

subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(June 29, 1936, ch. 858, title IX, §901j, as added Pub. L. 99-198, title XI, §1142, Dec. 23, 1985, 99 Stat. 1496.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241d, 1241i, 1241j, 1241k, 1241p of this Appendix.

§ 1241o. Definition of United States-flag vessel eligible to carry cargoes under sections 1241f through 1241h of this Appendix

A United States flag¹ vessel eligible to carry cargoes under sections 1241f through 1241h of this Appendix means a vessel, as defined in section 3 of title 1, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

(June 29, 1936, ch. 858, title IX, §901k, as added Pub. L. 99-198, title XI, §1142, Dec. 23, 1985, 99 Stat. 1496.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241d, 1241i, 1241j, 1241p of this Appendix.

§ 1241p. Effect on other laws

Sections 1241d to 1241p of this Appendix shall not be construed as modifying in any manner the provisions of section 1707a(b)(8)¹ of title 7 or chapter 5 of title 5.

(Pub. L. 99-198, title XI, §1143, Dec. 23, 1985, 99 Stat. 1496.)

REFERENCES IN TEXT

Sections 1241d to 1241p of this Appendix, referred to in text, was in the original "this subtitle", meaning subtitle C (§§1141-1143) of title XI of Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1490, which enacted sections 1241d to 1241p of this Appendix.

Section 1707a of title 7, referred to in text, was repealed by Pub. L. 101-624, title XV, §1574, Nov. 28, 1990, 104 Stat. 3702.

CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1241d of this Appendix.

§ 1241q. Exemption of American Great Lakes vessels from restriction on carriage of preference cargoes

(a) Exemption from restriction

The restriction described in subsection (b) of this section shall not apply to an American Great Lakes vessel while it is so designated.

(b) Restriction described

The restriction referred to in subsection (a) of this section is the restriction in section 1241(b)(1) of this Appendix, that a vessel that is—

- (1) built outside the United States;
- (2) rebuilt outside the United States; or
- (3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) Subsequent application of restriction

Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) of this section shall apply as if the vessel had never been a vessel documented under the laws of the United States.

(Pub. L. 101-624, title XV, §1521, Nov. 28, 1990, 104 Stat. 3665.)

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241r, 1241t, 1241u, 1241v of this Appendix.

§ 1241r. Designation of American Great Lakes vessels

(a) In general

The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of sections 1241q to 1241v of this Appendix if—

- (1) the vessel is documented under the laws of the United States;
- (2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d) of this section;
- (3) the owner of the vessel enters into an agreement in accordance with subsection (b) of this section;
- (4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

- (5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) Construction and purchase agreement

As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120-day period following the date of any revocation of such designation under section 1241t of this Appendix, an exclusive right to purchase the vessel for a price equal to—

- (1) the approximate world market value of the vessel; or

¹ So in original. Probably should be "United States-flag".

¹ See References in Text note below.

(2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel;

whichever is greater.

(c) Certain foreign registry and sale not prohibited

Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b) of this section, the owner of the vessel shall not be prohibited from—

(1) transferring the vessel to a foreign registry; or

(2) selling the vessel to a person who is not a citizen of the United States.

(d) Issuance of regulations

Not later than 60 days after November 28, 1990, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

(Pub. L. 101-624, title XV, § 1522, Nov. 28, 1990, 104 Stat. 3665.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsec. (a), was in the original “this subtitle”, meaning subtitle B (§§ 1521-1527) of title XV of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241t, 1241u, 1241v of this Appendix.

§ 1241s. Restrictions on operations of American Great Lakes vessels

(a) In general

Subject to subsection (b) of this section, an American Great Lakes vessel shall not be used—

(1) to engage in trade—

(A) from a port in the United States that is not located on the Great Lakes; or

(B) between ports in the United States;

(2) to carry bulk cargo (as that term is defined in section 1702 of this Appendix¹ which is subject to section 1241(b) or 1241f of this Appendix, or section 2631 of title 10; or

(3) to provide any service other than ocean freight service—

(A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) Off-season carriage exception

(1) In general

Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade

otherwise prohibited by subsection (a)(1)(A) of this section for not more than 90 days during any 12-month period.

