90-214, Dec. 18, 1967, 81 Stat. 660; Pub. L. 91-469, § 11, Oct. 21, 1970, 84 Stat. 1022; Pub. L. 92-374, Aug. 10, 1972, 86 Stat. 528; Pub. L. 95-173, § 8, Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95-505, Oct. 24, 1978, 92 Stat. 1755; Pub. L. 97-31, § 12(90), Aug. 6, 1981, 95 Stat. 161.)

## AMENDMENTS

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

1978--Pub. L. 95-505 substituted "ten knots" for "fourteen knots".

1977--Pub. L. 95-173 inserted ", or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots" after "less than eight knots".

1972--Pub. L. 92-374 inserted "or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots" in sentence dealing with percentage of cost payable by purchaser, after "barge of more than two thousand five hundred gross tons".

1970--Pub. L. 91-469 substituted "Secretary of Commerce" for "Commission" in seven places, "purchaser" for "applicant" in first three places, and provision for a rate of interest not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance for prior rate of 3<sup>1/2</sup> per centum per annum.

1967--Pub. L. 90-214 included provision for oceangoing tugs of more than two thousand five hundred horsepower or oceangoing barges of more than two thousand five hundred gross tons.

Pub. L. 90-183 inserted "or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots" after "fourteen knots,".

1962--Pub. L. 87-877 struck out second proviso which, in the case of a vessel to be constructed under this section, gave a preference to an applicant who had his principal place of business on the Pacific coast of the United States, but not including one in business on or before Aug. 1, 1935, who subsequently changed his principal place of business to the Pacific coast, if such vessel was to be operated from such coast, the amount of the lowest responsible shipyard bid did not exceed by more than six per centum, a bid by such a shipyard on the Atlantic coast, and a port on the Pacific coast was designated and continued as the home port of the vessel, which set a lower rate of interest on deferred payments that would otherwise be applicable with respect to periods of construction of such vessel and its operation exclusively in coastwise, intercoastal, and other domestic trade, and which enumerated four conditions under which such lower interest rate would not apply.

1960--Pub. L. 86-518 substituted "twenty-five" for "twenty" in two places.

1952--Act July 17, 1952, provided that as to vessels delivered after Mar. 8, 1946, the balance of the payments shall be secured by a first preferred mortgage and that the purchaser's obligation to pay will be discharged by surrender of the vessel and all rights to the Government.

1939--Act June 6, 1939, struck out "except as otherwise provided in this title" after "no construction-differential subsidy shall be allowed", and inserted provisions requiring the applicant to pay not less than 12<sup>1/2</sup> per centum of the cost in case the vessel is designed to be of not less than 3,500 gross tons and to be capable of a sustained speed of not less than 14 knots.

1938--Act June 23, 1938, substituted "foreign or domestic trade" for "domestic trade", and inserted provisions requiring the Commission to pay for the cost of national-defense features.

## EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

## REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

## COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

## SECTION REFERRED TO IN OTHER SECTIONS

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

### § 1160. Acquisition of obsolete vessels

(a) Definitions

When used in this section--

(1) The term "obsolete vessel" means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term "new vessel" means a vessel or vessels, each of which (A) is constructed under the provisions of this chapter, and is acquired within two years from the date of completion of such vessel, or is purchased under section 1204 of this Appendix, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this chapter, and documented under the laws of the United States.

(b) Promotion of construction of new vessels; allowance on obsolete vessels

In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be determined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel constructed under the provisions of this chapter, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this chapter. In case the new vessel is not constructed under the provisions of this chapter, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation, be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) Utility value of new vessel; gross tonnage

The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) Amount of allowance on obsolete vessel; determination of amount

The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of construction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) Recognition of gain for income tax purposes; basis for gain or loss

No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) Report to Congress

The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) Use of vessels 25 years old or more

An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 1242 of this Appendix, as amended, and except as otherwise provided in this chapter for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(h) Repealed. Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925

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

The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 808 and 835 of this Appendix, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

(j) Placement in national defense reserve fleet of acquired vessels

Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 [50 App. U.S.C. 1744] and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this subchapter or in subchapters VII or XI of this chapter.

(June 29, 1936, ch. 858, title V, § 510, as added Aug. 4, 1939, ch. 417, § 7, 53 Stat. 1183; amended July 17, 1952, ch. 939, § 7, 8, 66 Stat. 762; Aug. 10, 1954, ch. 664, 68 Stat. 680; Pub. L. 85-332, Feb. 20, 1958, 72 Stat. 17; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86-575, July 5, 1960, 74 Stat. 312; Pub. L. 87-401, Oct. 5, 1961, 75 Stat. 833; Pub. L. 87-755, Oct. 5, 1962, 76 Stat. 751; Pub. L. 89-254, § 1, 2, Oct. 10, 1965, 79 Stat. 980; Pub. L. 91-469, § 12, 13, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 93-605, § 1, Jan. 2, 1975, 88 Stat. 1965; Pub. L. 95-177, Nov. 15, 1977, 91 Stat. 1368; Pub. L. 97-31, § 12(91), Aug. 6, 1981, 95 Stat. 161; Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925; Pub. L. 101-595, title VII, § 704, Nov. 16, 1990, 104 Stat. 2994.)

## REFERENCES IN TEXT

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

## AMENDMENTS

1990--Subsec. (i). Pub. L. 101-595 amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: "The Secretary of Transportation is authorized to acquire mariner class vessels constructed under subchapter VII of this chapter and Public Law 911, Eighty-first Congress, and other suitable vessels, constructed in the United States, which have never been under foreign documentation, in exchange for obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the trade-in and trade-out vessels shall be valued at the higher of their scrap value in domestic or foreign markets as of the date of the exchange: *Provided*, That in any exchange transactions, the value assigned to the traded-in and traded-out vessels will be determined on the same basis. The value of the traded-out vessels shall be as nearly as possible equal to the value of the traded-in vessel plus the fair value of the cost of towing the traded-out vessel to the place of scrapping. To the extent the value of the traded-out vessel exceeds the value of the traded-in vessel plus the fair value of the cost of towing, the owner of the traded-in vessel shall pay the excess to the Secretary of Transportation in cash at the time of exchange. This excess shall be deposited into the Vessel Operations Revolving Fund and all costs incident to the lay-up of the vessels

acquired under this chapter may be paid from balances in the Fund. No payments shall be made by the Secretary of Transportation to the owner of any traded-in vessel in connection with any exchange under this subsection. Notwithstanding the provisions of sections 808 and 835 of this Appendix, vessels traded out under this subsection may be scrapped in approved foreign markets. The provision of this subsection (i) as it read prior to the 1975 amendment shall govern all transactions made thereunder prior to that amendment."

1989--Subsec. (h). Pub. L. 101-225 struck out subsec. (h) which related to acquisition of tankers for national defense reserve.

1981--Subsecs. (a)(1), (b). Pub. L. 97-31, § 12(91)(A), substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

Subsecs. (c) to (e). Pub. L. 97-31, § 12(91)(B), substituted "Secretary of Transportation" for "Commission" wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (f). Pub. L. 97-31, § 12(91)(B), (C), substituted "Secretary of Transportation" for "Commission" and "his" for "its". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (g). Pub. L. 97-31, § 12(91)(B), (D), substituted "Secretary of Transportation" for "Commission" and "Secretary's" for "Commission's" in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (h), (i). Pub. L. 97-31, § 12(91)(A), substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

Subsec. (j). Pub. L. 97-31, § 12(91)(A), (E), substituted "Maritime Administration of the Department of Transportation" for "Secretary of Commerce" and "Secretary of Transportation" for "Secretary of Commerce".

1977--Subsec. (i). Pub. L. 95-177 struck out ", within two years after the enactment of this subsection," after "is authorized" and "that are scheduled for scrapping" after "National Defense Reserve Fleet", inserted "and other suitable vessels, constructed in the United States, which have never been under foreign documentation," after "Eighty-first Congress," and substituted "the trade-in and trade-out vessels" for "the traded-in and traded-out vessels" and "the 1975 Amendment" for "this amendment".

1975--Subsec. (i). Pub. L. 93-605 added subsec. (i). A prior subsec. (i) providing authority for the Secretary of Commerce to acquire vessels of one thousand five hundred gross tons or over which were constructed in the United States in exchange for more modern or efficient ocean-going vessels of one thousand five hundred gross tons or over owned by the United States under specified conditions expired on July 5, 1972.

1970--Subsec. (a)(1). Pub. L. 91-469, § 12(a), in redefining "obsolete vessel", substituted in subd. (B) "in the judgment of the Secretary of Commerce, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest" for "is not less than seventeen years old and, in the judgment of the Commission, is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States", substituted in subd. (C) "has been owned" for "is owned" and deleted therefrom "and has been owned by such citizen or citizens" preceding "for at least three years", and deleted concluding proviso defining "obsolete vessel" as meaning a vessel, until June 30, 1964, which is not less than 1,350 gross tons, is not less than 12 years old, and is citizen owned for three year period prior to acquisition hereunder.

Subsec. (b). Pub. L. 91-469, § 12(b), 35(a), substituted "capital construction fund" for "capital reserve fund" and "Secretary of Commerce" for "Commission" in seven places, respectively.

Subsec. (i). Pub. L. 91-469, § 13, in amending first sentence, substituted "1972" and "which were constructed in the United States" for "1970" and "which were constructed or contracted for by the United States shipyards before September 3, 1945" and struck out "war-built vessels (which are defined for purposes of this subsection as" and "which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)" before and after "oceangoing vessels of one thousand five hundred gross tons or over".

1965--Subsec. (i). Pub. L. 89-254, § 1(a), substituted "before July 5, 1970, vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards before September 3, 1945" for "within five years from the date of enactment of this Act war-built vessels (which are defined for purposes of this subsection as oceangoing vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)", and inserted "(which are defined for purposes of this subsection as oceangoing vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945)".

Subsec. (i)(1). Pub. L. 89-254, § 1(b), amended par. (1) to apply the 3 year prohibition against any vessel being operated under an operating-differential subsidy to the applicant or any affiliate of the applicant rather than to the vessel itself.

Subsec. (i)(2). Pub. L. 89-254, § 1(c), required the value of a traded out vessel to be calculated in the same manner as its value was determined when it was traded in, except that vessels traded in prior to Oct. 1, 1960, shall be valued on the basis yielding the highest fair return to the government commensurate with the purpose of this subsection, and required in each exchange of vessels under this subsection, the value of the traded-in vessel, unless based on scrap value, and the value of the traded-out vessel to be calculated in the same manner.

Subsec. (i)(9). Pub. L. 89-254, § 1(d), substituted provisions permitting tanker vessels to be traded out under the provisions of this subsection only for major conversions into dry cargo carriers or liquid bulk carriers, including natural gas carriers but excluding bulk petroleum carriers, except where traded out for use exclusively in trade and commerce on the Great Lakes, including the St. Lawrence River and Gulf, for provisions which prohibited tanker-vessels to be traded out under the provisions of this subsection.

Subsec. (j). Pub. L. 89-254, § 2, added subsec. (j).

1962--Subsec. (a)(1). Pub. L. 87-755 substituted "June 30, 1964" for "June 30, 1962".

1961--Subsec. (b). Pub. L. 87-401, § 1(1), provided that if the owner requests, the vessel shall be acquired by the Federal Maritime Board or Secretary of Commerce either when the owner contracts for construction or purchase of a new ship or within 5 days of actual delivery of the new vessel to the owner, that the amount of allowance be determined at the time of acquisition of the vessel by the Board or Secretary, and if at such time, the owner contracts for construction or purchase of a new vessel, the allowance shall be applied upon the price of the new vessel, that if the Board or Secretary acquired title to the vessel at time of delivery of the new vessel, the allowance shall be deposited in the owner's capital reserve fund, and that this subsection shall apply to exchanges for vessels hereafter contracted to be built, or eligible for exchange but not so exchanged in connection with contracts for new vessels executed prior to Oct. 1, 1960.

Subsec. (d). Pub. L. 87-401, § 1(2), provided for a depreciation value based upon a twenty-year life, if applicable, and substituted "In the event the obsolete vessel is acquired by the Board or Secretary at the time the owner contracts for the construction of a new vessel, and the owner" for "If the owner of the obsolete vessel".

1960--Subsec. (d). Pub. L. 86-518 substituted "twenty-five-year life" for "twenty-year life".

Subsec. (g). Pub. L. 86-518 substituted "twenty-five years" for "twenty years" in two places.

Subsec. (i). Pub. L. 86-575 added subsec. (i).

1958--Subsec. (a)(1). Pub. L. 85-332 substituted "June 30, 1962" for "June 30, 1958".

1954--Subsec. (h). Act Aug. 10, 1954, added subsec. (h).

1952--Subsec. (a)(1). Act July 17, 1952, § 7, provided that until June 30, 1958, the minimum age in determining the eligibility of "obsolete vessels" for turn in for credit allowance on a new vessel is reduced from 17 to 12 years.

Subsec. (d). Act July 17, 1952, § 8, provided that the rate for the use of the obsolete vessel should be fixed at the time that the contract for the new vessel is entered into.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### SECRETARY OF COMMERCE AUTHORIZED TO PURCHASE STEAMSHIP UNITED STATES; REQUISITION OR PURCHASE BY UNITED STATES

Pub. L. 92-296, § 2, May 16, 1972, 86 Stat. 140, as amended by Pub. L. 94-536, Oct. 17, 1976, 90 Stat. 2497; Pub. L. 96-111, § 2, Nov. 15, 1979, 93 Stat. 846, provided that: "The Secretary of Commerce is authorized and directed to purchase the steamship United States, as is, where is, at the depreciated cost of the vessel to the owner, as determined by the Secretary of Commerce, less the unpaid principal and interest on the mortgage on the vessel, for layup in the National Defense Reserve Fleet and operation for the account of any agency or department of the United States during any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1242], and/or for sale or charter to a qualified operator for operation under the American flag in the coastwise and/or foreign commerce of the United States and/or between foreign ports notwithstanding the provision of section 506 of the Merchant Marine Act, 1936 [46 App. U.S.C. 1156]: *Provided*, That for hire carriage in coastwise commerce of the United States is limited to passengers, their accompanying baggage, and one thousand measurement tons of cargo, of forty cubic feet each, per annum in any single coastwise trade: *Provided further*, That for hire carriage of cargo in excess of the aforesaid one thousand tons shall be unlawful, or for use as a floating hotel in or on the navigable waters of the United States. Whenever the conditions set forth in section 902, the Merchant Marine Act of 1936 [46 App. U.S.C. 1242], exist, the vessel may be requisitioned or purchased by the United States and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, as amended (46 U.S.C. 1242) [46 App. U.S.C. 1242]. The depreciated cost of the vessel to the owner shall be computed on the schedule adopted by the Internal Revenue Service for income tax purposes. Such determination shall be final. The Secretary of Commerce shall require the owner of the vessel to agree that it will pay all existing private obligations related to the vessel, and that it will commit an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale, within a reasonable period not to exceed twelve months of receipt, as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [this chapter]."

#### RATE OF DEPRECIATION FOR VESSELS DELIVERED BY SHIPBUILDER ON OR AFTER JANUARY 1, 1946, AND BEFORE JANUARY 1, 1960

For provisions relating to computation of depreciation with respect to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and before Jan. 1, 1960, see section 8(b) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### SUSPENSION OF SUBSECTION (G) REPEALED

Act May 14, 1940, ch. 201, § 1, 54 Stat. 216, as extended by act June 16, 1942, ch. 416, 56 Stat. 370, which suspended subsec. (g) of this section until six months after the end of World War II should have been proclaimed or such earlier time as the Congress by concurrent resolution or the President might designate, was repealed by act July 25, 1947, ch. 327, § 1, 61 Stat. 449.

#### CROSS REFERENCES

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

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2218; title 16 section 5405; title 26 section 1061.

#### § 1161. Reserve funds for construction or acquisition of vessels; taxation

(a) "New vessel" defined

When used in this section the term "new vessel" means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) construction in the United States after December 31, 1939, or the construction of which has been financed under subchapters V or VII of this chapter, or the construction of which has been aided by a mortgage insured under subchapter XI of this chapter; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this chapter, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) Establishment of construction reserve funds

For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in section 1101 of this Appendix, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(c) Recognition of gain for taxation where proceeds of sale or indemnity for loss deposited in fund

In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b) of this section, then--

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury,

no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) of this subsection and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term "net proceeds" and the term "net indemnity" mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) Basis for determining gain or loss and for depreciation of new vessels

The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g) of this section, in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c) of this section.

(e) Order, proportions, etc., of deposits and withdrawals

For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c) of this section, any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) Amounts in fund as accumulation of earnings or profits

With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code.

(g) Benefits of section conditioned upon manner and time of expenditure of deposits

The provisions of subsections (c) and (f) of this section shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury--

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation, for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations--

(A) within such period not less than 12<sup>1/2</sup> per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this subchapter or not purchased from the Secretary of Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) Authorizations of extensions of time

The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extensions of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: *Provided*, That until January 1, 1965, in addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) Taxation of deposits upon failure of conditions

Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) Assessment and collection of deficiency tax

Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: *Provided, however*, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) of this section to be included in gross income.