(2) Limitation

An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

(Pub. L. 101-624, title XV, § 1523, Nov. 28, 1990, 104 Stat. 3666.)

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241r, 1241t, 1241u, 1241v of this Appendix.

§ 1241t. Revocation and termination of designation

(a) Revocation

The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1241r of this Appendix as an American Great Lakes vessel if the Secretary determines that—

(1) the vessel does not meet a requirement for such designation;

(2) the vessel has been operated in violation of sections 1241q to 1241v of this Appendix; or

(3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1241r(b) of this Appendix.

(b) Civil penalty

The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than \$1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a) of this section.

(c) Termination of designation

The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under sections 1241q to 1241v of this Appendix upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

(Pub. L. 101-624, title XV, § 1524, Nov. 28, 1990, 104 Stat. 3667.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsecs. (a)(2) and (c), was in the original “this subtitle”, meaning subtitle B (§§ 1521-1527) of title XV of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990,

¹So in original. Probably should be followed by a closing parenthesis.

and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241r, 1241u, 1241v of this Appendix.

§ 1241u. Study and report

(a) Study

The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of sections 1241q to 1241v of this Appendix. The study shall include analysis of—

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1721 et seq.]; and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) Report

Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a) of this section.

(Pub. L. 101-624, title XV, § 1526, Nov. 28, 1990, 104 Stat. 3668.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in subsec. (a), was in the original “this subtitle”, meaning subtitle B (§§ 1521-1527) of title XV of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (a)(1), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended. Title II of the Act is classified generally to subchapter III (§ 1721 et seq.) of chapter 41 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241r, 1241t, 1241v of this Appendix.

§ 1241v. Definitions

As used in sections 1241q to 1241v of this Appendix—

(1) American Great Lakes vessel

The term “American Great Lakes vessel” means a vessel which is so designated by the Secretary in accordance with section 1241r of this Appendix.

(2) Great Lakes

The term “Great Lakes” means Lake Superior; Lake Michigan; Lake Huron; Lake Erie;

Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) Great Lakes shipping season

The term “Great Lakes shipping season” means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) Secretary

The term “Secretary” means the Secretary of Transportation.

(Pub. L. 101-624, title XV, § 1527, Nov. 28, 1990, 104 Stat. 3668.)

REFERENCES IN TEXT

Sections 1241q to 1241v of this Appendix, referred to in text, was in the original “this subtitle”, meaning subtitle B (§§ 1521-1527) of title XV of Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3665, which enacted sections 1241q to 1241v of this Appendix and amended section 1241f of this Appendix.

Act of May 13, 1954, referred to in par. (3), is act May 13, 1954, ch. 201, 68 Stat. 93, as amended, which is classified generally to chapter 19 (§ 981 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Agricultural Development and Trade Act of 1990 and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1241r, 1241t, 1241u of this Appendix.

§ 1242. Requisition or purchase of vessels in time of emergency

(a) Compensation; restoration; consequential damages

Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Transportation to requisition or purchase any vessel or other watercraft owned by citizens of the United States, a documented vessel, or a vessel under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, such property shall be restored to the owner in a condition at least as good as when taken, less ordinary wear and tear, or the owner shall be paid an amount for recondition-

ing sufficient to place the property in such condition. The owner shall not be paid for any consequential damages arising from a taking or use of property under authority of this section.

(b) Determination of value of vessel

When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 1212 of this Appendix, and in determining the value of any vessel taken or used, on which a construction-differential subsidy has not been paid, the value of any national defense features previously paid for by the United States shall be excluded.