(k) Taxable years governed by section

This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(l) Vessels deemed constructed or acquired by taxpayers owning stock in corporations constructing or acquiring vessels

For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(m) Definitions

The terms used in this section shall have the same meaning as in chapter 1 of the Internal Revenue Code.

(n) "Contract for the construction" and "construction contract" defined

The terms "contract for the construction" and "construction contract", as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(o) "Reconstruction and reconditioning" defined

The terms "reconstruction and reconditioning", as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the objectives of this chapter will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a "new vessel" within the meaning of this section for such reconstruction, reconditioning, or modernization.

(June 29, 1936, ch. 858, title V, § 511, as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; amended June 17, 1943, ch. 130, 57 Stat. 157; Dec. 23, 1944, ch. 714, 58 Stat. 920; July 17, 1952, ch. 939, § 9-14, 66 Stat. 762-764; Pub. L. 86-237, § 1, Sept. 8, 1959, 73 Stat. 471; Pub. L. 87-303, § 3, Sept. 26, 1961, 75 Stat. 661; Pub. L. 87-782, § 1, Oct. 10, 1962, 76 Stat. 796; Pub. L. 88-227, § 1, Dec. 23, 1963, 77 Stat. 470; Pub. L. 88-595, § 1, Sept. 12, 1964, 78 Stat. 943; Pub. L. 97-31, § 12(92), Aug. 6, 1981, 95 Stat. 161.)

#### REFERENCES IN TEXT

Section 102 of the Internal Revenue Code, referred to in subsec. (f), means section 102 of the Internal Revenue Code of 1939, which was classified to section 102 of former Title 26, Internal Revenue Code. Section 102 was repealed by section 7851(a)(1) of Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 1 of the Internal Revenue Code, referred to in subsec. (m), means chapter 1 of the Internal Revenue Code of 1939, which was classified to chapter 1 of former Title 26, Internal Revenue Code. Chapter 1 was comprised of sections 1 to 482 of former Title 26. Sections 1 to 142 and 145 to 482 were repealed by section 7851(a)(1) of Title 26, Internal Revenue Code. Sections 143 and 144 were repealed by section 7851(a)(2) of Title 26. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of Title 26. See also section 7851(e) of Title 26 for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

#### AMENDMENTS

1981--Subsecs. (a), (b). Pub. L. 97-31, § 12(92)(A), substituted "Secretary of Transportation" for "Commission" wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (g). Pub. L. 97-31, § 12(92), substituted "Secretary of Transportation" for "Commission" wherever appearing and in subpars. (A) and (B), substituted "him" for "it". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsecs. (h), (i), (n), (o). Pub. L. 97-31, § 12(92)(A), substituted "Secretary of Transportation" for "Commission" wherever appearing. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1964--Subsec. (h). Pub. L. 88-595 substituted "January 1, 1965" for "January 1, 1964" and "December 31, 1965" for "December 31, 1964".

1963--Subsec. (h). Pub. L. 88-227 substituted "January 1, 1964" for "January 1, 1963" and "December 31, 1964" for "December 31, 1963".

1962--Subsec. (h). Pub. L. 87-782 substituted "January 1, 1963" for "January 1, 1962" and "December 31, 1963" for "December 31, 1962".

1961--Subsec. (h). Pub. L. 87-303 substituted "January 1, 1962" for "January 1, 1961" and "December 31, 1962" for "December 31, 1961".

1959--Subsec. (h). Pub. L. 86-237 substituted "January 1, 1961" and "December 31, 1961" for "March 31, 1953" and "September 30, 1953," respectively.

1952--Subsec. (b). Act July 17, 1952, § 9, extended its provisions to the reconstruction and reconditioning of vessels.

Subsec. (c). Act July 17, 1952, § 10, struck out obsolete language.

Subsec. (d). Act July 17, 1952, § 11, provided for the adjustment in the tax basis of a vessel if the reserve funds are used for reconstruction, reconditioning, or liquidation of a purchase-money indebtedness on vessels.

Subsec. (g). Act July 17, 1952, § 12, provided that the reserve funds may be used for reconstruction, reconditioning, and liquidation of purchase money indebtedness, and extended the time of required commitment of deposits in order to avoid the imposition of taxes at the established rate.

Subsec. (h). Act July 17, 1952, § 13(a), extended extension period.

Subsec. (i). Act July 17, 1952, § 13(b), limited the additional 1.1% tax imposed on deposits in lieu of the capital-stock tax or declared excess profit tax to deposits made in taxable years ending on or before June 30, 1945.

Subsec. (o). Act July 17, 1952, § 14, added subsec. (o).

1944--Subsec. (c). Act Dec. 23, 1944, amended first sentence generally.

Subsec. (n). Act Dec. 23, 1944, added subsec. (n).

1943--Subsec. (b). Act June 17, 1943, extended provisions of first sentence to ownership in whole or in part and to persons who had acquired or were having constructed a vessel or vessels.

Subsec. (c). Act June 17, 1943, changed the dates of deposit in second sentence.

Subsec. (g). Act June 17, 1943, inserted "(or in the discretion of the Commission, for a part interest therein)".

Subsec. (h). Act June 17, 1943, substituted "Commission" for "Commissioner of Internal Revenue" at beginning of subsec. and inserted proviso.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88-595 provided that: "The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1964, or on the date of enactment of this Act [Sept. 12, 1964], whichever date first occurs."

#### EFFECTIVE DATE OF 1963 AMENDMENT

Section 2 of Pub. L. 88-227 provided that: "The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1963, or on the date of enactment of this Act [Dec. 23, 1963], whichever date first occurs."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87-782 provided that: "The amendment made by the first section of this Act [amending this section] shall take effect December 31, 1962, or on the date of enactment of this Act [Oct. 10, 1962], whichever date first occurs."

#### EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-237 provided that: "The amendment made by the first section of this Act [amending this section] shall take effect June 30, 1959, or on the date of enactment of this Act [Sept. 8, 1959], whichever date first occurs."

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### TERMINATION OF WAR

Section 5 of act Aug. 8, 1947, ch. 515, 61 Stat. 917, as amended Apr. 20, 1949, ch. 82, 63 Stat. 56; Oct. 1, 1951, ch. 443, 65 Stat. 366; July 16, 1952, ch. 913, 66 Stat. 737, provided: "For the purposes of the proviso of subsection (h) of section 511 of the Merchant Marine Act, 1936, as amended, added to such subsection by the Act of June 17, 1943 (57 Stat. 158) [subsec. (h) of this section], the present war shall be considered as having terminated on March 31, 1953."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 543, 1023, 1061.

#### § 1162. Limitation on restrictions

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 1153, 1156, and 1212 of this Appendix applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

(June 29, 1936, ch. 858, title V, § 511, as added Pub. L. 104-239, § 7, Oct. 8, 1996, 110 Stat. 3133.)

---

### SUBCHAPTER VI--VESSEL OPERATING ASSISTANCE PROGRAMS

#### PART A--OPERATING-DIFFERENTIAL SUBSIDY PROGRAM

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 808, 1187a, 1222, 1223 of this Appendix.

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

(a) Application for subsidy; conditions precedent to granting

The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 1183 of this Appendix. In this subchapter VI the term "essential service" means the operation of a vessel on a service, route, or line described in section 1121(a) of this Appendix or in bulk cargo carrying service described in section 1121(b) of this Appendix. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 1183 of this Appendix, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns, or leases or can and will build or purchase, or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this chapter. To the extent the application covers cruises, as authorized under section 1183 of this Appendix, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

(b) Statements as to financial interests to accompany application; penalty for false statements

Every application for an operating-differential subsidy under the provisions of this subchapter shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this subchapter or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.

(June 29, 1936, ch. 858, title VI, § 601, 49 Stat. 2001; Pub. L. 87-45, § 2, May 27, 1961, 75 Stat. 90; Pub. L. 91-469, § 14, 35(a), (h), Oct. 21, 1970, 84 Stat. 1023, 1035, 1036; Pub. L. 91-603, § 4(c), (d), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97-31, § 12(93), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

1981--Subsec. (a). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" in two places and for "Commission" in one place. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (b). Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1970--Subsec. (a). Pub. L. 91-603 included the leasing of vessels in cl. (2).

Pub. L. 91-469 inserted definition of "essential service", and substituted "an essential service" for "such service, route, or line" in cl. (1) and "in an essential service" for "and maintain the service, route, or line" in cl. (2); substituted "Secretary of Commerce" for "Commission" in two places; and substituted "he" for "it" in third sentence preceding "determines that", respectively.

1961--Subsec. (a). Pub. L. 87-45 required the Federal Maritime Board to consider applications for financial aid in the operation of vessels in cruises under section 1183 of this Appendix, and permitted the Board, to the extent the application covers such cruises, to make the portion of the determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1185a of this Appendix.

#### § 1172. Determination of necessity of subsidy to meet competition

Except with respect to cruises authorized under section 1183 of this Appendix, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.

(June 29, 1936, ch. 858, title VI, § 602, 49 Stat. 2002; June 23, 1938, ch. 600, § 40(b), 52 Stat. 964; Pub. L. 87-45, § 3, May 27, 1961, 75 Stat. 91; Pub. L. 91-469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97-31, § 12(94), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

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

1970--Pub. L. 91-469 substituted "Secretary of Commerce" for "Commission" in two places.

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

**§ 1173. Contracts for payment of subsidy**

(a) Authorization of contracts

If the Secretary of Transportation approves the application, he may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 1183 of this Appendix for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this chapter, as the Secretary of Transportation shall require to effectuate the purposes and policy of this chapter, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

(b) Amount of subsidy

Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 1183 of this Appendix, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 1151(b) of this Appendix) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: *Provided, however*, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 1121(b) of this Appendix, pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 1183 of this Appendix, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: *Provided, however*, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 1183 of this Appendix) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

(c) "Collective bargaining costs", "base period costs", "base period", and "subsidizable wage costs of United States officers and crews" defined; determination of collective bargaining costs and establishment of new base periods; wage change index

(1) When used in this section--

(A) The term "collective bargaining costs" means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 1183 of this Appendix and costs relating to:

(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: *Provided*, That the Secretary of Transportation shall afford representatives of the collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: *And provided further*, That in determining whether officers or members of the crew are necessary for the efficient and economical operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following October 21, 1970, to be unnecessary for the efficient and economical operation of the vessel.

(B) The term "base period costs" means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following October 21, 1970, and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term "base period costs" means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: *Provided*, That in no event shall the base period cost be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period.

(C) The term "base period" means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

(D) The term "subsidizable wage costs of United States officers and crews" in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

(d) Foreign wage computation; foreign manning

Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation, the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

(e) Monthly payment of wage subsidy; procedures for calculation and payment of subsidy on certain expenses

The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in "collective-bargaining costs" but are not included in the daily rate because they are unpredictably timed.

(f) Monthly percentage payment of other than wage subsidy; security for refund of overpayments; payment of remainder after audit of voyage accounts

Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.

(June 29, 1936, ch. 858, title VI, § 603, 49 Stat. 2002; Aug. 4, 1939, ch. 417, § 8, 53 Stat. 1185; Pub. L. 87-45, § 4, May 27, 1961, 75 Stat. 91; Pub. L. 87-243, Sept. 14, 1961, 75 Stat. 513; Pub. L. 91-469, § 15-17, 35(a), (i), Oct. 21, 1970, 84 Stat. 1023, 1024, 1035, 1036; Pub. L. 97-31, § 12(94), Aug. 6, 1981, 95 Stat. 161.)

#### AMENDMENTS

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

1970--Subsec. (a). Pub. L. 91-469, § 15, 35(a), (i), substituted "an essential service" for "such service, route, or line," "Secretary of Commerce" for "Commission" in three places, and "he" for "it" before "may enter", respectively.

Subsec. (b). Pub. L. 91-469, § 16, in amending first sentence, inserted ", except as the parties should agree upon a lesser amount," after "shall provide", "subsistence of officers and crews on passenger vessels, as defined in section 1183 of this Appendix," after "cost of insurance," and proviso for payment of necessary sums to make operating costs of American-flag vessels providing bulk cargo carrying services competitive with operating costs of similar vessels under foreign registry, and substituted "vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews," for "vessels on a service, route, or line shall not exceed the excess of", "maintenance, and repairs not compensated by insurance" for "maintenance, repairs not compensated by insurance," and "incurred" for "wages and subsistence of officers and crews, and any other items of expense in which the Commission shall find and determine that the applicant is at a substantial disadvantage in competition with vessels of the foreign country hereinafter referred to,".

Subsecs. (c) to (e). Pub. L. 91-469, § 17(1), added subsecs. (c) to (e). Former subsec. (c) redesignated (f).

Subsec. (f). Pub. L. 91-469, § 17, redesignated former subsec. (c) as (f), substituted provision for monthly payment of ninety percent of subsidy (insurance and maintenance and repair and subsistence of officers and crews) on basis of estimated accrual of subsidy and payment of remaining ten percent after audit of voyage accounts for prior provisions for determination and payment of subsidy on basis of final accounting made annually or after some agreed fixed period and for payments on account limited to 75 per centum of estimated accrued amount and an additional 15 per centum for any particular voyage after an audit, substituted provision to "assure" rather than "insure" refund, and repealed second par. prohibition against payment of subsidy until contractor provided evidence that minimum wages prescribed by Secretary of Commerce under section 1131(a) of this Appendix had been paid to ships personnel.

1961--Subsec. (a). Pub. L. 87-45, § 4(a), inserted "and in cruises authorized under section 1183 of this Appendix" after "in such service, route, or line".

Subsec. (b). Pub. L. 87-45, § 4(b), inserted provisions for the computation of the subsidy for periods during which a vessel cruises as authorized by section 1183 of this Appendix.

Subsec. (c). Pub. L. 87-243 increased, effective on and after July 1, 1962, the amount payable on account from not more than 75 per centum to not more than 90 per centum of the amount estimated to have accrued on account of such subsidy, and reduced the amount payable to the contractor after the audit of the voyage from 15 to 5 per centum.

1939--Subsec. (c). Act Aug. 4, 1939, permitted payment to the contractor of an additional 15 per centum.

#### OPERATING-DIFFERENTIAL SUBSIDY CONTRACTS; AMENDMENT AND RECAPTURE PROVISIONS

Section 40 of Pub. L. 91-469 provided that:

"(a) The amendments made by this Act [see Short Title of 1970 Amendment note set out under section 1245 of this Appendix] shall not affect any contract with the Secretary of Commerce or his delegates that is in effect on the date of enactment of this Act [Oct. 21, 1970]. At the request of the other party to such operating-differential subsidy contract, the Secretary of Commerce shall amend such contract so as to be in accordance with all of the amendments made by this Act. No amendment made by this Act shall be incorporated in such contract unless all such amendments are incorporated in such contract, except that if the other party elects to continue under the "old fund" as provided in section 607 as amended by section 21 of this Act [section 1177 of this Appendix], such amendment need not be incorporated in such contract. Until such contract is amended or if such contract is not amended, it shall be administered in accordance with the provisions of the Merchant Marine Act, 1936 [this chapter] as they existed immediately prior to enactment of this Act. Nothing in section 16 of this Act amending section 603 of the Merchant Marine Act, 1936 [subsec. (b) of this section] or in the contracts made thereunder, shall be deemed to affect or to change existing law or contracts with respect to the proceedings now pending before the Secretary of Commerce relating to the payment of subsidy in respect of cargoes covered by section 901(b)(1) of the Merchant Marine Act, 1936 [section 1241(b)(1) of this Appendix], section 616(a) of Title 15, United States Code, or section 2631 of Title 10, United States Code.

"(b) If any operating-differential subsidy contract in existence on the date of enactment of this Act [Oct. 21, 1970] is amended by including all of the amendments made by this Act or all of the amendments made by this Act other than those made by section 21 [amending section 1177 of this Appendix], the operator may elect to terminate his recapture period as of the date of such contract amendment and have his recapture computed on the basis of the shortened period, or he may elect to continue his recapture period until the end of its ten-year term and continue his recapture obligations as provided by the Merchant Marine Act, 1936, prior to the enactment of this Act [see Short Title of 1970 Amendment note set out under section 1245 of this Appendix] until the end of such ten-year period. The amendments in either event shall provide that, with respect to seafaring personnel, in determining the rights and obligations of the contractor under such contract, the limitation of section 805(c) of the Merchant Marine Act, 1936 [section 1223(c) of this Appendix], as it existed immediately before the enactment of this Act [Oct. 21, 1970] shall not apply."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185a of this Appendix.

#### § 1174. Additional subsidy; when authorized

If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State, that the subsidy provided for in this subchapter is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.

(June 29, 1936, ch. 858, title VI, § 604, 49 Stat. 2003; June 23, 1938, ch. 600, § 21, 52 Stat. 959; Aug. 4, 1939, ch. 417, § 9, 53 Stat. 1185; Pub. L. 97-31, § 12(95), Aug. 6, 1981, 95 Stat. 162.)

#### AMENDMENTS

1981--Pub. L. 97-31 substituted "Secretary of Transportation" for "Commission" and "he" for "it", and struck out provision relating to subsidy voting requirements. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note set out below.

1939--Act Aug. 4, 1939, reduced requirement in proviso from unanimous vote to vote of four commissioners.

1938--Act June 23, 1938, authorized additional subsidies only where the Commission (which had reference to United States Maritime Commission) by unanimous vote finds after consultation with the Secretary of State that the subsidy is inadequate.