(c) Charter of vessels; compensation; reimbursement for loss or damage

If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, the Secretary of Transportation, at the time of the taking or as soon thereafter as the exigencies of the situation may permit, shall transmit to the person entitled to the possession of such property a charter setting forth the terms which, in the Secretary's judgment, should govern the relationships between the United States and such person and a statement of the rate of hire which, in the Secretary's judgment, will be just compensation for the use of such property and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rate of hire, the Secretary of Transportation shall pay to such person as a tentative advance only, on account of such just compensation a sum equal to 75 per centum of such rate of hire as the same may from time to time be due under the terms of the charter so tendered, and such person shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: *Provided, however,* That in the event of an election by such person to reject the rate of hire fixed by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of loss or damage to such property, due to operation of a risk assumed by the United States under the terms of a charter prescribed in this subsection, but no valuation of such vessel or other property or mode of compensation has been agreed to, the United States shall pay just compensation for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage.

(d) Determination of amount of compensation

In all cases, the just compensation authorized by this section shall be determined and paid by the Secretary of Transportation as soon as practicable, but if the amount of just compensation determined by the Secretary is unsatisfactory to the person entitled thereto; such person shall

be paid, as a tentative advance only, 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such amount as would equal just compensation therefor, in the manner provided for by sections 1346 and 1491 of title 28: *Provided, however,* That in that event of an election to reject the amount determined by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.

The existence of any valid claim by way of mortgage or maritime claim or attachment lien upon such vessel shall not prevent the taking thereof pursuant to this section: *Provided, however,* That in the event any such claim exists the Secretary of Transportation may in his discretion deposit such portion of the compensation hereunder, or advances on account thereof, as may equal but not exceed the amount of such claims in respect of the vessel, with the Treasurer of the United States, and the fund so deposited shall be available for the payment of such compensation, and shall be subject to be applied to the payment of the amount of any valid claim by way of mortgage or maritime lien or attachment lien upon such vessel, or of any stipulation therefor in a court of the United States, or of any State, subsisting at the time of such requisition or taking of title or possession; the holder of any such claim may commence prior to June 30, 1943, or within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, whichever date is later, and maintain in the United States district court from whose custody such vessel has been or may be taken or in whose territorial jurisdiction the vessel was lying at the time of requisitioning or taking of title or possession, a suit in admiralty according to the principles of libels in rem against the fund, which shall proceed and be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties, and any decree in said suit shall be paid out of the first and all subsequent deposits of compensation; and such suit shall be commenced in the manner provided by section 742 of this Appendix and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary of Transportation and due notice shall under order of the court be given to all interested persons, and any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction.

(e) Use of vessels by Secretary; transfer to other departments or agencies; reimbursement of Secretary

The Secretary of Transportation is authorized to repair, recondition, reconstruct, and operate, or charter for operation, any property acquired under authority of this section. The Secretary of Transportation is further authorized to transfer the possession or control of any such property to any department or agency of the Government of the United States upon such terms and condi-

tions as may be approved by the President. In case of any such transfer the department or agency to which the transfer is made shall promptly reimburse the Secretary of Transportation for the Department of Transportation's expenditures on account of just compensation, purchase price, repairs, reconditioning, reconstruction, or charter hire for the property transferred. Such reimbursements shall be deposited in the construction fund established by section 1116 of this Appendix.

(June 29, 1936, ch. 858, title IX, §902, 49 Stat. 2015; Aug. 7, 1939, ch. 555, §3, 53 Stat. 1255; Mar. 24, 1943, ch. 26, §3(d), 57 Stat. 49; Aug. 3, 1956, ch. 929, §§2, 3, 70 Stat. 985; Pub. L. 97-31, §12(131), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100-710, title I, §104(c), Nov. 23, 1988, 102 Stat. 4750.)

CODIFICATION

In subsec. (d), "sections 1346 and 1491 of title 28" substituted for "section 24, paragraph 20, and section 145 of the Judicial Code (U.S.C., 1946 edition, title 28, secs. 41(20) and 250)" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure. Section 1346 of Title 28 sets forth the basic jurisdiction of the district courts in cases in which the United States is defendant. Section 1491 of Title 28 sets forth the basic jurisdiction of the United States Court of Claims. Sections 24(20) and 145 of the Judicial Code were also restated in sections 1496, 1501, 1503, 2401, 2402, and 2501 of Title 28.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-710 substituted "a documented vessel, or a vessel under construction" for "or under construction".