#### TRANSFER OF FUNCTIONS

For transfer of functions of United States Maritime Commission, see Reorg. Plan No. 6 of 1949, Reorg. Plan No. 21 of 1950, and Reorg. Plan No. 7 of 1961, set out under section 1111 of this Appendix.

#### § 1175. Vessels excluded from subsidy

(a) Vessels engaged in coastwise or intercoastal trade; vessels on inland waterways

No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however*, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such

gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this chapter to be operating in foreign trade.

(b) Vessels more than 25 years old

No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before October 8, 1996, that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) Vessels to be operated in an essential service served by citizens of United States

No contract shall be made under this subchapter with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this chapter additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.

(June 29, 1936, ch. 858, title VI, § 605, 49 Stat. 2003; July 17, 1952, ch. 939, § 15, 66 Stat. 764; Pub. L. 86-3, § 18(b)(2), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 89-348, § 1(9), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 91-469, § 18, 19, 26(b), 35(a), (j), Oct. 21, 1970, 84 Stat. 1025, 1026, 1034-1036; Pub. L. 97-31, § 12(96), Aug. 6, 1981, 95 Stat. 162; Pub. L. 104-239, § 3(a), Oct. 8, 1996, 110 Stat. 3126.)

#### AMENDMENTS

1996--Subsec. (b). Pub. L. 104-239 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty-five years of age unless the Secretary of Transportation finds that it is to the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon."

1981--Subsecs. (b), (c). Pub. L. 97-31 substituted "Secretary of Transportation" for "Secretary of Commerce" wherever appearing.

1970--Subsec. (a). Pub. L. 91-469, § 26(b), struck out "on the Great Lakes or" after "No vessel operating" in last sentence.

Subsec. (b). Pub. L. 91-469, § 18, substituted "unless the Secretary of Commerce" for "unless the Commission" and deleted preceding such words "except one whose life expectancy has been determined as provided in section 1177(b) of this Appendix for a period in no case to exceed the life expectancy determined thereunder,".

Subsec. (c). Pub. L. 91-469, § 19, 35(a), (j), substituted "in an essential service" for "on a service, route, or line", "an essential service" for "a service, route, or line", and "such essential service" for "competitive services, routes, or lines," and struck out "in such service, route, or line" before "is inadequate" in first sentence; substituted "Secretary of Commerce" for "Commission" in four places; and substituted "he" for "it" before "may deem" in last sentence, respectively.

1965--Subsec. (b). Pub. L. 89-348 struck out provisions which required an annual report covering each case and the reasons therefor in which an exception is made to the prohibition against payment of an operating-differential subsidy for the operation of a vessel beyond its economic life.

1960--Subsec. (b). Pub. L. 86-518 substituted "twenty-five years" for "twenty years".

1959--Subsec. (a). Pub. L. 86-3 included stops at the State of Hawaii.

1952--Subsec. (b). Act July 17, 1952, permitted the recomputation of the life-expectancy of a reconstructed or reconditioned vessel in use under an operating differential-subsidy contract, and provided for recomputation of depreciation changes.

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### REVISION OF CONTRACT, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1183, 1185a, 1213 of this Appendix.

#### § 1176. Readjustments; change in service; withdrawal from service; payment of excess profits; wages, etc.; American materials

Every contract for an operating-differential subsidy under this subchapter shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this subchapter, is necessary in the accomplishment of the purposes of this chapter, it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential services and any services authorized under section 1183 of this Appendix, covered by his contract in an economical and efficient manner, and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 1155 of this Appendix, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency.

(June 29, 1936, ch. 858, title VI, § 606, 49 Stat. 2004; June 23, 1938, ch. 600, § 22, 52 Stat. 960; July 17, 1952, ch. 939, § 16, 66 Stat. 764; May 10, 1956, ch. 247, § 1, 70 Stat. 148; Pub. L. 86-624, § 35(b), July 12, 1960, 74 Stat. 421; Pub. L. 87-45, § 5, May 27, 1961, 75 Stat. 91; Pub. L. 91-469, § 20, 35(a), (k), Oct. 21, 1970, 84 Stat. 1026, 1035, 1036; Pub. L. 97-31, § 12(96), Aug. 6, 1981, 95 Stat. 162.)

#### AMENDMENTS

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

1970--Pub. L. 91-469, § 35(a), substituted "Secretary of Commerce" for "Commission" wherever appearing.

Cl. (1). Pub. L. 91-469, § 35(k)(1)-(3), substituted "his" for "its" in two places, "he" for "it", and "His" for "Its", respectively.

Cl. (3). Pub. L. 91-469, § 20(1), 35(k)(2), substituted "and essential service" for "the service, route, or line" and "he" for "it", respectively.

Cl. (4). Pub. L. 91-469, § 20(2), (3), substituted "in such an essential service" for "on such service, route, or line" and "essential service" for "service, route, or line" in two places, respectively.

Cl. (5). Pub. L. 91-469, § 20(4), (5), (6)-(9), struck out cl. (5) providing that when at the end of any ten-year period the contractor's net profit on his subsidized vessels has averaged more than 10 percent of his capital necessarily employed, he shall pay one-half of such net profit to the United States, but not exceeding the operating-differential subsidy paid to him during the period, as partial or complete reimbursement of the operating subsidy; redesignated cl. (6) as (5); and substituted therein "essential services", "services", and "an economical" for "the vessel's services, routes, and lines", "cruises", and "the most economical" and struck out therefrom "but with due regard to the wage and manning scales and working conditions prescribed by the Commission as provided in subchapter III of this chapter" after "efficient manner", respectively.

Cls. (6), (7). Pub. L. 91-469, § 20(10), (11), redesignated cl. (7) as (6) and substituted "an operator who received subsidy with respect to subsistence of officers and crews shall use as such subsistence items" for "the operator shall use", "1155" for "1155(a)", and "and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico," and struck out "and equipment" before "outside the United States" and definition of "continental limits of the United States" as including States of Alaska and Hawaii, respectively. Former cl. (6) redesignated (5).

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

1960--Pub. L. 86-624 inserted definition of "continental limits of the United States."

1956--Cl. (5). Act May 10, 1956, provided that termination of subsidy contract shall not end the 10-year recapture period if subsidized operations continue under a new, or consecutive, contract.

1952--Cl. (5). Act July 17, 1952, substituted "life expectancy of the subsidized vessel determined as provided in section 1177(b) of this Appendix" for "twenty-year life expectancy of the subsidized vessels".

1938--Cl. (5). Act June 23, 1938, substituted "ten-year period" for "five-year period" in three places, and inserted provisions to permit computation of net profits without regard to capital gains and losses.

#### AMENDMENT OF CONTRACT

Section 2 of act May 10, 1956, provided that: "Each operating-differential subsidy contract in force on the date of enactment of this act [May 10, 1956] shall, if the subsidized contractor consents, be amended to conform to the provisions of section 606 of the Merchant Marine Act, 1936 [this section], as amended by section 1 of this act."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1177 of this Appendix; title 26 section 7518.

##### § 1177. Capital construction fund

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

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

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

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

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1986 [26 U.S.C. 167] for such year with respect to the agreement vessels,

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

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

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

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

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

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

exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) Nontaxability of deposits; eligible deposits

(1) For purposes of the Internal Revenue Code of 1986--

(A) taxable income (determined without regard to this section and section 7518 of such Code [26 U.S.C. 7518]) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A) of this section,

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

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

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code [26 U.S.C. 316]) shall be determined without regard to this section and section 7518 of such Code [26 U.S.C. 7518], and

(E) in applying the tax imposed by section 531 of such Code [26 U.S.C. 531] (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

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

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

For purposes of this section--

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

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) The capital account shall consist of--

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

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

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 243(a)(1)] of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C) of this section) be allowed a deduction under section 243 of the Internal Revenue Code of 1986 [26 U.S.C. 243], and

(D) interest income exempt from taxation under section 103 of such Code [26 U.S.C. 103].

(3) The capital gain account shall consist of--

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

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

(4) The ordinary income account shall consist of--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate; amounts not withdrawn after 25 years; highest marginal rate of tax

(1) Except as provided in subsection (i) of this section, any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated--

(A) first as made out of the ordinary income account,

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

(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4) of this section, shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1986--

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made--

(i) no interest shall be payable under section 6601 of such Code [26 U.S.C. 6601] and no addition to the tax shall be payable under section 6651 of such Code [26 U.S.C. 6651],

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 1176(5) of this Appendix as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal--

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

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

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

If the amount remains in the fund at the

**The applicable**

<b>close of the_</b>	<b>percentage is_</b>
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

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

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

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

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

(6) Nonqualified withdrawals taxed at highest marginal rate.--

(A) In general.--In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be determined--

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

(ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code [26 U.S.C. 1, 11].

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code [26 U.S.C. 1(h), 1201(a)] applies, the rate of tax taken into account under the preceding sentence shall not exceed 20 percent (34 percent in the case of a corporation).

(B) Tax benefit rule.--If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 [26 U.S.C. 1 et seq.] for any taxable year preceding the taxable year in which such withdrawal occurs--

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code [26 U.S.C. 172] for the taxable year in which such withdrawal occurs.

(C) Coordination with deduction for net operating losses.--Any nonqualified withdrawal excluded from gross income under subparagraph (A) shall be excluded in determining taxable income under section 172(b)(2) of the Internal Revenue Code of 1986 [26 U.S.C. 172(b)(2)].

(i) Corporate reorganizations and partnership changes

Under joint regulations--

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 [26 U.S.C. 381] applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K<sup>1</sup> of such Code [26 U.S.C. 701 et seq.]).

<sup>1</sup> So in original. Probably should be followed by "of chapter 1".

(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 Appendix.

(6) The term "joint regulations" means regulations prescribed under subsection (l) of this section.

(7) The term "vessel" includes cargo handling equipment which the Secretary determines is intended for use primarily on the vessel. The term "vessel" also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term "noncontiguous trade" means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term "Secretary" means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(l) Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) Departmental reports and certification

(1) In general

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

(2) Contents of reports

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

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

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

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

(June 29, 1936, ch. 858, title VI, § 607, 49 Stat. 2005; June 23, 1938, ch. 600, § 23-28, 52 Stat. 960, 961; Aug. 4, 1939, ch. 417, § 10, 53 Stat. 1185; July 17, 1952, ch. 939, § 17-19, 66 Stat. 764, 765; Pub. L. 85-637, Aug. 14, 1958, 72 Stat. 592; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87-45, § 6, May 27, 1961, 75 Stat. 91; Pub. L. 87-271, Sept. 21, 1961, 75 Stat. 570; Pub. L. 91-469, § 21(a), Oct. 21, 1970, 84 Stat. 1026; Pub. L. 93-116, Oct. 1, 1973, 87 Stat. 421; Pub. L. 97-31, § 12(97), Aug. 6, 1981, 95 Stat. 162; Pub. L. 99-514, § 2, title II, § 261(d), (e), Oct. 22, 1986, 100 Stat. 2095, 2214; Pub. L. 100-647, title I, § 1002(m)(2), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 101-508, title XI, § 11101(d)(7)(B), Nov. 5, 1990, 104 Stat. 1388-405; Pub. L. 105-34, title III, § 311(c)(2), Aug. 5, 1997, 111 Stat. 835.)

#### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (d)(1) and (h)(3), is classified generally to Title 26, Internal Revenue Code.

Section 103, referred to in subsec. (e)(2)(D), which related to interest on certain governmental obligations was amended generally by Pub. L. 99-514, title XIII, § 1301(a), Oct. 22, 1986, 100 Stat. 2602, and as so amended relates to interest on State and local bonds.

#### AMENDMENTS

1997--Subsec. (h)(6)(A). Pub. L. 105-34 substituted "20 percent" for "28 percent" in concluding provisions.

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

1988--Subsec. (h)(6)(A). Pub. L. 100-647 substituted "section 1(j)" for "section 1(i)".

1986--Subsec. (b)(1)(A), (B). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (d)(1). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (d)(1)(A), (D). Pub. L. 99-514, § 261(e)(1), (2), inserted "and section 7518 of such Code".

Subsec. (e)(2)(C). Pub. L. 99-514, § 261(e)(3), substituted "the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986" for "85 percent".

Pub. L. 99-514, § 2, substituted "section 243 of the Internal Revenue Code of 1986" for "section 243 of the Internal Revenue Code of 1954".

Subsec. (e)(4)(E). Pub. L. 99-514, § 261(e)(4), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "15 percent of any dividend referred to in paragraph (2)(C)."

Subsec. (g)(3). Pub. L. 99-514, § 261(e)(5), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to--

"(A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954, or

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

Subsec. (h)(3). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (h)(5), (6). Pub. L. 99-514, § 261(e)(6), added pars. (5) and (6).

Subsec. (i)(1). Pub. L. 99-514, § 2, substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (m). Pub. L. 99-514, § 261(d), added subsec. (m).

1981--Subsecs. (a), (c), (f), (h)(4). Pub. L. 97-31, § 12(97)(A), substituted "Secretary" for "Secretary of Commerce" wherever appearing.

Subsec. (k). Pub. L. 97-31, § 12(97), substituted in pars. (2)(C) and (7) "Secretary" for "Secretary of Commerce" and added par. (9).

Subsec. (l). Pub. L. 97-31, § 12(97)(A), substituted "Secretary" for "Secretary of Commerce" wherever appearing.

1973--Subsec. (k)(8). Pub. L. 93-116 substituted "(ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions." for "(ii) trade between the islands of Hawaii."

1970--Pub. L. 91-469 revised tax deferred reserve fund provisions generally, extended tax deferral privilege to vessels operated in nonsubsidized foreign trade, noncontiguous domestic trade, Great Lakes trade, and in fisheries, built in the United States, and documented under her laws, and substituted a new statutory framework consisting of subsecs. (a) to (l) for determination of tax status of deposits into and withdrawals from the fund for former subsecs. (a) to (h) and providing as follows:

Subsec. (a), a capital construction fund, agreement rules, persons eligible, replacement, additional, or reconstructed vessels for prescribed trade and fishery operations, amount of deposits, annual limitation, and conditions and requirements for deposits and withdrawals, subsec. (a) formerly permitting a 10 percent distribution of net profits;

Subsec. (b), ceiling on deposits, deposits of lessees, and definition of "agreement vessel", subsec. (b) formerly providing for a capital reserve fund, deposits, and allowable disbursements;

Subsec. (c), investment requirements, depositories, fiduciary requirements, investment in interest-bearing certificates (formerly provided in former subsec. (d)(2) of this section), stock investments, including common stock treatment of preferred issues, percentage for domestic issues, listing and registration, prudent man acquisitions (provisions formerly covered in former subsec. (d)(3)(A) of this section), and value and percentage equilibrium, subsec. (c) formerly providing for creation of a special reserve fund, deposits, and allowable disbursements;

Subsec. (d), nontaxability of deposits and eligible deposits, subsec. (d) formerly providing rules and regulations for administration of reserve funds and investment of funds, now covered in subsec. (c) of this section;

Subsec. (e), capital account, capital gain account, and ordinary income account within the capital construction fund and limitation on losses, subsec. (e) formerly providing for withdrawals from capital reserve fund to meet needs due to operating losses;

Subsec. (f), purposes of qualified withdrawals and nonqualified withdrawal treatment for nonfulfillment of substantial obligations, subsec. (f) formerly providing for title to reserve funds on termination of contract;

Subsec. (g), tax treatment of qualified withdrawals and reduction of basis, subsec. (g) formerly providing for increase and transfer of reserve funds and interest on overpayment of taxes;

Subsec. (h), tax treatment of nonqualified withdrawals, FIFO and LIFO bases, and interest rate, subsec. (h) formerly providing for exemption of reserve funds from taxation, in effect a tax deferral;

Subsec. (i), corporate reorganizations and partnership changes;

Subsec. (j), treatment of existing funds and relation of old to new funds;

Subsec. (k), definitions; and

Subsec. (l), records, reports, rules, and regulations, and termination of agreement upon changes in regulations with substantial effect on rights or obligations.

1961--Subsec. (b). Pub. L. 87-271 authorized the contractor, upon consent of the Secretary of Commerce, to pay amounts from the capital reserve fund for research, development, and design expenses for new and advanced ship design machinery and equipment, purchase of cargo containers delivered after June 30, 1959, payment of principal on indebtedness incurred for containers, and for reimbursing the contractor's general funds for expenditures for such purchases or payments, and required such cargo containers, to the extent paid for out of the capital reserve fund, to be treated as vessels for purpose of deposits and withdrawals from the fund, except that depreciation thereon shall be based on life expectancy used for such containers in determination of "net earnings" in subsec. (d)(1) of this section.

Pub. L. 87-45 inserted "and on cruises, if any, authorized under section 1183 of this Appendix" after "route or service approved by the Secretary" in second par.

1960--Subsec. (b). Pub. L. 86-518 substituted "twenty-five-year life expectancy" for "twenty-year life expectancy".

1958--Subsec. (d). Pub. L. 85-637 designated first and second paragraphs as subdivisions (1) and (2), and added subdivision (3).

1952--Subsec. (b). Act July 17, 1952, § 17, permitted recomputation of life-expectancy of a reconstructed or reconditioned vessel in use under an operating-differential subsidy contract, and provided for recomputation of depreciation changes.

Subsec. (d). Act July 17, 1952, § 18, substituted "as provided for in section 1177(b) of this Appendix" after "life of the vessel" for "being twenty years".

Subsec. (g). Act July 17, 1952, § 19, barred payment of interest by Government on overpayment of taxes resulting from voluntary deposits of earnings.

1939--Subsec. (c)(3). Act Aug. 4, 1939, permitted payment from the capital reserve fund, and authorized payment from other assets of the contractor if assets have not been repaid to the reserve funds, or if prepayments of amounts not due before one year after the date of termination of the contract have been made from the capital reserve funds.

1938--Subsec. (b). Act June 23, 1938, § 23, 24, substituted "insurance and indemnities" for "insurance indemnities" in first par., and inserted provisions requiring deposit of proceeds of any sale or other disposition of a vessel in the capital reserve funds, and to permit the contractor to pay from the fund any sums owing but not yet due on notes secured by mortgages on subsidized vessels.

Subsec. (c). Act June 23, 1938, § 25, substituted "If the profits, without regard to capital gains and capital losses, earned by the business of the subsidized vessels and services incident thereto exceed 10 per centum per annum and exceed the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section, the contractor shall deposit annually such excess profits in this reserve fund" for "In this reserve fund, the contractor shall deposit annually the profits earned by the business of the subsidized vessels and services incident thereto in excess of 10 per centum per annum and in excess of the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section", in second par.

Subsec. (c)(2). Act June 23, 1938, § 26, substituted "will be made up" for "will not be made up".

Subsecs. (f), (g). Act June 23, 1938, § 27, added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Act June 23, 1938, § 28, redesignated former subsec. (f) as subsec. (h) and made earnings withdrawn from the special reserve fund taxable as if earned during the year of withdrawal from the fund.

#### **EFFECTIVE DATE OF 1997 AMENDMENT**

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

#### **EFFECTIVE DATE OF 1990 AMENDMENT**

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

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

#### **EFFECTIVE DATE OF 1986 AMENDMENT**

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

#### **EFFECTIVE DATE OF 1970 AMENDMENT**

Section 21(b) of Pub. L. 91-469 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

#### **EFFECTIVE DATE OF 1960 AMENDMENT**

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

### **MERCHANT MARINE CAPITAL CONSTRUCTION FUNDS**

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

#### **DEPOSITS INTO CAPITAL RESERVE FUND**

Pub. L. 92-507, § 6, Oct. 19, 1972, 86 Stat. 917, provided that: "Nothing in this Act [enacting this note and amending subchapter XI of this chapter] shall limit or affect the right of an obligor who maintains a capital reserve fund under section 607 of the Merchant Marine Act, 1936 [this section] to make deposits of the proceeds of guaranteed obligations into such capital reserve fund as provided in subparagraph (c) of condition (6) of section 1107 of the Merchant Marine Act, 1936 [subparagraph (c) of condition (6) of section 1276a of former Title 46, Shipping], as in effect prior to the effective date of this Act [Oct. 9, 1972]."

**Title 26: Internal Revenue**  
**PART 3—CAPITAL CONSTRUCTION FUND**

**§ 3.6 Tax treatment of qualified withdrawals.**

(a) *In general.* Section 607(g) of the Act and this section provide rules for the income tax treatment of qualified withdrawals including the income tax treatment on the disposition of assets acquired with fund amounts.

(b) *Order of application of qualified withdrawals against accounts.* A qualified withdrawal from a fund shall be treated as being made: First, out of the capital account; second, out of the capital gain account; and third, out of the ordinary income account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest qualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made.

(c) *Reduction of basis.* (1) If any portion of a qualified withdrawal for the acquisition, construction, or reconstruction of a vessel, barge, or container (or share therein) is made out of the ordinary income account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to such portion.

(2) If any portion of a qualified withdrawal for the acquisition, construction, or reconstruction of a vessel, barge, or container (or share therein) is made out of the capital gain account, the basis of such vessel, barge, or container (or share therein) shall be reduced by an amount equal to—

(i) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Code), or

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

(3) If any portion of a qualified withdrawal to pay the principal of an indebtedness is made out of the ordinary income account or the capital gain account, then the basis of the vessel, barge, or container (or share therein) with respect to which such indebtedness was incurred is reduced in the manner provided by subparagraphs (1) and (2) of this paragraph. If the aggregate amount of such withdrawal from the ordinary income account and capital gain account would cause a basis reduction in excess of the party's basis in such vessel, barge, or container (or share therein), the excess is applied against the basis of other vessels, barges, or containers (or shares therein) owned by the party at the time of withdrawal in the following order: (i) vessels, barges, or containers (or shares therein) which were the subject of qualified withdrawals in the order in which they were acquired, constructed, or reconstructed; (ii) agreement vessels (as defined in section 607(k)(3) of the Act and §3.11(a)(3)) and barges and containers which are part of the complement of an agreement vessel (or shares therein) which were not the subject of qualified withdrawals, in the order in which such vessels, barges, or containers (or shares therein) were acquired by the party; and (iii) other vessels, barges, and containers (or shares therein), in the order in which they were acquired by the party. Any amount of a withdrawal remaining after the application of this subparagraph is to be treated as a nonqualified withdrawal. If the indebtedness was incurred to acquire two or more vessels, barges, or containers (or shares therein), then the basis reduction in such vessels, barges, or containers (or shares therein) is to be made pro rata in proportion to the adjusted basis of such vessels, barges, or containers (or shares therein) computed, however, without regard to this section and adjustments under section 1016(a) (2) and (3) of the Code for depreciation or amortization.

(d) *Basis for depreciation.* For purposes of determining the allowance for depreciation under section 167 of the Code in respect of any property which has been acquired, constructed, or reconstructed from qualified withdrawals, the adjusted basis for determining gain on such property is determined after applying paragraph (c) of this section. In the case of reductions in the basis of any property resulting from the application of paragraph (c)(3) of this section, the party may adopt a method of accounting whereby (1) payments shall reduce the basis of the property on the day such payments are actually made, or (2) payments made at any time during the first half of the party's taxable year shall reduce the basis of the property on the first day of the taxable year, and payments made at any time during the second half of the party's taxable year shall reduce the basis of the property on the first day of the succeeding taxable year. For requirements respecting the change of methods of accounting, see §1.446-1(e)(3) of the Income Tax Regulations of this chapter.

## **Title 26: Internal Revenue**

### **PART 3—CAPITAL CONSTRUCTION FUND**

#### **§ 3.7 Tax treatment of nonqualified withdrawals.**

(a) *In general.* Section 607(h) of the Act provides rules for the tax treatment of nonqualified withdrawals, including rules for adjustments to the various accounts of the fund, the inclusion of amounts in income, and the payment of interest with respect to such amounts.

(b) *Nonqualified withdrawals defined.* Except as provided in section 607 of the Act and §3.8 (relating to certain corporate reorganizations, changes in partnerships, and transfers by reason of death), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal which is subject to tax in accordance with section 607(h) of the Act and the provisions of this section. Examples of nonqualified withdrawals are amounts remaining in a fund upon termination of the fund, and withdrawals which are treated as nonqualified withdrawals under section 607(h)(2) of the Act and §3.5(d) (relating to failure by a party to fulfill substantial obligation under agreement) or under the second sentence of section 607(g)(4) of the Act and §3.6(c)(3) (relating to payments against indebtedness in excess of basis).

(c) *Order of application of nonqualified withdrawals against deposits.* A nonqualified withdrawal from a fund shall be treated as being made: first, out of the ordinary income account; second, out of the capital gain account; and third, out of the capital account. Such withdrawals will reduce the balance within a particular account on a first-in-first-out basis, the earliest nonqualified withdrawals reducing the items within an account in the order in which they were actually deposited or deemed deposited in accordance with this part. Nonqualified withdrawals for research, development, and design expenses incident to new and advanced ship design, machinery, and equipment, and any amount treated as a nonqualified withdrawal under the second sentence of section 607(g)(4) of the Act and §3.6(c)(3), shall be applied against the deposits within a particular account on a last-in-first-out basis. The date funds are actually withdrawn from the fund determines the time at which withdrawals are considered to be made. For special rules concerning the withdrawal of contingent deposits of net proceeds from the installment sale of an agreement vessel, see §3.2(c)(6).

(d) *Inclusion in income.* (1) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the ordinary income account is to be included in gross income as an item of ordinary income for the taxable year in which the withdrawal is made.

(2) Any portion of a nonqualified withdrawal which, under paragraph (c) of this section, is treated as being made out of the capital gain account is to be included in income as an item of long-term capital gain recognized during the taxable year in which the withdrawal is made.

(3) For effect upon a party's taxable income of capital losses remaining in a fund upon the termination of a fund (which, under paragraph (b) of this section, is treated as a nonqualified withdrawal of amounts remaining in the fund), see §3.4(e).

(e) *Interest.* (1) For the period on or before the last date prescribed by law, including extensions thereof, for filing the party's Federal income tax return for the taxable year during which a nonqualified withdrawal is made, no interest shall be payable under section 6601 of the Code in respect of the tax on any item which is included in gross income under paragraph (d) of this section, and no addition to such tax for such period shall be payable under section 6651 of the Code. In lieu of the interest and additions to tax under such sections, simple interest on the amount of the tax attributable to any item included in gross income under paragraph (d) of this section is to be paid at the rate of interest determined for the year of withdrawal under subparagraph (2) of this paragraph. Such interest is to be charged for the period from the last date prescribed for payment of tax for the taxable year for which such item was deposited in the fund to the last date for payment of tax for the taxable year in which the withdrawal is made. Both dates are to be determined without regard to any extensions of time for payment. Interest determined under this paragraph which is paid within the taxable year shall be allowed as a deduction for such year under section 163 of the Code. However, such interest is to be treated as part of the party's tax for the year of withdrawal for purposes of collection and in determining any interest or additions to tax for the year of withdrawal under section 6601 or 6651, respectively, of the Code.

(2) For purposes of section 607(h)(3)(C)(ii) of the Act, and for purposes of certain dispositions of vessels constructed, reconstructed, or acquired with qualified withdrawals described in §3.6(e), the applicable rate of interest for any nonqualified withdrawal—

(i) Made in a taxable year beginning in 1970 and 1971 is 8 percent.

(ii) Made in a taxable year beginning after 1971, the rate for such year as determined and published jointly by the Secretary of the Treasury or his delegate and the Secretary of Commerce. Such rate shall bear a relationship to 8 percent which the Secretaries determine 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. The determination of the applicable rate for any such taxable year will be computed by multiplying 8 percent by the ratio which ( a ) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year, bears to ( b ) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined shall be computed to the nearest one-hundredth of 1 percent. If such a determination and publication is made, the latest published percentage shall apply for any taxable year beginning in the calendar year with respect to which publication is made.

(3) No interest shall be payable in respect of taxes on amounts referred to in section 607(h)(2) (i) and (ii) of the Act (relating to withdrawals for research and development and payments against indebtedness in excess of basis) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act, 1936, as in effect on December 31, 1969.

(f) *Basis and holding period in the case of property purchased by the fund or considered purchased by the fund.* In the case of a nonqualified withdrawal of property other than money which was purchased by the fund (including deposited property considered under §3.2(g)(1)(ii) as purchased by the fund), the adjusted basis of the property in the hands of the party is its adjusted basis to the fund on the day of the withdrawal. In determining the period for which the taxpayer has held the property withdrawn in a nonqualified withdrawal, there shall be included only the period beginning with the date on which the withdrawal occurred. For basis and holding period in the case of nonqualified withdrawals of property other than money deposited into the fund, see §3.2(g)(4).

e-CFR Data is current as of May 27, 2009

**Title 50: Wildlife and Fisheries**  
**PART 259—CAPITAL CONSTRUCTION FUND**  
**Capital Construction Fund Agreement**

**§ 259.35 Annual deposit and withdrawal reports required.**

(a) The Secretary will require from each Interim CCF Agreement holder (Party) the following annual deposit and withdrawal reports. Failure to submit such reports may be cause for involuntary termination of CCF Agreements.

(1) A preliminary deposit and withdrawal report at the end of each calendar year, which must be submitted not later than 45 days after the close of the calendar year. The report must give the amounts withdrawn from and deposited into the party's CCF during the subject year, and be in letter form showing the agreement holder's name, FVCCF identification number, and taxpayer identification number. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and the account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity. If the party's tax year is the same as the calendar year, and if the final deposit and withdrawal report required under paragraph (a)(2) of this section is submitted before the due date for this preliminary report, then this report is not required.

(2) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, with extensions (if any), for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each FVCCF depository. Each report must bear certification that the deposit and withdrawal information given includes all deposit and withdrawal activity for the year and account reported. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) Failure to submit the required annual deposit and withdrawal reports shall be cause after due notice for either, or both, disqualification of withdrawals or involuntary termination of the Interim CCF Agreement, at the Secretary's discretion.

(c) Additionally, the Secretary shall require from each Interim CCF Agreement holder, not later than 30 days after expiration of the party's tax due date, with extensions (if any), a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit shall after due notice be cause for the same adverse action specified in the paragraph above.

[39 FR 33675, Sept. 19, 1974, as amended at 48 FR 57302, Dec. 29, 1983; 53 FR 35203, Sept. 12, 1988]

## **e-CFR Data is current as of June 10, 2009**

### **Title 50: Wildlife and Fisheries**

#### **PART 259—CAPITAL CONSTRUCTION FUND**

##### **Capital Construction Fund Agreement**

#### **§ 259.38 Miscellaneous.**

(a) Wherever the Secretary prescribes time constraints herein for the submission of any CCF transactions, the postmark date shall control if mailed or, if personally delivered, the actual date of submission. All required materials may be submitted to any Financial Assistance Division office of the National Marine Fisheries Service.

(b) All CCF information received by the Secretary shall be held strictly confidential, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of any fundholder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can often cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should before the fact attempt to act in reliance on its being granted after the fact.

(d) These §§259.30 through 259.38 are applicable absolutely to all Interim CCF Agreements first entered into (or the amendment of all then existing Interim CCF Agreements, which amendment is first entered into) on or after the date these §§259.30 through 259.38 are adopted. These §§259.30 through 259.38 are applicable to all Interim CCF Agreements entered into before the date these §§259.30 through 259.38 are adopted, with the following exceptions only:

(1) The vessel age limitations imposed by §259.31 shall not apply to already scheduled Schedule B objectives.

(2) The minimum deposits imposed by §259.34 shall not apply to any party's tax year before that party's tax year next following the one in which these §§259.30 through 259.38 are adopted.

(e) These §§259.30 through 259.38 are specifically incorporated in all past, present, and future Interim CCF Agreements by reference thereto made in Whereas Clause number 2 of all such Interim CCF Agreements.

**Merchant Marine Act, 1936**

*The statues at Large of the United States of America from January 1935 to June 1936.*

*Concurrent Resolutions, Recent Treaties and Conventions, Executive Proclamations and Agreements.*

**Vol. XLIX -- Merchant Marine Act, 1936**

[Declaration of policy](#)

[United States Maritime Commission](#)

- Establishment; qualifications; compensation, etc.
- Experts, attorneys, and other personnel, appointment, etc., of
- Transfer of property, etc., controlled by Department of Commerce, to Commission
- United States Shipping Board Merchant Fleet Corporation, dissolution of; transfer of records, etc.
- Functions, powers, etc., vested by certain Acts transferred to; adoption of rules, etc.; enforcement
- Unlawful restraints, discriminations, etc.
- Construction fund established; transfer of funds to; proceeds of sales, etc.
- Contracts authorized; audit of financial transactions
- Annual report to Congress
- Appropriations authorized; use of unexpended balances
- Survey of needed merchant marine improvements; objectives
- Investigations, etc.
- Studies of marine problems directed
- Studies and reports on, to Congress
- Authority to administer oaths, subpoena witnesses, etc.