1981—Subsec. (a). Pub. L. 97-31, §12(131)(A), substituted "Secretary of Transportation" for "Commission". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (c). Pub. L. 97-31, §12(131)(A), (B), substituted "Secretary of Transportation" for "Commission" in three places and "Secretary's" for "Commission's" in two places. For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

Subsec. (d). Pub. L. 97-31, §12(131)(A), (C), (D), substituted "Secretary of Transportation" for "Commission" and "United States Maritime Commission" and "his discretion" for "its discretion". For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

Subsec. (e). Pub. L. 97-31, §12(131)(A), (E), substituted "Secretary of Transportation" for "Commission" and "the Department of Transportation's expenditures" for "its expenditures". For prior transfers of functions of the Commission, meaning the United States Maritime Commission, see Transfer of Functions note below.

1956—Subsec. (c). Act Aug. 3, 1956, §2, inserted "as a tentative advance only," in second sentence, and substituted "in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: *Provided, however,* That in the event of an election by such person to reject the rate of hire fixed by the Commission and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded." for "to recover such further sum as added to such 75 per centum will make up such amount as will be just compensation for the use of the property and for the services required in connection with such use."

Subsec. (d). Act Aug. 3, 1956, §3, inserted "as a tentative advance only", substituted "such amount as would equal" for "such further sum as, added to said 75

per centum will make up such amount as will be", and inserted proviso.

1943—Subsec. (d). Act Mar. 24, 1943, added second par.

1939—Subsecs. (c) to (e). Act Aug. 7, 1939, added subsecs. (c) to (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

TRANSFER OF FUNCTIONS

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

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

TERMINATION OF WAR AND EMERGENCIES

Act July 25, 1947, ch. 327, §3, 61 Stat. 451, provided that in the interpretation of subsec. (a) of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

FEDERAL RULES OF CIVIL PROCEDURE

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

CROSS REFERENCES

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865a, 1132, 1152, 1160, 1185a, 1187a, 1187b, 1222, 1241a, 1289 of this Appendix; title 46 sections 12111, 31329; title 50 sections 196, 197; title 50 App. section 1744.

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

(a) "Essential vessel" defined

When used in this section the term "essential vessel" means any vessel (1) which is (A) security for any mortgage indebtedness to the United States or (B) constructed under this chapter, or required by the terms of a contract under this chapter to be operated on a certain essential foreign trade route, and (2) which it is necessary in the interests of commerce and national defense to maintain in condition for prompt use.

(b) Adjustment of obligations and arrangements for maintenance of essential vessels

For the purposes of preserving in the national interest the full availability and usefulness of essential vessels, which, under the provisions of the Neutrality Act of 1939 [22 U.S.C. 441 et seq.]

(or any proclamation issued thereunder), or compatibly with the national interest, cannot be operated in the service, route, or line to which such vessels are assigned pursuant to this chapter, or in which they would otherwise be operated, the Secretary of Transportation is authorized to make adjustments of obligations in respect to such vessels and to make arrangements for the maintenance of such vessels, subject to the provisions of this section and to such rules and regulations as the Secretary of Transportation shall prescribe as necessary or appropriate for carrying out the purposes and provisions of this section. If the Secretary of Transportation, upon written application in respect of any essential vessel, determines after such examination, investigation, and proceedings as he deems desirable, that (1) the operation of such vessel in the service, route, or line to which such vessel is assigned pursuant to this chapter, or in which it would otherwise be operated, is either (A) not lawful under the Neutrality Act of 1939 (or any proclamation issued thereunder), or (B) not compatible with the maintenance of availability of such vessel for purposes of national defense and commerce, (2) it is not feasible under existing law to employ such vessel in any other service or operation in either the foreign or domestic trades (except temporary or emergency operation under subsection (c)(5) hereof), and (3) the applicant, by reason of the restrictions of the Neutrality Act of 1939, or the withdrawal of vessels for national-defense purposes under clause (1) hereof, is not earning or will not earn a fair and reasonable return on the capital necessarily employed in its business, the Secretary of Transportation may make adjustments and arrangements with the applicant as provided in subsection (c) of this section, which shall continue in effect only during the circumstances above described.