[American seamen](#)

- Incorporation of minimum manning and wage scales, working, living, etc., conditions in contracts
- Citizenship requirements
- Alien declarants, restrictions on employment of
- Vacancies, filling of, on foreign voyages
- Violations, penalty for
- Naval Reserve membership requirement, deck and engineer officers
- Suspension of provisions in emergencies

[Ocean-mail contracts](#)

- Termination of certain, made by Postmaster General
- Applications for adjustments; time limitation
- Payments, application of, as credit on amounts owed
- Transfer of powers, etc., to Commission
- Transportation of mails by vessels of United States registry; transportation of persons in charge of mails

[Construction-differential subsidy](#)

- Applications for; investigation before approval
- Submission of plans to Navy Department
- Reconstruction or reconditioning, subsidies for aid in
- Bids and contracts, approval of; payment to builder; contract with applicant for purchase when completed
- Definition; limitation on amount
- Cash payment, amount required; payment of balance; interest
- Pacific coast, differential allowance for construction and operation on
- Government construction if no bids received, collusion, etc.; sale to applicant
- Documentation of delivered vessels; mortgages to secure payment of balance; insurance on vessels sold on deferred payments
- Construction financed by applicant; payment of subsidy to builder; documentation, etc.
- Construction of subsidized vessels in domestic shipyards; qualifications of builders, etc.
- Operation of subsidized vessels other than in foreign trade unlawful
- Replacement of obsolete, etc., vessels; purchase of replaced vessel by Commission; credit of purchase price; documentation requirements
- Disposition of vessels acquired from Department of Commerce of insufficient value for commercial or military operation Domestic trade, aid in construction of vessels for; construction subsidy not permitted

[Operating-differential subsidy](#)

- Applications for assistance in operating vessels in foreign trade; requirements
- Contracts for payment; computation, etc.
- Additional subsidies, foreign trade routes; conditions for granting
- Restrictions on payments
- Review and readjustments of contracts
- Annual withdrawal of profits by contractor
- Transfer of contracts without consent forbidden
- Withholding of payments when contractor in default of payments etc.
- Requirements of vessels for operation on which subsidy paid

[Private charter operation](#)

- Construction of new, and reconditioning of old vessels by Commission when required, to accomplish objectives
- Charter or sale of vessels acquired by Commission
- Use of vessels on foreign trade routes; sale or charter of vessels to private citizens
- Charters
- Finding by Commission of inability to develop trade routes under private ownership; construction and charter of adapted vessels to citizen operators

[Books, records, etc., to be kept by contractor; examination and audit by Commission](#)

[Acquisition of vessels by United States on which construction subsidy paid; payment to owner; amount](#)

[Employment of concern, etc., in which contractor financially interested forbidden; exceptions](#)

[Receipt of subsidy by contractor connected with foreign competition forbidden; waiver Operation, etc., of vessels in coastal or intercoastal service by contractor forbidden](#)

[Default by contractor on mortgage, etc.; supervision by Commission of number and pay of personnel](#)

[Unauthorized employment of managing or operating agent by contractor; chartering of subsidized vessels to others, etc.](#)

[Members of Congress, employment of, by contractor, etc., forbidden](#)

[Violations of section to breach contracts](#)

[Combinations to prevent making of bona-fide bids, etc.; penalty for](#)

[Violations of Act, penal provision](#)

[Lobbying activities without filing statement with Commission forbidden; penalty](#)

[Contractor giving preference, etc., where he has interest; penalty](#)

[Preference in awarding contracts to citizens, etc.](#)

[Unfair trade practices, etc., by contractor forbidden; denial of payments to; suit by injured person; amount of damages](#)

[United States officers and employees, use of American ships when traveling abroad; exception](#)

[Requisitioning of vessels in national emergency; payment for](#)

[Acts, etc., repealed](#)

[Definitions, etc.](#)

[Separability provision](#)

[Citation of Act](#)

[Effective date](#)

## AN ACT

To further the development and maintenance of an adequate and well-balanced American merchant marine, to promote the commerce of the United States, to aid in the national defense, to repeal certain former legislation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### TITLE I – DECLARATION OF POLICY

**SECTION 101.** It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine

- (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times
- (b) capable of serving as a naval and military auxiliary in time of war or national emergency,
- (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, and
- (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

### TITLE II—UNITED STATES MARITIME COMMISSION

#### SEC. 201.

(a) An agency is hereby created, to be known as the United States Maritime Commission (hereinafter referred to as the Commission). The Commission shall be composed of five persons, in this title referred to as members, to be appointed by the President by and with the advice and consent of the Senate. The President shall designate the member to act as chairman of the Commission, and the Commission may elect one of its members as vice chairman. The members of the Commission shall be appointed as soon as practicable after the enactment of this Act and shall continue in office as designated by the President at the time of nomination, for terms of two, three, four, five, and six years, respectively, from the date upon which they qualify and take office; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. The members shall be appointed with due regard to their special fitness for the efficient discharge of the duties imposed upon them by this Act. Not more than three of the members shall be appointed from the same political party. A vacancy in the Commission shall be filled in the same manner as an original appointment. Any member may be removed by the President for neglect of duty or malfeasance in office. Vacancies in the Commission, so long as there shall be three members in office, shall not impair the power of the Commission to execute its functions, and three of the members in office shall constitute a quorum for the transaction of the business of the Commission. Each member shall receive a salary at the rate of \$12,000 per annum.

(b) No person shall hold office as a member of the Commission who, within three years prior to his appointment, shall have been employed by, or have had any pecuniary interest in, any carrier by water or substantial pecuniary interest in any other person who derives a substantial portion of his revenues from any business associated with ships or shipping. Each member shall devote his full time to the duties of his office. It shall be unlawful for any member, officer, or employee of the Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Commission may have business relations.

(c) The Commission shall, through its secretary, keep a true record of all its meetings and the ye-and-nay votes taken therein, on every action, order, contract,, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) The Commission may make such expenditures as are necessary in the performance of its functions from funds made available to it by this Act or hereafter appropriated, which further appropriations are hereby authorized.

(e) Without regard to the civil-service laws or the Classification Act of 1923, as amended, the Commission may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission, and not more than three assistants, not more than a total of twelve each of naval architects, special experts, attorneys, and examiners and not more than two inspectors at each shipyard at which vessels are being constructed by it or under its supervision. No employee so appointed may receive an annual salary at a rate in excess of that provided under the Classification Act of 1923, as amended. The Commission may, subject to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of its functions: Provided, That trained and satisfactory present employees of the United States Shipping Board Bureau or United States Shipping Board Merchant Fleet Corporation shall be eligible for transfer to the Commission, and if after the expiration of a probationary period of six months from the date of employment the Commission shall certify to the United States Civil Service Commission that the services of any employee so transferred are satisfactory, the employee shall thereupon acquire the same status as though certified after examination by the Civil Service Commission.

(f) Each member, any employee of the Commission, and any person detailed to it from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission. Expenditures by the Commission shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or a designated employee thereof.

(g). This section shall take effect immediately upon approval of this Act.

**SEC. 202.** All money, notes, bonds, mortgages, and securities of every kind, contracts and contract rights, lands, vessels, docks, wharves, piers, and property and interests of every kind, owned by the United States, and now controlled by the Department of Commerce as the successor to the powers and functions of the former United States Shipping Board, by virtue of the President's Executive order of June 10, 1933, are hereby transferred to the Commission.

**SEC. 203.** The United States Shipping Board Merchant Fleet Corporation shall, cease to exist and shall stand dissolved. All the records, books, papers, and corporate property of said dissolved corporation shall be taken over by the Commission. All existing contractual obligations of the dissolved corporation shall be assumed by the United States. Any suit against the dissolved corporation pending in any court of the United States shall be defended by the Commission upon behalf of the United States, under the supervision of the Attorney General, and any judgment obtained against the dissolved corporation in any such pending suit shall be reported to Congress in the manner provided in section 226, title 31, United States Code, for reporting judgments against the United States in the Court of Claims.

#### SEC. 204.

(a) All the functions, powers, and duties vested in the former United States Shipping Board by the Shipping Act, 1916, the Merchant Marine Act, 1920, the Merchant Marine Act, 1928, the Intercoastal Shipping Act, 1933, and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive order of June 10, 1933, are hereby transferred to the United States Maritime Commission: *Provided however,* That after the date of the passage of this Act no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended.

(b) The Commission is hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in it by this Act. After the expiration of two years from the effective date of this Act, the President is authorized to transfer, by Executive order, to the Interstate Commerce Commission any or all the regulatory powers, regulatory duties, and regulatory functions which, by this title, are vested in the United States Maritime Commission.

(c) The orders issued by the United States Maritime Commission in the exercise of the powers transferred to it by this title 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.

**SEC. 206.** Without limiting the power and authority otherwise vested in the Commission, 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.

**SEC. 206.** All sums of money now 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 Commission, 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 received thereon, 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 controlled and employed by the Commission in carrying out the provisions of this Act. All moneys received by the Commission under the provisions of titles IV, V, VI, and VII, of this Act shall be deposited in its construction fund, and all disbursements made by the Commission under authority of said titles shall be paid out of said fund. Further appropriations by Congress to replenish said fund are hereby authorized.

**SEC. 207.** The Commission may enter into such contracts, upon behalf of the United States, as may, in its discretion, be necessary to carry on the activities authorized by this Act, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission'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 Act, 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 from the provisions of this Act.

**SEC. 208.** The Commission shall, at the beginning of each regular session, make a report to Congress, which shall include the results of its investigations, a summary of its transactions, its recommendations for legislation, a statement of all receipts under this Act, and the purposes for which all expenditures were made.

#### SEC. 209.

(a) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(b) All appropriations and unexpended balances of appropriations available for expenditure by the United States Shipping Board Bureau and United States Shipping Board Merchant Fleet Corporation which would otherwise be applicable to functions transferred to the Commission by this Act, including the fund appropriated to enable the United States Shipping Board Merchant Fleet Corporation to operate ships or lines of ships which have been or may be taken back from purchasers by reason of competition or other methods employed by foreign shipowners or operators as appropriated by the Independent Offices Act, 1928, approved February 11, 1927 (44 Stat. 1082), and reappropriated by the Department of Commerce Appropriation Acts, shall be available for expenditure by or at the direction of the Commission for any and all objects of expenditure authorized by this Act in the discretion of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906 (U. S. C., title 31, sec. 665).

(c) After the transfer, under section 404 of this Act, to the Commission of the powers and duties of the Postmaster General with respect to existing ocean-mail contracts entered into pursuant to title IV, Merchant Marine Act, 1928 (U. S. C., Supp. VII, title 46, secs. 891e to 891r, inclusive), all appropriations and unexpended balances of appropriations available for expenditure by the Post Office Department for the transportation of foreign mails under contracts authorized by the Merchant Marine Act, 1928, less any amount necessary to be paid out by the Post Office Department, shall be available for an and all objects of expenditure authorized by this Act, by or at the direction of the Commission, without regard to the requirement of apportionment under the Antideficiency Act of February 27, 1906.

(d) Funds made available under the provisions of subsection (b) of this section shall be available for expenditures authorized by the Commission under the provisions of section 201 of this Act as soon as a majority of the members of the Commission shall have taken the oath of office, notwithstanding the provisions of section 907 of this Act.

**SEC. 210.** It shall be the duty of the Commission to make a survey of the American merchant marine, as it now exists, to determine what additions and replacements are required to carry forward the national policy declared in section 101 of this Act, and the Commission is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

First, the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service on all routes essential for maintaining flow of commerce of the United States, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Commission is directed to cooperate closely with the Navy Department as to national-defense needs and the possible speedy adaptation of the merchant fleet to national-defense requirements.

Second, the ownership and the operation of such a merchant fleet by citizens of the United States insofar as may be practicable.

Third, the planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

**SEC. 211.** The Commission is authorized and directed to investigate, determine, and keep current records of --

(a) The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Commission to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching its determination the Commission shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss is disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States and to the national defense;

(b) The type, size, speed, and other requirements of the vessels, including express-liner or super-liner vessels, which should be employed in such services or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view to furnishing adequate, regular, certain, and permanent service;

(c) The relative cost of construction of comparable vessels in the United States and in foreign countries;

(d) The relative cost of marine insurance, maintenance, repairs wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels in particular services, routes, and lines under the laws, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American service, route, or line;

(e) The extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(f) The number, location, and efficiency of the shipyards existing on the date of the enactment of this Act or thereafter built in the United States;

(g) To investigate and determine what provisions of this Act and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce in order to further the policy expressed in this Act, and to recommend appropriate legislation to this end;

(h) The advisability of enactment of suitable legislation authorizing the Commission, in an economic or commercial emergency, to aid the farmers and cotton, coal, lumber, and cement producers in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Commission, until such time as the Commission shall deem such special rate reduction and operation unnecessary for the benefit of the American farmers and such producers; and

(i) New designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of American foreign trade in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

**SEC. 212.** The Commission is authorized and directed --

(a) To study all maritime problems arising in the carrying out of the policy set forth in title I of this Act;

(b) To study, and to cooperate with vessel owners in devising means by which --

(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

(2) there may be constructed by or with the aid of the United States express-liner or super-liner vessels comparable with those of other nations, especially with a view to their use in national emergency, and the use in connection with or in lieu of such vessels of transoceanic aircraft service;

(c) To collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits accruing from standardized production where practicable and desirable;

(d) To establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly, with any movement of commodities in the water-borne export and import foreign commerce of the United States for the purpose of securing preference to vessels of United States registry in the shipment of such commodities; and

(e) To investigate, under the regulatory powers transferred to it by this Act, any and all discriminatory rates, charges, classifications, and practices whereby exporters and shippers of cargo originating in the United States are required by any common carrier by water in the foreign trade of the United States to pay a higher rate from any United States port to a foreign port than the rate charged by such carrier on similar cargo from such foreign port to such United States port, and recommend to Congress measures by which such discrimination may be corrected.

(f) To make recommendations to Congress, from time to time, for such further legislation as it deems necessary better to effectuate the purpose and policy of this Act.

**SEC. 213.** The Commission shall make studies of and make a report to Congress as soon as practicable on --

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

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

(c) The relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may compete for work on an equalized basis.

**SEC. 214.**

(a) For the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this Act, any member of the Commission, or any officer or employee thereof designated by it, is empowered to subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any Territory, district, or possession thereof at any designated place of hearing within the Federal judicial district in which the witness resides. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Upon failure of any person to obey a subpoena issued by the Commission, it may invoke the aid of any District Court of the United States within the jurisdiction in which such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Commission, or member, officer, or employee designated by the Commission, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found.

(c) No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Commission, or any member or officer or employee thereof, in any investigation instituted by the Commission under this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person so testifying shall not be exempt from prosecution and punishment for perjury

committed in so testifying.

### **TITLE III -- AMERICAN SEAMEN**

#### **SEC. 301.**

(a) The Commission is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under titles VI and VII of this Act minimum-manning scales and minimum-wage scales and reasonable working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales and working conditions shall have been adopted by the Commission, no change shall be made therein by the Commission except upon formal complaint, public notice of the hearing to be had on such complaint, and a hearing by the Commission of all interested parties, under such rules as the Commission shall prescribe. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales and work-in conditions prescribed by his contract and applicable to such vessel: *Provided, however,* That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage, manning scales, and working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) Every contract executed under authority of titles VI and VII of this Act shall require --

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Commission, Coast Guard, or Department of Labor, providing they file such complaint or recommendation with their immediate superior, who shall be required to forward such complaint or recommendation with his remarks to the Commission, Coast Guard, or Department of Labor;

(3) Licensed officers who are members of the Naval Reserve Corps shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Navigation and Steamboat Inspection;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the Naval Reserve Corps; and

(6) Licensed officers shall take their meals in the main dining salon of the vessel and no other place during regular meal hours, except in cases of emergency.

#### **SEC. 302.**

(a) All licensed officers of vessels documented under the laws of the United States, as now required by law, shall be citizens of the United States native-born or completely naturalized; and upon each departure from the United States of a cargo vessel in respect of which a construction or operating subsidy has been granted all of the crew (crew including all employees of the ship) shall be citizens of the United States, native-born or completely naturalized.

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

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

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

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

(f) This section shall be enforced by the Secretary of Commerce, for the purpose of carrying out the provisions of this section, and shall take effect ninety days after its enactment, and will then repeal paragraph (c), section 405, Merchant Marine Act, 1928.

(g) All of the deck and engineer officers employed on vessels on which an operating-differential subsidy is paid under authority of title VI, or employed on the Commission's vessels, after one year after the passage of this Act, shall, if eligible, be members of the United States Naval Reserve.

(h) During a national emergency as proclaimed by the President he may, in his discretion, suspend any or all of the provisions of this section.

### **TITLE IV -- OCEAN-MAIL CONTRACTS**

**SEC. 401.** No contract heretofore made by the Postmaster General, pursuant to the provisions of the Merchant Marine Act of 1928, for the carriage of mail, shall be continued in effect after June 30, 1937, and after that date it shall be unlawful for any officer of the United States to pay from any public funds any compensation to the holder of such contract for services thereunder, except for such voyages as were completed prior to the expiration date herein fixed and for voyages commenced prior to said expiration date and which shall not have been completed prior to said expiration date.

#### **SEC. 402.**

(a) The holder of any mail contract that is to be terminated as provided in section 401 of this title may, within ninety days after the passage of this Act., file an application with the Commission to adjust and settle all the rights of the parties under such contract and to substitute in whole or in part thereof or a contract or contracts authorized in titles V and VI of this Act in accordance with the conditions hereinafter prescribed. Such application shall be in such form and filed under such regulations as the Commission may prescribe.

"(b) As soon as practicable after the filing of any such application, the Commission shall proceed to attempt to adjust all differences with such contractor, including any claims of the contractor against the United States and any claims of the United States against such contractor, arising out of its foreign ocean mail contract. In adjusting such differences and claims, the Commission shall not take into consideration any prospective or speculative future profits, but shall consider any and all payments theretofore made by the United States pursuant to such mail contract, and the profits realized as a result thereof, and the interest paid and the interest due according to law on construction loans, and all other facts deemed pertinent. If the contractor shall be willing to accept such determination and receive payment for the amount determined by the Commission to be a fair adjustment of such differences the Commission is authorized and directed to enter into and execute a settlement agreement with such contractor, wherein such contractor shall release the United States from any and all further claims arising from such contractor's mail contract: *Provided,* That the Attorney General of the United States may, if he is dissatisfied with such finding, appeal the same to the Court of Claims within a period of sixty days from the date such settlement is agreed upon, of record, by the Commission and the contractor. If such appeal is not taken for the United States by the Attorney General within sixty days from the record agreement between the Commission and the contractor, the contractor shall be paid any sum of money due him under such settlement agreement from any funds controlled by the Commission or hereafter appropriated for that purpose; or if such appeal is taken by the Attorney General, then, within sixty days from the rendition of the final judgment by the courts, the contractor shall be paid any sum of money due him under such judgment from any funds controlled by the Commission or hereafter appropriated for that purpose.

"(c) If the holder of any ocean mail contract terminated by the provisions of section 401 of this title does not enter into and execute a settlement agreement as provided in subsection (b) hereof such holder may sue the United States in the United States Court of Claims, but such suit shall not be maintained unless brought before January 1, 1938. If suit is filed in the Court of Claims the claimant and the United States shall have the right in such court to set up and have determined and adjusted by the court all legal and equitable claims, differences, offsets credits, and recoupments to which either may be entitled to the end that all conflicting claims, assertions, and rights may be fully, fairly, and completely settled and adjudged by the court, including any question as to the legality of the contract as originally made or as modified, altered, or amended. The jurisdiction of said court to award any damages or payments to the ocean mail contractor is hereby expressly limited to an award of just compensation under the provisions heretofore set forth and such just compensation shall not include any allowances for prospective profits or for speculative future profits that might have been realized by the claimant if permitted further to carry out the contract. The remedy herein provided shall be exclusive and no other suit shall be maintained by the applicant or by any other person in any court of the United States arising out of any claims under or connected with said contract."

#### **SEC. 403.**

(a) If any sum of money is payable to the contractor under the terms of any settlement agreement made pursuant to section 402 (b) of this title, such sum shall be applied as a credit upon any amount owing by the contractor to the United States on any loan agreement entered into under section 11 of the Merchant Marine Act, (1920, as amended, or upon unpaid ship-sales mortgage notes.

**SEC. 404.** All the powers and duties now vested by law in the Postmaster General, with respect to existing ocean-mail contracts, executed pursuant to title IV of the Merchant Marine Act, 1928, are hereby transferred to and vested in the Commission.

#### **SEC. 405.**

(a) All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

(b) Every steamship company carrying the mails shall carry on any ship it operates and without extra charge therefor the persons in charge of the mails and when on duty and traveling to and from duty, and all duly accredited agents and officers of the Post Office Department and post-office inspectors while traveling on official business, upon the exhibition of their credentials.

## TITLE V --CONSTRUCTION-DIFFERENTIAL SUBSIDY

### SEC. 501.

(a) Any citizen of the United States may make application to the Commission for a construction-differential subsidy to aid in the construction of a new vessel, to be used on a service, route, or line in the foreign commerce of the United States, determined to be essential under section 211 of this Act. No such application shall, be approved by the Commission unless it determines that

- (1) the service, route, or line requires a new vessel of modern and economical design to meet foreign-flag competition and to promote the foreign commerce of the United States;
- (2) the plans and specifications call for a new vessel which will meet the needs of the service, route, or line, and the requirements of commerce;
- (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain the proposed new vessel in such service, or on such route or line, and to maintain and continue adequate service on said route or line, including replacement of worn-out or obsolete tonnage with new and modern ships; and
- (4) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act.

(b) The Commission 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 Commission.

(c) Any citizen of the United States may make application to the Commission for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be exclusively used on a service, route, or line in the foreign commerce of the United States, determined to be essential under section 211 of this Act. If the Commission, in the exercise of its 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 Act, the Commission 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 title and under such further conditions and limitations as may be prescribed in the rules and regulations the Commission has adopted as provided in section 201 (c) of this Act; 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 commission that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

### SEC. 502.

(a) If the Secretary of the Navy certifies his approval under section 501 (b) of this Act, and the Commission approves the application, it may secure, on behalf of the applicant, 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 Commission to be fair and reasonable, the Commission may approve such bid, and if such approved bid is accepted by the applicant, the Commission 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 Commission to the shipbuilder, on terms to be agreed upon in the contract, the cost of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Concurrently with entering into such contract with the shipbuilder, the Commission is authorized to enter into a contract with the applicant for the purchase by him of such vessel upon its completion, at a price corresponding to the estimated cost, as determined by the Commission pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

(b) The amount of the reduction in selling price which is herein termed the "construction-differential subsidy" may 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 Commission in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Commission, of the construction of the proposed vessel if it were constructed under like plans and specifications (excluding national-defense features as above provided) in a principal foreign shipbuilding center which is availed of by the principal foreign competitors in the service in which the vessel is to be operated, and which is deemed by the Commission to furnish a fair and representative example for the determination of the estimated cost of construction in foreign countries of vessels of the type proposed to be constructed: Provided, That the construction differential approved by the Commission shall not exceed 33 1/3 per centum of the construction cost of the vessel paid by the Commission (excluding the cost of national-defense features as above provided), except in cases where the Commission possesses conclusive evidence that the actual differential is greater than that percentage, in which cases the Commission may approve an allowance not to exceed 50 per centum of such cost, upon the affirmative vote of four members, except as otherwise provided in subsection 201 (a).

(c) In such contract between the applicant and the Commission, the applicant shall be required to pay the Commission a sum equal to 25 per centum of the construction cost of the vessel paid by the Commission (excluding cost of national-defense features as above provided) such cash payment to be made at the time and in the same proportion as provided for the payment of the construction cost in the contract between the shipbuilder and the Commission; and the balance of such purchase price shall be, paid by the applicant, within twenty years after delivery of the vessel and in not to exceed twenty equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Commission to the applicant. Interest at the rate of 3.5 per centum per annum shall be paid on all installments of purchase price remaining unpaid.

(d) In case a construction subsidy is applied for under this title by an applicant who has as his principal place of business a place on the Pacific coast of the limited States (but not including one who, having been in business on or before August 1, 1935, has changed his principal place of business to a place on the Pacific coast of the United States after such date) to aid in the construction or reconditioning of a vessel to be operated in foreign trade in a service, route, or line from ports on the Pacific coast of the United States, and the amount of the bid of the shipbuilder on the Pacific coast who is the lowest responsible bidder on such coast for such construction or reconditioning does not exceed the amount of the bid of the shipbuilder on the Atlantic coast of the United States who is the lowest responsible bidder therefor by more than 6 per centum of the amount of the bid of such Atlantic coast shipbuilder, the Commission shall, except as provided in subsection (e), approve such Pacific coast bid, and in such case no payment shall be made to aid in such construction or reconditioning unless the applicant accepts the bid of such Pacific coast shipbuilder and agrees to designate and continue as the home port of the vessel to be constructed or reconditioned, a port on the Pacific coast.

(e) If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Commission that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if the applicant agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Commission 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 Commission. In such event the Commission is authorized to pay for any such vessel so constructed from its construction fund. The Commission is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to an applicant 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), such sale to be in accordance with all the provisions of this title.

**SEC. 503.** Upon completion of the construction of any vessel in respect to which a construction subsidy is to be allowed under this title and its delivery by the shipbuilder to the Commission, 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 applicant with warranty against liens, pursuant to the contract of purchase between the applicant and the Commission hereinbefore provided for. The vessel shall remain documented under the laws of the United States for not less than twenty years, and so long as there remains due the United States any principal or interest on account of the purchase price, whichever shall be the longer period. At the time of delivery of the vessel the applicant shall execute and deliver a first preferred mortgage to the United States to secure payment of any sums due from the applicant in respect to said vessel. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920.

**SEC. 504.** Where an eligible applicant under the terms of this title desires to finance the construction of a proposed vessel according to approved plans and specifications rather than purchase the same vessel from the Commission as hereinabove authorized, the Commission may permit the applicant to obtain and submit to it competitive bids from American shipyards for such work. If the Commission considers the bid of the shipyard in which the applicant desires to have the vessel built fair and reasonable and if it is the lowest bid, it may approve such bid and become a party to the contract or contracts or other arrangements for the construction of such proposed vessel and may agree to pay to the shipbuilder a construction subsidy in an amount determined by the Commission in accordance with section 502 of this title: Provided, however, That no 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 title to protect the interests of the United States as the Commission deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title and operated as approved by the Commission under the requirements applicable to vessels constructed under this Act.

### SEC. 505.

(a) All construction in respect of which a subsidy is allowed under this title shall be performed in a shipyard within the continental limits of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the applicant to reject, and in the Commission to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, material men, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Commission shall be accompanied by all detailed estimates upon which it is based. The Commission may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept permanently on file.

(b) No contract shall be made for the construction of any vessel under this Act unless the shipbuilder shall agree

- (1) to make a report under oath to the Commission upon completion of the contract, setting forth in the form prescribed by the Commission the total contract price the total cost of performing the contract, the amount of the shipbuilder's overhead charged to such cost, the net profits and the percentage such net profit bears to the contract price, and such other information as the Commission shall prescribe;
- (2) to pay to the Commission profit as hereinafter provided shall be determined by the Commission, in excess of 10 per centum of the total contract prices of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: Provided, That if there is a net loss on all such contracts or subcontracts completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year: Provided, That, if such amount is not voluntarily paid, the Commission shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected;
- (3) to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this Act, and any subdivision of any contract or subcontract involving an amount in excess of \$10,000 shall be subject to the conditions herein prescribed;
- (4) that the books, files, and all other records of the shipbuilder, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to, inspection and audit by any person designated by the Commission, and the premises, including ships under construction, of the shipbuilder, shall at all reasonable times be subject to inspection by the agents of the Commission; and

(5) to make no subcontract unless the subcontractor agrees to the foregoing conditions: Provided, That this section shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Commission, and the Commission shall report annually to the Congress the names of such contractors and subcontractors affected by this provision, together with the applicable contracts and the amounts thereof.

(c) The method of determining the shipbuilder's profit shall be prescribed by the Commission: Provided, That in computing such profits no salary of more than \$25,000 per year to any individual shall be considered as a part of the cost of building such ship, and the Commission shall scrutinize construction costs and overhead expenses to determine that they are fair, just, and not in excess of a reasonable market price for commodities or goods or services purchased or charged.

(d) The Commission may, with the consent of the Secretary of the Treasury, utilize the services of Treasury Department employees engaged in similar functions in the determination or collection of shipbuilder profits in naval construction.

(e) If the shipbuilder whose bid has been approved by the Commission and accepted by the applicant, as provided in section 502 of this title, shall refuse to agree to any of the requirements of this section, the Commission is authorized to rescind its approval of such bid and to advertise for new bids, or, in its discretion, the Commission may have the vessel or vessels in question constructed in a United States navy yard.

**SEC. 506.** It shall be unlawful to operate any vessel, for the construction of which any subsidy has been paid pursuant to this title, other than exclusively in foreign trade, or on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, unless the owner of such vessel shall receive the written consent of the Commission so to operate and prior to such operation shall agree to pay to the Commission, upon such terms and conditions as the Commission may prescribe, an amount which bears the same proportion to the construction subsidy theretofore paid or agreed to be paid (excluding cost of national-defense features as hereinbefore provided), as the remaining economic life of the vessel bears to its entire economic life. If an emergency arises which, in the opinion of the Commission, warrants the temporary transfer of a vessel, for the construction of which any subsidy has been paid pursuant to this title, to service other than exclusive operation in foreign trade, the Commission may permit such transfer: Provided That no operating differential subsidy shall be paid during the duration of such temporary or emergency period, and such period shall not exceed three months. Every contractor receiving a contract for a construction-differential subsidy under the provisions of this title shall agree that if the subsidized vessel engages in domestic trade on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or loads or discharges cargo or passengers at an island possession or island territory as permitted by this section, that the contractor will repay annually to the Commission that proportion of one-twentieth of such construction subsidy as the gross revenue of such protected trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

**SEC. 507.** If a contract is made by the Commission under authority of this title for the construction and sale of a new vessel to replace a vessel exclusively operated in foreign trade, which in the judgment of the Commission should be replaced because it is obsolete or inadequate for successful operation in such trade, the Commission is authorized, in its discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than a twenty-year life of the vessel and less a proper deduction for obsolescence, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: Provided, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: And provided further, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

**SEC. 508.** If the Commission shall determine that any vessel transferred to it by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Commission is authorized

(1) to scrap said vessel, or

(2) to sell such vessel for cash, after appraisalment and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: Provided, That the purchaser thereof shall enter into an undertaking with sureties approved by the Commission that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

**SEC. 509.** Any citizen of the United States may make application to the Commission for aid in the construction of a new vessel to be operated in the domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Commission, the vessel may be constructed and sold to such applicant under the same terms and conditions as are provided in this Act for the construction and sale of vessels to be operated in foreign trade, but no construction subsidy shall be allowed (except for the cost of national-defense features which shall be paid by the Commission), and the applicant shall be required to pay the Commission not less than 25 per centum of the cost of such vessel (excluding cost of national-defense features); and the balance of such purchase price shall be paid by the applicant within twenty years in not to exceed twenty equal annual installments, with interest at 3.5 per centum per annum, secured by a preferred mortgage on the vessel sold and otherwise secured as the Commission may determine: Provided, That in case a vessel is to be constructed under this section for an applicant who has as his principal place of business a place on the Pacific coast of the United States (but not including one who having been in business on or before August 1, 1935, has changed his principal place of business to a place on the Pacific coast of the United States after such date), to be operated in a coastwise, intercoastal, or other domestic service, route, or line from or on the Pacific coast of the United States, and the amount of the lowest responsible bid of shipyards on such coast for the construction of such vessel does not exceed the amount of the lowest responsible bid therefor of shipyards on the Atlantic coast of the United States by more than 6 per centum of the amount of the bid of such Atlantic coast shipyard, such vessel shall be constructed for the applicant by the Commission only if the applicant accepts such lowest responsible bid of the Pacific coast shipyard, and agrees to designate and continue as the home port of the vessel to be constructed a port on the Pacific coast of the United States. The minimum rate of interest on deferred payments shall be three-fourths of 1 per centum lower than the minimum rate which would otherwise be applicable, with respect to the periods of construction of such vessel and its operation exclusively in coastwise, intercoastal, and other domestic trade. Such lower interest rate shall not apply with respect to any period in which the applicant

(1) Does not continue as its home port a port on the Pacific coast of the United States;

(2) Operates the vessel in coastwise or other domestic trade other than on the Pacific coast

(3) Operates the vessel in intercoastal or foreign trade except to and from ports on the Pacific coast; or

(4) Having been in business before August 1, 1935, and having changed his principal place of business to a place on the Pacific coast after such date, maintains his principal place of business at any place on the Pacific coast.

## TITLE VI – OPERATING-DIFFERENTIAL SUBSIDY

### SEC. 601.

(a) The Commission 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. No such application shall be approved by the Commission unless it determines that

(1) the operation of such vessel or vessels in such service, route, or line is required to meet foreign-flag competition and to promote the foreign commerce of the United States, 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 can and will build or purchase, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate and maintain the service, route, or line, 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 Act.

(b) Every application for an operating-differential subsidy under the provisions of this title 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 Commission. All such statements shall be under oath or affirmation and in such form as the Commission shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.

**SEC. 602.** No contract for an operating-differential subsidy shall be made by the Commission for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Commission, after a full and complete investigation and hearing, shall determine that an operating subsidy is necessary to meet competition of foreign-flag ships.

### SEC. 603.

(a) If the Commission approves the application, it 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 such service, route, or line for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Commission shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Commission.

(b) Such contract shall provide that the amount of the operating, differential subsidy shall not exceed the excess of the fair and reasonable cost of insurance, maintenance, repairs not compensated by insurance, wages and subsistence of officers and crews, and any other items of expense in which the Commission shall find and determine that the applicant is at a substantial disadvantage in competition with vessels of the foreign country hereinafter referred to, 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 501 (b) 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.

(c) The amount of such subsidy shall be determined and payable on the basis of a final accounting made as soon as practicable after the end of each year or other period fixed in the contract. The Commission may provide for in the contract, or otherwise approve, the payment, from time to time during any such period of such amounts on account as it deems proper. Such payments on account shall

in no case exceed 75 per centum of the amount estimated to have accrued on account of such subsidy and shall be made only after there has been furnished to the Commission such security as it determines to be reasonable and necessary to insure the refund of any overpayment.

No such operating-differential subsidy shall be paid until the contractor shall have furnished evidence satisfactory to the Commission that the wages prescribed in accordance with subsection 301 (a) of this Act have been paid to the ship's personnel.

**SEC. 604.** If in the case of any particular foreign-trade route the Commission finds the subsidy provided for in this part of this title in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, it may grant such additional subsidy as it determines to be necessary for that purpose: Provided, That no such additional subsidy shall be granted, and no part thereof paid, except upon an affirmative vote of all the members of the Commission.

**SEC. 605.**

(a) No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: Provided, however, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the Great Lakes or on the inland waterways of the United States shall be considered for the purposes of this Act to be operating in foreign trade.

(b) No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty years of age unless the Commission finds that it is in the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon, and the Commission shall include in each annual report a full report covering each case in which such exception is made, with the reasons therefor.

(c) No contract shall be made under this title with respect to a vessel to be operated on a service, route, or line served by citizens of the United States which would be in addition to the existing service, or services, unless the Commission shall determine after proper hearing of all parties that the service already provided by vessels of United States registry in such service, route, or line is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in a service, route, or line served by two or more citizens of the United States with vessels of United States registry, if the Commission shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in competitive services, routes, or lines, unless following public hearing, due notice of which shall be given to each line serving the route, the Commission shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Commission, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as it may deem proper.