(c) Provisions included within adjustments and arrangements

Such adjustments and arrangements shall include suspension of the requirement to operate such vessel in foreign trade under the applicable operating-differential or construction-differential subsidy contract or mortgage or other agreement, and of the right to operating-differential subsidy in respect of such vessel, and may include any one or more of the following provisions, in whole or in part, as, and to the extent that, the Secretary of Transportation may deem to be necessary or appropriate to carry out the purposes of this chapter, or the purposes and provisions of this section:

(1) Lay-up of the vessel by the owner or, at the option of the Secretary of Transportation, in the custody of the Secretary of Transportation, with payment or reimbursement by the Secretary of Transportation of necessary and proper expenses thereof (including reasonable overhead and insurance), or in lieu of such payment or reimbursement, a fixed periodic allowance therefor;

(2) Postponement, for a period not in excess of the period or periods of lay-up, of the maturity date of each installment on account of the principal of obligations to the United States in respect of the vessel (whether or not such

maturity date shall fall within such period or periods), or rearrangement of such maturities;

(3) Postponement or cancellation of interest accruing on such obligations during such period or periods of lay-up;

(4) Extension for a period not in excess of the period or periods of lay-up, of the twenty-year life limitation in respect of the vessel, and of the period or periods of other limitations and provisions of this chapter, insofar as they are based upon a twenty-year life;

(5) Provisions for such temporary or emergency employment of the vessel in lieu of lay-up as may be practicable, with such arrangements for management of the vessel, payment of expenses, and application of the proceeds of such employment, as the Secretary of Transportation may approve, the period or periods of such operation being included as part of the period or periods of lay-up;

(6) The payment to the Secretary of Transportation, upon termination of the arrangements with the applicant hereunder, out of the applicant's net profits, earned while such arrangements were in effect, in excess of 10 per centum per annum on the capital necessarily employed in the applicant's business, in reimbursement, to the extent that the Secretary of Transportation shall deem it necessary to carry out the purposes of this section, on account of obligations postponed or canceled and expenses incurred or paid by the Secretary of Transportation under this subsection. For the purposes of this paragraph capital of the applicant represented by vessels of the applicant laid up or operated under this section shall not be excluded from capital necessarily employed in the applicant's business. The Secretary of Transportation may require that the vessels so laid up or operated be security for reimbursement hereunder.

(d) Readjustment or modification of adjustments and arrangements

The adjustments and arrangements made under subsection (c) of this section in respect of any vessel shall be subject to such readjustment or modification from time to time as may be deemed necessary by the Secretary of Transportation to carry out the purposes and provisions of this section.

(e) Expenses incurred in adjustments and arrangements

Moneys in the construction fund of the Secretary of Transportation shall be available for expenses of the Secretary of Transportation incurred in adjustments or arrangements made under this section.

(June 29, 1940, ch. 442, 54 Stat. 684; Pub. L. 97-31, §12(132), Aug. 6, 1981, 95 Stat. 165.)

REFERENCES IN TEXT

The Neutrality Act of 1939, referred to in subsec. (b), is act Nov. 4, 1939, ch. 2, 54 Stat. 4, as amended, which is classified generally to subchapter II (§441 et seq.) of chapter 9 of Title 22, Foreign Relations and Inter-course. For complete classification of this Act to the Code, see Short Title note set out under section 441 of Title 22 and Tables.

CODIFICATION

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97-31 substituted “Secretary of Transportation” for “United States Maritime Commission” and “Commission” wherever appearing and “he deems” for “it deems”. For prior transfers of functions of United States Maritime Commission, see Transfer of Functions note below.