**SEC. 606.** Every contract for an operating-differential subsidy under this title shall provide

(1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Commission or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Commission, on its own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as it may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Commission. Its decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Commission shall state its findings of fact;

(2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Commission shall determine, for any periods in which the vessel or vessels are laid up;

(3) that if the Commission shall determine that a change in the service, route, or line, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions;

(4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels on such service, route, or line, with a reasonable profit upon his investment, and applies to the Commission for, a modification or rescission of his contract to maintain such service, route, or line, and the Commission determines that such claim is proved, the Commission shall modify or rescind such contract and permit the contractor to withdraw such vessels from such service, route, or line, upon a date fixed by the Commission, 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 when at the end of any five-year period during which an operating-differential subsidy has been paid, and when prior to the end of any such five-year period the contract shall be terminated, if the net profit of the contractor on his subsidized vessels and services incident thereto during such period or time, after deduction of depreciation charges based upon a twenty-year life expectancy of the subsidized vessels, has exceeded 10 per centum per annum upon the contractor's capital investment necessarily employed in the operation of the subsidized vessels services, routes, and lines, the contractor shall pay to the United States an amount equal to one-half of such profits in excess of 10 per centum per annum as partial or complete reimbursement for operating-differential-subsidy payments received by the contractor for such five-year period, but the amount of excessive profit so recaptured shall not in any case exceed the amount of the operating-differential-subsidy payments theretofore made to the contractor for such period under such contract and the repayment of such reimbursement to the Commission shall be subject to the provisions of section 607;

(6) that the contractor shall conduct his operations with respect to the vessel's services, routes, and lines covered by his contract in the most economical and efficient manner, but with due regard to the wage and manning scales and working conditions prescribed by the Commission as provided in title III; and

(7) that whenever practicable, the operator shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as, defined in section 505a herein, except when it is necessary to purchase supplies and equipment outside the United States to enable such vessel to continue and complete her voyage, and the operator shall perform repairs to subsidized vessels within the continental limits of the United States, except in an emergency.

**SEC. 607.**

(a) Every contract for an operating-differential subsidy made under authority of this title shall provide that the contractor shall be entitled to annually withdraw from net earnings of subsidized vessels and services incident thereto as profit, if the contractor is a natural person or a partnership, or may pay to its shareholders or stockholders, as dividends, if the contractor is an association or corporation, a sum not in excess of 10 per centum per annum on the contractor's capital necessarily employed in his business, except subject to the further provisions of this section which likewise shall be incorporated in such contract.

(b) To insure the prompt payment of the contractor's obligations to the United States and the replacement of the contractor's subsidized vessels as may be required, the contractor shall create and maintain, out of gross earnings, during the life of such contract, a "capital reserve fund", in such depository or depositories as may be approved by the Commission. In this fund the contractor shall deposit, annually or oftener, as the Commission may require, an amount equal to the annual depreciation charges on the contractor's vessels on which the operating differential is being paid, such depreciation charges to be computed on a twenty-year life expectancy of the subsidized vessels: Provided, however, That if, during an accounting year, the annual depreciation charges on the contractor's line of subsidized vessels has not been earned, in whole or in part, over and above the annual expense of operation of such vessels (exclusive of said annual depreciation thereon), the contractor shall not be required to deposit in his capital reserve fund for such accounting year a sum in excess of the amount of annual depreciation actually earned during that year but shall make up any and all deficiencies in his capital reserve fund as soon as the earnings of his subsidized vessels in excess of annual expenses of operation shall permit. The proceeds of all insurance indemnities received by the contractor on account of the total loss of any subsidized vessel shall in also be deposited in the capital reserve fund.

The contractor shall also deposit in the capital reserve fund, from time to time, such percentage of the annual net profits of the contractor's business covered by the contract as the Commission shall determine is necessary to further build up a fund for replacement of the contractor's subsidized ships; but the Commission shall not require the contractor to make such deposit of the contractor's net in profits in the capital reserve fund unless the cumulative net profits of the contractor, at the time such deposit is to be made, shall be in excess of 10 per centum per annum from the date the contract was executed. From the capital reserve fund so created, the contractor may pay the principal, when due, on all notes secured by mortgage on the subsidized vessels and may make disbursements for the purchase of replacement vessels or reconstruction of vessels or additional vessels to be employed by the contractor on an essential foreign-trade line, route, or service approved by the Commission, but payments from the capital reserve fund shall not be made for any other purpose.

(c) To attain the public objects for which the financial aid provided for in such contract is extended and to insure the continued maintenance and successful operation of the subsidized vessels, the contractor shall create and maintain during the life of such contract, a "special reserve fund" in such depository or depositories as the Commission shall approve.

In this reserve fund, the contractor shall deposit annually the profits earned by the business of the subsidized vessels and services incident thereto in excess of 10 per centum per annum and in excess of the percentage of profits deposited in the capital reserve fund, as provided in subsection (b) of this section. From the special reserve fund the contractor may make the following disbursements and no others:

(1) Reimbursement to the contractor's general funds for any losses on the operation of the subsidized vessels and services incident thereto sustained subsequent to the execution of the operating-differential-subsidy contract;

(2) Reimbursement to the contractor's general funds for current operating losses on completed voyages of subsidized vessels whenever the Commission shall determine it is improbable that such current losses will not be made up by profits on other voyages during the current year;

(3) Payment of amounts due from the contractor to the Commission for reimbursement as provided in clause 5 of section 606, but such reimbursement shall be deferred until the amount on deposit in the special reserve fund shall be sufficiently in excess of 5 per centum of the capital necessarily employed in the business so that payment of such reimbursement to the Commission will not reduce the special reserve fund below a sum equal to such 5 per centum of capital necessarily employed in the business: Provided, however, That such reimbursement to the Commission, if so deferred, shall be payable from the special reserve fund or other funds upon termination of the contract and the United States shall then have a preferred lien on the special reserve fund for such deferred reimbursement

(4) After reimbursement to the contractor's general funds of all operating losses has been made as provided in clause 1, and after reimbursement to the Commission of all amounts due from the contractor, as determined under clause 5 of section 606, if the amount accumulated in the special reserve fund shall then be in excess of 5 per centum of the capital necessarily employed in the business, the contractor may, if the Commission approves, withdraw some or all of such excess reserve and pay the sum so withdrawn into the contractor's general funds or distribute the sum so withdrawn as a

special dividend to the contractor's shareholders or stockholders or as a bonus to officers or employees, as the contractor may determine.

(d) The Commission shall adopt and prescribe rules and regulations for the administration of the reserve funds contemplated by this section and shall include therein a definition of the term "net earnings" and the term "capital necessarily employed in the business", as such terms are employed in this section: Provided, however, That the term "net earnings" shall take into account as a proper accounting charge to operation of vessels expense, an annual depreciation charge on the vessels, computed on the economic life of the vessel being twenty years and the term "capital necessarily employed in the business" shall not include borrowed capital.

Upon application of the contractor, the Commission, in its discretion, may permit the investment by the operator of some or all of the contractor's capital and special reserve fund in approved interest-bearing securities, approved by the Commission, upon condition that the interest on such securities shall be deposited in the capital reserve fund.

(e) If, during any accounting year, the contractor's general funds have become seriously depleted due to operating losses on the subsidized vessels and the special reserve fund has been exhausted, the Commission may, in its discretion, permit the contractor temporarily to withdraw from his capital reserve fund such excess therein on deposit over and above the amount necessary to pay the principal amount currently due or about to become due on the contractor's mortgage obligation on the subsidized vessels: Provided, however, That the sum so withdrawn shall be repaid to the capital reserve fund as soon as the contractor's financial condition shall permit.

(f) The earnings of any contractor receiving an operating-differential subsidy under authority of this Act, which are deposited in the contractor's reserve funds as provided in this section, except earnings withdrawn from the "special reserve funds" and paid into the contractor's general funds or distributed as dividends or bonuses as provided in paragraph 4 of subsection (c) of this section, shall be exempt from all Federal taxes.

**SEC. 608.** No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Commission. If it 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 Act applicable there to, and the rules and regulations prescribed pursuant to this Act. 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 Commission, or if the operation of the service, route, lines 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 Commission 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 it under such contract shall be expended.

**SEC. 609.**

(a) The Commission 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.

(b) If the holder of any contract under this title has filed a petition under any provision of the Bankruptcy Act or has applied for the appointment of a receiver or is in default under any provisions of a ship mortgage given to the United States, the Commission may cancel or modify the contract as it finds advisable, and is hereby granted exclusive power to determine the purpose for which any payments made by it under such contract shall be expended.

**SEC. 610.** An operating-differential subsidy shall not be paid under authority of this title 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 the passage of this Act it shall be either a vessel constructed according to plans and specifications approved by the Commission and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Commission and the Navy Department as otherwise useful to the United States in time of national emergency.

**TITLE VII—PRIVATE CHARTER OPERATION**

**SEC. 701.** Whenever the Commission shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 101 of this Act, and the objectives set forth in section 210 of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of titles V and VI, the Commission is hereby authorized and directed to complete its long-range program previously adopted as hereinafter provided in this title.

**SEC. 702.** The Commission is authorized to have constructed in domestic yards, on the Atlantic and Gulf and Pacific coasts, such new vessels as it shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: Provided, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this Act, cannot be obtained from private shipbuilders, the Commission is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards.

**SEC. 703.**

(a) No contract for the building of a new vessel or for the reconditioning or reconstruction of any other vessel, shall be made by the Commission with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this title shall be subject to all the provisions and requirements prescribed in title V of this Act with respect to contracts with a private shipbuilder for the construction of vessels under authority of that title.

(c) All bids required by the Commission for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the Commission's vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

**SEC. 704.** All vessels transferred to or otherwise acquired by the Commission in any manner may be chartered or sold by the Commission pursuant to the further provisions of this Act. All vessels transferred to the Commission by this Act and now being operated by private operators on lines in foreign commerce of the United States may be temporarily operated by the Commission for its account by private operators until such time and upon such operating agreements as the Commission may deem advantageous, but the Commission shall arrange as soon as practicable to offer all such lines of vessels for charter as hereinafter provided and all operation of the Commission's vessels by private operators under such operating agreements shall be discontinued within one year after the passage of this Act.

**SEC. 705.** As soon as practicable after the passage of this Act, and continuing thereafter, the Commission shall arrange for the employment of its vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Commission shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: Provided, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States. It shall be the policy of the Commission to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920, and in strict accordance with the provisions of section 5 of said Act, or by demising its vessels on bare-boat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided.

**SEC. 706.**

(a) The Commission shall not charter its vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the (Commission's vessels shall state the number, type, and tonnage of the vessels the Commission is offering for bare-boat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Commission shall deem necessary for the information of prospective bidders.

(b) The Commission shall have authority to, and shall announce its advertisements for bids that the Commission reserves the right to, reject any and all bids submitted.

**SEC. 707.**

(a) The Commission shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Commission shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) The Commission may reject the highest or most advantageous or any other bid, if, in the Commission's discretion, the charter hire offered is deemed too low, or the Commission determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid, upon request of the bidder, shall be stated to such bidder in writing.

(c) If the highest bid is rejected, the Commission may award the charter to the next highest bidder, or may reject all bids and readvertise the line: Provided, however, That the Commission may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

**SEC. 708.** The Commission may, if in its discretion financial aid is deemed necessary, enter into a contract with any charterer of its vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions as are elsewhere provided in this Act with respect to payments of such subsidies to operators of privately owned vessels.

**SEC. 709.**

(a) Every charter made by the Commission pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall

exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Commission, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: Provided, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Commission and published in the advertisement for bids for such charter.

**SEC. 710.** Every charterer of the Commission's vessels shall be required to deposit with the Commission an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Commission shall require.

**SEC. 711.** The charters to be made by the Commission pursuant to the provisions of this title shall demise the vessels to the charterer subject to all usual conditions contained in bare-boat charters, and until January 1, 1940, shall be for terms of three years or less as the Commission may decide: Provided, That after January 1, 1940, charters may be executed by the Commission for such terms as the experience gained by the Commission shall indicate are to the best interests of the United States and the merchant marine.

**SEC. 712.** Every charter shall provide --

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Commission shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: *Provided*, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Commission itself as, in its discretion, it may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Commission.

(c) That the Commission shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That in any national emergency as proclaimed by the President of the United States, the Commission may terminate the charter without cost to the United States, upon such notice to the charterers as the President of the United States shall determine.

**SEC. 713.** In the awarding of charters, the Commission shall take in consideration the charterer's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Commission is directed to refrain from chartering its vessels to any person, appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

**SEC. 714.** If the Commission shall find that any trade route (determined by the Commission to be an essential trade route as provided in section 211 of this Act) cannot be successfully developed and maintained and the Commission's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under title V and VI of this Act, the Commission is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 5 per centum of the construction cost of such new vessel or vessels. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Commission, within five years after the execution of the charter, upon the same terms and conditions as are provided in title V for the purchase of new vessels from the Commission with credit on the purchase price for all charter-hire theretofore paid by the purchaser on account of such charter.

## TITLE VIII -- CONTRACT PROVISIONS

**SEC. 801.** Every contract executed by the Commission under the provision of titles VI or VII of this Act shall contain provisions requiring

(1) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Commission: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission;

(2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Commission, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Commission affect the financial results in, the performance of, or transactions or operations under, such contract;

(3) that the Commission shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever it may deem it necessary or desirable; and

(4) that upon the willful failure or refusal of any person described in this so section to comply with the contract provisions required by this section, the Commission shall have the right to rescind the contract, and upon such rescission the United States shall be relieved of all further liability on such contract.

**SEC. 802.** Every contract executed by the Commission under authority of title V of this Act shall provide that:

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the fair actual value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels. In computing the value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue for income-tax purposes.

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

**SEC. 803.** It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer under title VII of this Act to employ any person or concern performing or supplying stevedoring, ship-repair, ship-chandler, towboat, or kindred services to supply such services to the operator's subsidized or chartered vessels if such contractor, or any subsidiary company, holding company, affiliate company, or associate company of such contractor, or any officer, director, or employee of such contractor, or any member of the immediate family of any such contractor, officer, director, or employee, or any member of the immediate family of any officer, director, or employee, of such subsidiary company, holding company, affiliate company, or associate company of such contractor, owns any pecuniary interest directly or indirectly in the person or concern supplying such services to the contractor's subsidized or chartered vessels or receives any payment or other thing of value directly or indirectly as a result of such employment or services: *Provided*, That, with the express written approval of the Commission, such contractor or a subsidiary company wholly owned by such contractor may perform such services to its own vessels if the profits, if any, of such subsidiary company or companies with respect to such services shall become a part of the earnings of such contractor and shall be accounted for as provided in clause 5 of section 606: *Provided* further, That the contractor may, in the discretion of the Commission, contract with a holding company, affiliate company, or associate company of such contractor for the use of terminal facilities by such contractor, if the contract is approved by the Commission.

**SEC. 804.** It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly, to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Commission to be essential as provided in section 211 of this Act: *Provided*, however, That under special circumstances and for good cause shown, the Commission may, in its discretion, waive the provisions of this section as to any contractor, by affirmative vote of four of its members, except as otherwise provided in subsection 201 (a).

**SEC. 805.**

(a) It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Commission. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Commission shall give a hearing to the applicant and the intervenors. The Commission shall not grant any such application if the Commission finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: *Provided*, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without, further proceedings as to the competition in such route or trade.

If such application be allowed it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) Whenever any contractor under title VI or title VII receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Commission, or has not maintained, in a manner satisfactory to the Commission all of the reserves provided for in this Act, the Commission shall have the right to supervise the number and compensation of all officers and employees of the contractor (c) no director, officer, or employee (which terms shall be construed in the broadest sense to include, but not to be limited to, managing trustee or other administrative agent) shall receive from any contractor, holding a contract authorized by title VI or title VII of this act and its affiliate, subsidiary, associate, directly or indirectly, wages, salary, allowances of compensation in any form for personal services which will result in such person's receiving a total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum, and no such person or concern shall be qualified to receive or thereafter to hold any contract under this part, if such person or concern its subsidiary, affiliate, or associate pays or causes to be paid, directly or indirectly, wages, salary, allowances, or compensation in any form for personal services which result in such person's receiving a total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum.

(d) It shall be unlawful, without express written consent of the Commission for any contractor holding a contract authorized under title VI or VII of this Act to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this Act, including limitations of profits and salaries. No contractor shall receive an operating-differential subsidy for the operation of any chartered vessel save and except during a period of actual emergency determined by the Commission.

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

(f) Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this Act, and upon determining that such a violation has occurred the Commission may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

#### **SEC. 806.**

(a) Whoever shall consult with, or enter into an agreement with, or inform any other bidder, or officer, director, executive, agent, or employee of any such other bidder, as to the amount, the terms, or the conditions of any bid submitted to the Commission prior to the public opening of such bids, or enter into any combination, understanding, agreement, or arrangement whatsoever, to prevent the making of any bona-fide bid for any contract or charter under this Act, to induce any other person not to bid for any such contract or charter, or to deprive the United States in any way of the benefit of full, free, and secret competition in the awarding of any such contract or charter shall be guilty of a misdemeanor: Provided, that this section shall also apply to bidding for contracts under the provisions of section 504 of this Act.

(b) Whenever any natural person is found guilty in any district court of the United States of any act or acts declared in this Act to constitute a misdemeanor, he shall be punished by a fine of not more than \$10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this Act to be unlawful, such corporation shall be punished by a fine of not more than \$25,000.

(c) In addition to the punishment prescribed in subsection (a) of this section, any person or corporation convicted of a misdemeanor under the provisions of this Act shall be ineligible, at the discretion of the Commission, to receive any benefits under titles V and VI of this Act, or to receive a charter under title VII of this Act, for a period of five years after conviction.

**SEC. 807.** It shall be unlawful for any person employed or retained by any shipbuilder or ship operator holding or applying for a contract under the provisions of this Act, or employed or retained by any subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator, to present, advocate, or oppose any matter affecting any such shipbuilder or ship operator or any subsidiary, affiliate, associate, or holding company thereof, before the Congress or any Member or committee thereof, or before the Commission, or any other governmental agency or any member, officer, or employee thereof, unless such shipbuilder or ship operator shall have previously filed with the Commission in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment. Whosoever shall violate this provision shall be guilty of a misdemeanor.

**SEC. 808.** It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer or under title VII of this Act unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

**SEC. 809.** Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, and Pacific ports of the United States. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

**SEC. 810.** It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

#### **TITLE IX -- MISCELLANEOUS PROVISIONS**

**SEC. 901.** Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

#### **SEC. 902.**

(a) It shall be lawful for the Commission to requisition any vessel documented under the laws of the United States, during any national emergency declared by proclamation of the President, and when so taken or used, the owner shall be paid the fair actual value of the vessel at the time of taking, or paid the just compensation for the vessel's use based upon such fair actual value (excluding any national defense features previously paid for by the United States), less a deduction from such fair actual value of any construction differential subsidy allowed under this Act, and in no case shall such fair actual value be enhanced by the causes necessitating the taking. In the case of a vessel taken and used, but not purchased, the vessel shall be restored to the owner in a condition at least as good as when taken, less reasonable wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the vessel in such condition. The owner shall not be paid for any consequential damages arising from such taking or use.

(b) Except in cases of vessels where a construction differential subsidy has been allowed and paid, in which case the value of the vessel for the purposes of this section shall be established as provided in section 802, the Commission shall ascertain the fair compensation for such taking or use and shall certify to Congress the amount so found by it to be due for appropriation and payment to the person entitled thereto. If the amount found by the Commission to be due is unsatisfactory to the person entitled thereto, such person shall be entitled to sue the United States for the amount of such just compensation and such suit shall be brought in the manner prescribed by paragraph 20 of section 24, or by section 145 of the Judicial Code, as amended (U. S. C., title 28, secs. 41, 250).

**SEC. 903.** The following Acts and parts of Acts shall stand repealed:

(a) All of the provisions of sections 3 to 8, inclusive, section 10, section 11, section 35, and section 43 of the Shipping Act, 1916, as amended.

(b) All of the provisions of subsection (b) (4) of section 2, section 3, section 11, section 14, and section 35 of the Merchant Marine Act, 1920, as amended.

(c) All of the provisions of sections 201, 301, 302, 401 to 413, inclusive, 601, and 702 of the Merchant Marine Act, 1928, as amended: Provided, That any contract lawfully entered into under authority of sections 401 to 413, inclusive, of such Act shall remain in full force and effect as though these sections were not repealed, subject, however, to the further provisions of this Act.

(d) The last sentence in section 3 of the Intercoastal Shipping Act, 1933.

**SEC. 904.** Whenever the words "United States Shipping Board" or the words "the Board" are used in any prior Act, such Acts are hereby amended so that such words shall be applicable to the United States Maritime Commission.

**SEC. 905.** When used in this Act --

(a) The words "foreign trade" mean trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country.

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

(c) The words "citizen of the United States" include a corporation, partnership or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U. S. C., title 46, sec. 802).

(d) The word "construction" includes outfitting and equipping.

**SEC. 906.** If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons. or circumstances, shall not be affected thereby. This Act may be cited as the Merchant Marine Act, 1936.

**SEC. 907.** Except as otherwise provided herein this Act shall take effect thirty days after a majority of the members of the Commission have taken the oath of office.

Approved, June 29, 1936.

TITLE 46 - SHIPPING

CHAPTER II - MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER K - REGULATIONS UNDER PUBLIC LAW 91 - 469

PART 391 - FEDERAL INCOME TAX ASPECTS OF THE CAPITAL CONSTRUCTION FUND

391.0 - Statutory provisions; section 607, Merchant Marine Act, 1936, as amended.

Sec. 607 (a) Agreement Rules.

Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary of Transportation 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). 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 of Transportation may by regulations prescribe or are set forth in such agreement; except that the Secretary of Transportation 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)) which is attributable to the operation of the agreement vessels.

(b) Ceiling on Deposits.

(1) The amount deposited under subsection (a) 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) Requirements as to Investments.

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 of Transportation. They may be invested only in interest-bearing securities approved by the Secretary of Transportation; except that, if the Secretary of Transportation 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 for Deposits.

(1) For purposes of the Internal Revenue Code of 1954 (A) Taxable income (determined without regard to this section) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A).

(B) Gain from a transaction referred to in subsection (b)(1)(C) 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 (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) Establishment of Accounts.

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), (B) Amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B), (C) 85 percent of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) 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), 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), (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), 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), and (E) 15 percent of any dividend referred to in paragraph (2)(C).

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

(f) Purposes of Qualified Withdrawals.

(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 of Transportation, 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 of Transportation 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.

(1) Any qualified withdrawal from a fund shall be treated (A) First as made out of the capital account.

(B) Second as made out of the capital gain account, and (C) Third as made out of the ordinary income account.

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

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to (A) Five-eighths of such portion, in the case of a corporation (other than an electing small business corporation, as defined in section 1371 of the Internal Revenue Code of 1954), or (B) One-half of such portion, in the case of any other person.

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

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) 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.

(1) Except as provided in subsection (i), 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), 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 606(5) of the Merchant Marine Act of 1936 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 of Transportation and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(i) Certain Corporate Reorganizations and Changes in Partnerships.

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.

(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), 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 of Transportation 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 506 of the Act.

(6) The term joint regulations means regulations prescribed under subsection (1).

(7) The term vessel includes cargo handling equipment which the Secretary of Transportation 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.

(l) Records; Reports; Changes in Regulations.

Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary of Transportation or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary of Transportation 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 of Transportation 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.

Other documents:

40 CFR 442.35 Pretreatment standards for existing sources PSES . | 26 CFR 1.552-3 Stock ownership requirement. | 40 CFR 180.1118 Spodoptera exigua nuclear polyhedrosis virus exemption from the requirement of a tolerance. | 30 CFR 77.1800 Cutout switches. | acuerdo n 1158706330000000 of 6 camara de direito criminal d of november 03 2008 | Rectificação n.º 1145/2008 de 23 de Maio de 2008 | acordao n 70026107870 of tribunal de justica do rs decima segunda camara cível of november 20 2008 | acórdão n° 2000/0113398-5 of superior tribunal de justiça - sexta turma, of march 27... | acórdão n° rec-22952 of são paulo of november 23 2004 | Entscheidungstext 3Ob1072/92 Oberster Gerichtshof October 15 1992 | Despacho extracto n.º 14936/2008 de 29 de Maio de 2008 | Decisao Monocratica N 2008/0091730-6 of Superior Tribunal de Justica Sexta Turma of May 12 2008 | acordao n 71001516384 of turmas recursais primeira turma recursal cível of march 27 2008 | Acordao N 2007/0185274-0 of Superior Tribunal de Justica Segunda Turma of November 06 2007

**TEXT, EXPLANATION AND INTERPRETATION OF UC AMENDMENTS**  
**Made by Public Law 99-514, The Tax Reform Act of 1986**

**I. Section 121. Taxation of Unemployment Compensation.**

**A. Text of Amendment.**

1. Amendment to Section 85 of the Internal Revenue Code (IRC) of 1986:

SEC. 85. UNEMPLOYMENT COMPENSATION.

(a) GENERAL RULE--In the case of an individual, gross income includes unemployment compensation.

(b) UNEMPLOYMENT COMPENSATION DEFINED.--For purposes of this section the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

2. Effective Date:

SECTION 151. EFFECTIVE DATES.

(b) UNEMPLOYMENT COMPENSATION.--The amendment made by section 121 shall apply to amounts received after December 31, 1986, in taxable years ending after such date.

**B. Discussion.** The Revenue Act of 1978 designated specific income levels at which unemployment benefits were taxable (\$25,000 for joint returns or \$20,000 for single returns). The Tax Equity and Fiscal Responsibility Act of 1982 lowered the applicable income levels to \$18,000 for joint returns or \$12,000 for single returns. Section 121 of the Tax Reform Act of 1986 amends the law to provide that gross income shall include all unemployment benefits.

**C. Implementation.** Each claimant should be informed of this change in income tax law. Notices should be furnished to each claimant currently filing and to new and reopening claimants as claims are filed. Informational pamphlets should be revised when reprinted. A brief supplemental form can be issued in the interim.

**II. Section 122. Exclusion From the Definition of "Gross Income" Certain Prizes and Awards**

**A. General.** Section 122 of the Tax Reform Act of 1986 amends Section 74 of the Internal Revenue Code of 1954 concerning exclusions from the definition of "gross income" of certain prizes and awards. The amendment specifies conditions which must be met to allow such exclusions. Determination of FUTA tax liability will be based upon such definition of gross income.

**B. Effective Date.** The amendments made by Section 122 apply to prizes and awards granted after December 31, 1986 (Section 151(c)).

**C. Implementation.** Since the Internal Revenue Service has the primary authority for administering the FUTA tax provisions it will be responsible for interpreting and applying this provision.

**III. Section 1162. 2-YEAR EXTENSION OF EXCLUSIONS FOR EDUCATIONAL ASSISTANCE PROGRAMS AND GROUP LEGAL PLANS.**

**A. Text of Amendments to Sections 120 and 127 of the IRC of 1986.**

(a) EDUCATIONAL ASSISTANCE PROGRAMS.--

(1) EXTENSION.--Subsection (d) of section 127 (relating to termination of exclusion for amounts received under educational assistance programs) is amended by striking out "1985" and inserting in lieu thereof "1987".

(2) INCREASE IN AMOUNTS.--Paragraph (2) of section 127(a) is amended by striking out "\$5,000" each place it appears in the text and the heading thereof and inserting in lieu thereof "\$5,250".

(b) GROUP LEGAL PLANS.--Subsection (e) of section 120 (relating to termination of exclusion for amounts received under qualified group legal services plans) is amended by striking out "1985" and inserting in lieu thereof "1987".

(c) EFFECTIVE DATES.--

(1) SUBSECTION (a).--The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1985.

(2) SUBSECTION (b).--The amendment made by subsection (b) shall apply to years ending after December 31, 1985.

(3) CAFETERIA PLAN WITH GROUP LEGAL BENEFITS.-If, within 60 days after the enactment of this Act, an employee elects under a cafeteria plan under Section 125 of the Internal Revenue Code of 1986 coverage for group legal benefits to which Section 120 of such Code applies, such election may, at the election of the taxpayer, apply to all legal services provided during 1986. The preceding sentence shall not apply to any plan which on August 16, 1986, offered such group legal benefits under such plan.

**B. Discussion.** Section 1162 of the Tax Reform Act of 1986 provides a two-year extension of the exclusion from the definition of wages under the FUTA of employer-financed educational assistance and group legal service plans (through December 31, 1987).

**C. Implementation.** Since the Internal Revenue Service (IRS) has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

**IV. Section 1705. APPLICABILITY OF UNEMPLOYMENT COMPENSATION TAX TO CERTAIN SERVICES PERFORMED FOR CERTAIN INDIAN TRIBAL GOVERNMENTS (This provision does not amend the FUTA).**

**A. Text of Section 1705 of the Tax Reform Act of 1986:**

(a) IN GENERAL.--For purposes of the Federal Unemployment Tax Act, service performed in the employ of a qualified Indian tribal government shall not be treated as employment (within the meaning of section 3306 of such Act) if it is service--

(1) which is performed--

(A) before, on, or after the date of the enactment of this Act, but before January 1, 1988, and

(B) during a period in which the Indian tribal government is not covered by a State unemployment compensation program, and

(2) with respect to which the tax imposed under the Federal Unemployment Tax Act has not been paid.

(b) DEFINITION.--For purposes of this section, the term "qualified Indian tribal government" means an Indian tribal government the service for which is not covered by a State unemployment compensation program on June 11, 1986.

B. **Discussion.** Section 1705 of the Tax Reform Act of 1986 excludes from the definition of employment for Federal unemployment tax purposes services performed for a qualified Indian tribal government during the period prior to January 1, 1988 if the service was not covered by a State law on June 11, 1986. Presently, the only Indian tribal government we are aware of that meets this requirement is the Ute tribe in Colorado.

C. **Implementation.** Since the IRS has the primary authority for administering the FUTA tax collections, it will be responsible for interpreting and applying this provision.

V. **Section 1706 of the Tax Reform Act of 1986. Treatment of Certain Technical Personnel.**

A. **Text of Amendment.**

(a) IN GENERAL.--Section 530 of the Revenue Act of 1978 is amended by adding at the end thereof the following new subsection:

(d) EXCEPTION.--This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work."

(b) EFFECTIVE DATE.--The amendment made by this section shall apply to remuneration paid and services rendered after December 31, 1986.

B. **Discussion.** Section 530 of the Revenue Act of 1978 (P.L. 95-600) provides that taxpayers who in the past had a reasonable basis, under specified criteria, for not treating workers as employees may continue such treatment without incurring employment tax liability. Section 1706 of the Tax Reform Act of 1986 amends Section 530 to limit its applicability by providing that the section shall not apply to firms engaging the services of such person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work. This means that the IRS will apply common-law rules to these firms in determining liability for employment taxes, including the FUTA tax.

C. **Implementation.** Since the IRS has the primary authority for administering the FUTA tax provisions, it will be responsible for interpreting and applying this provision.

VI. **Section 1884 of the Tax Reform Act of 1986. Technical Corrections in Federal Unemployment Tax Act.**

A. **Text of Amendment:**

The Federal Unemployment Tax Act is amended as follows:

(1) Subparagraph (B) of section 3302(c)(2) (relating to a limit on the credit against the unemployment tax) is amended--

(A) By striking out "determination" the second place it appears in the material preceding clause (i) and inserting in lieu thereof "denominator", and

(B) in clause (i)--

(i) by striking out "percent" immediately preceding the comma at the end thereof, and

(ii) by inserting "percent" after "2.7".

(2) Subparagraph (A) of section 3302(f)(8) (relating to a partial limitation on the reduction of the credit against the unemployment tax) is amended by striking out "1987" and inserting in lieu thereof "1986".

(3) Clause (i) of section 3306(o)(1)(A) (relating to crew leaders who are registered or provide specialized agricultural labor) is amended by striking out "Farm Labor Contractor Registration Act of 1963" and inserting in lieu thereof "Migrant and Seasonal Agricultural Worker Protection Act".

B. **Discussion.** Section 1884 of the Tax Reform Act of 1986 amends Section 3302(f)(8), FUTA, so that the partial limitation on the reduction of the credit against the unemployment tax does not apply after 1985.

C. **Implementation.** No changes are required in State law or procedures except that State laws referring to the "Farm Labor Contractor Registration Act," which no longer exists, may want to incorporate reference to the "Migrant and Seasonal Agricultural Worker Protection Act." This change should be considered where State laws make reference to the "Farm Labor Contractor Registration Act" concerning agricultural coverage requirements or in its definition of a crew leader.

*Comment 4:* HANDLH Should be Included in the Home Market Net Price Calculation

Pasta Zara S.p.A.

*Comment 5:* Treatment of Billing Adjustments

*Comment 6:* Direct Selling Expenses

*Comment 7:* Whether Zara U.S. Sales are CEP or EP

*Comment 8:* Zara's Home Market Level of Trade

*Comment 9:* Wheat Code Classification

*Comment 10:* Calculation of the G&A and Financial Expense Ratios

*Comment 11:* Treatment of Sales Proceeds with Respect to the Cost of Production

[FR Doc. E8-29393 Filed 12-10-08; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Capital Construction Fund—Deposit/Withdrawal Report

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before February 9, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper at (301) 713-2396 or [Charles.Cooper@noaa.gov](mailto:Charles.Cooper@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The respondents will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal

taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders are required pursuant to 50 CFR 259.35 and Public Law 99-514 (The Tax Reform Act, 1986). The information collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported semi-annually to the Secretary of Treasury in accordance with the Tax Reform Act, 1986.

##### II. Method of Collection

The paper forms are currently required to be signed and mailed.

##### III. Data

*OMB Control Number:* 0648-0041.

*Form Number:* NOAA Form 34-82.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 3,600.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 1,200.

*Estimated Total Annual Cost to Public:* \$21,060 in recordkeeping/reporting costs.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 5, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8-29270 Filed 12-10-08; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0061]

#### Federal Acquisition Regulation; Information Collection; Transportation Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning transportation requirements. The clearance currently expires on December 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before February 9, 2009.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405.