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

TRANSFER OF FUNCTIONS

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

§ 1244. Definitions

When used in this chapter—

(a) The words “foreign commerce” or “foreign trade” mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 1177 of this Appendix concerning capital construction funds and in the context of subchapter V of this chapter concerning construction-differential subsidy, the said words “foreign commerce” or “foreign trade” shall also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 1114(b) of this Appendix.

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

(c) The words “citizen of the United States” include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 802 of this Appendix, and with respect to a corporation under subchapter VI of this chapter, all directors of the corporation are citizens of the United States and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

(d) The word “construction” includes outfitting and equipping.

(e) Repealed. Pub. L. 97-31, §12(133)(B), Aug. 6, 1981, 95 Stat. 165.

(f) The terms “Representative” and “Member of the Congress” include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from the Commonwealth of Puerto Rico.

(g) The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam,

American Samoa, the Virgin Islands, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

(June 29, 1936, ch. 858, title IX, §905, 49 Stat. 2016; June 23, 1938, ch. 600, §39, 52 Stat. 964; July 17, 1952, ch. 939, §21, 66 Stat. 765; Pub. L. 86-327, §4, Sept. 21, 1959, 73 Stat. 597; Pub. L. 91-469, §28, Oct. 21, 1970, 84 Stat. 1034; Pub. L. 92-402, §2, Aug. 22, 1972, 86 Stat. 617; Pub. L. 96-453, §3(b), Oct. 15, 1980, 94 Stat. 2008; Pub. L. 97-31, §12(133), Aug. 6, 1981, 95 Stat. 165.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-31, §12(133)(A), substituted “Secretary of Transportation” for “Secretary of Commerce”.

Subsec. (e). Pub. L. 97-31, §12(133)(B), struck out subsec. (e) which defined “United States Maritime Commission” and “Commission” to mean the Secretary of Commerce, the Maritime Administrator, or the Federal Maritime Commission as the context required.

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

1972—Subsec. (a). Pub. L. 92-402 made definition of “foreign commerce” or “foreign trade” in context of subchapter V of this chapter concerning construction-differential subsidy applicable in context of section 1177 of this Appendix concerning capital construction funds, made such definition subject to rules and regulations promulgated by the Secretary of Commerce pursuant to section 1114(b) of this Appendix rather than only to uniform regulations promulgated by the Secretary and also applicable, in the case of bulk cargo carrying services, to trading between foreign ports in such manner as will permit U.S.-flag bulk carrying vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters.

1970—Subsec. (a). Pub. L. 91-469 expanded definition of “foreign commerce” or “foreign trade” to permit United States operators of dry and liquid bulk ships built with construction subsidy to engage in foreign-to-foreign carriage to the extent permitted by regulations issued by the Secretary of Commerce.

1959—Subsec. (c). Pub. L. 86-327 inserted requirement that all the directors of a corporation under subchapter VI of this chapter be United States citizens.

1952—Subsec. (e). Act July 17, 1952, added subsec. (e) which defined “United States Maritime Commission” and “Commission”.

1938—Subsec. (a). Act June 23, 1938, inserted reference to “foreign commerce”.

Subsec. (c). Act June 23, 1938, inserted provisions relating to interest of citizens of the United States in vessels operated on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States.

EFFECTIVE DATE OF 1980 AMENDMENT

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1274a of this Appendix; title 30 section 1412; title 42 section 9141.

§ 1245. Separability; short title of chapter

If any provisions of this chapter, or the application thereof to any person or circumstance, is

held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. This chapter may be cited as the Merchant Marine Act, 1936.

(June 29, 1936, ch. 858, title IX, §906, 49 Stat. 2016.)

SHORT TITLE OF 1996 AMENDMENTS

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

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

SHORT TITLE OF 1980 AMENDMENT

For short title of Pub. L. 96-453, Oct. 15, 1980, 94 Stat. 1997, which enacted subchapter XIII of this chapter as the Maritime Education and Training Act of 1980, see Short Title note set out under section 1295 of this Appendix.

SHORT TITLE OF 1976 AMENDMENT

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

SHORT TITLE OF 1972 AMENDMENT

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

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-469, §44, Oct. 21, 1970, 84 Stat. 1018, provided that: "This Act [enacting section 1507a of Title 15, Commerce and Trade, and section 270f of Title 40, Public Buildings, Property, and Works, amending section 5315 of Title 5, Government Organization and Employees, sections 985 and 988 of Title 33, Navigation and Navigable Waters, sections 1101, 1111, 1119 to 1121, 1151 to 1155, 1159, 1160, 1171 to 1173, 1175 to 1177, 1204, 1213, 1222, 1223, 1241, 1244, 1271, 1273 to 1275, and 1294 of this Appendix, repealing section 1221 of former Title 46, Shipping, and enacting provisions set out as notes under sections 1151, 1173, and 1177 of this Appendix] may be cited as the 'Merchant Marine Act of 1970'."

§ 1247. Appointment of Secretary as trustee or receiver; operation of vessels under court orders; payment of operating costs; claims against corporation

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the ad-

vantage of the estate and the parties in interest and that it will tend to further the purposes of this chapter, may constitute and appoint the Secretary of Transportation as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this chapter, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act [46 App. U.S.C. 741 et seq.]. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

(June 29, 1936, ch. 858, title IX, §908, as added Pub. L. 95-598, title III, §334, Nov. 6, 1978, 92 Stat. 2680; amended Pub. L. 97-31, §12(134), Aug. 6, 1981, 95 Stat. 165.)

REFERENCES IN TEXT

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

AMENDMENTS

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

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 1248. Enrollment in a sealift readiness program

No vessel may receive construction differential subsidy or operating differential subsidy if

it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense.

(June 29, 1936, ch. 858, title IX, §909, as added Pub. L. 97-35, title XVI, §1605, Aug. 13, 1981, 95 Stat. 752.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1187b of this Appendix.

SUBCHAPTER XI—FEDERAL SHIP MORTGAGE INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1152, 1160, 1161, 1295d of this Appendix; title 11 section 362; title 16 section 742c-1; title 46 sections 31308, 31326.

§ 1271. Definitions

As used in this subchapter—

(a) The term “mortgage” includes—

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

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46.¹

(b) The term “vessel” includes all types, whether in existence or under construction, of passenger cargo and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 802 of this Appendix, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;

(c) The term “obligation” shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary pursuant to section 1275(d) of this Appendix and obligations eligible for investment of funds under sections 1272 and 1279a(d) of this Appendix), issued for one of the purposes specified in section 1274(a)² of this Appendix;

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

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

(f) The term “actual cost” of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;

(g) The term “depreciated actual cost” of a vessel means the actual cost of the vessel depre-

ciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary.

(h) The terms “construction,” “reconstruction,” or “reconditioning” shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term “ocean thermal energy conversion facility or plantship” means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term “citizen of the Northern Mariana Islands” means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which “owned” is used in the same sense as in section 802 of this Appendix;

(k) The term “fishery facility” means—

(1) for operations on land—

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for,

¹ So in original. The period probably should be a semicolon.

² See References in Text note below.

equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 802 of this Appendix, and for purposes of applying such section 802 of this Appendix with respect to this section—

(i) the term “State” as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term “fishing vessel” has the meaning given such term by section 1802(11)³ of title 16; and any reference in this subchapter to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term “United States” when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i) of this section.

(n) The term “Secretary” means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this subchapter, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix).

(o) The term “eligible export vessel” means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(June 29, 1936, ch. 858, title XI, §1101, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, §1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, §1(a), (b), 70 Stat. 1087; Pub. L.

86-127, §1(1), July 31, 1959, 73 Stat. 272; Pub. L. 86-685, §1, Sept. 2, 1960, 74 Stat. 733; Pub. L. 87-303, §2, Sept. 26, 1961, 75 Stat. 661; Pub. L. 91-469, §29, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, §1, Oct. 19, 1972, 86 Stat. 909; Pub. L. 96-320, title II, §202(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96-561, title II, §§220(1), 238(b), Dec. 22, 1980, 94 Stat. 3291, 3300; Pub. L. 97-31, §12(135), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100-710, title I, §104(d), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 102-567, title III, §304, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103-160, div. A, title XIII, §§1356(1), 1357(b), Nov. 30, 1993, 107 Stat. 1812, 1815; Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-239, §11(1), Oct. 8, 1996, 110 Stat. 3134.)

REFERENCES IN TEXT

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

Section 1802 of title 16, referred to in subsec. (l), was subsequently amended, and section 1802(11) no longer defines the term “fishing vessel”. However, such term is defined elsewhere in that section.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-239 struck out “owned by citizens of the United States” before semicolon at end.

Subsec. (l). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

1993—Subsec. (n). Pub. L. 103-160, §1357(b), substituted “vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix)” for “vessels”.

Subsec. (o). Pub. L. 103-160, §1356(1), added subsec. (o). 1992—Subsec. (k)(3). Pub. L. 102-567 added par. (3).

1988—Subsec. (a). Pub. L. 100-710 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The term ‘mortgage’ includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended.”

1981—Subsecs. (c), (f), (g). Pub. L. 97-31, §12(135)(A), struck out “of Commerce” after “Secretary” wherever appearing.

Subsec. (n). Pub. L. 97-31, §12(135)(B), added subsec. (n).

1980—Subsec. (b). Pub. L. 96-320, §202(a)(1), inserted reference to ocean thermal energy conversion facilities or plantships.

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

Subsecs. (j), (k). Pub. L. 96-561, §220(1), added subsecs. (j) and (k).

Subsec. (l). Pub. L. 96-561, §238(b), made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

Pub. L. 96-561, §220(1), added subsec. (l).

Subsec. (m). Pub. L. 96-561, §220(1), added subsec. (m). 1972—Subsec. (a). Pub. L. 92-507 reduced the minimum size requirement for certain vessels from 200 gross tons to 25 gross tons.

Subsec. (b). Pub. L. 92-507 substituted definition of “vessel” for definition of “loan”.

Subsec. (c). Pub. L. 92-507 substituted definition of “obligation” for definition of “vessel”.

³ See References in Text note below.

Subsec. (d). Pub. L. 92-507 substituted definition of “obligor” for definition of “mortgagee”.

Subsec. (e). Pub. L. 92-507 substituted definition of “obligee” for definition of “mortgagor”.

Subsec. (f). Pub. L. 92-507 struck out proviso and substituted obligor for mortgagor or borrower.

Subsecs. (g), (h). Pub. L. 92-507 added subsecs. (g) and (h).

1970—Subsec. (c). Pub. L. 91-469 included oceanographic research or instruction vessels in definition of term “vessel”.

1961—Subsec. (a). Pub. L. 87-303 excluded towboats, barges, scows, lighters, car floats, canal boats or tank vessels of less than two hundred gross tons.

1960—Subsec. (c). Pub. L. 86-685 included floating dry-docks which have a capacity of 35,000 or more lifting tons and a beam of 125 feet or more between the wing walls.

1959—Subsec. (f). Pub. L. 86-127 inserted in proviso “in respect of the unpaid balance of the principal of a mortgage or loan” and exception clause.

1956—Subsec. (f). Act Aug. 7, 1956, struck out “, except for certain special purpose vessels as provided for in subsections (a) and (b) of section 1273 of this Appendix,” in proviso following “That in no event”, and struck out “90 per centum of” both before and after “75 per centum, or”.

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, §211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

REGULATIONS

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

“(a) IN GENERAL.—Within 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Transportation shall prescribe regulations as necessary to carry out the Secretary’s responsibilities under this title [probably should be “subtitle” meaning subtitle D (§§1351-1363) of title XIII of div. A of Pub. L. 103-160, see Tables for classification] (including the amendments made by this title [subtitle]).

“(b) INTERIM REGULATIONS.—The Secretary of Transportation may prescribe interim regulations necessary to carry out this title [subtitle] and for accepting applications under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], as amended by this title [subtitle]. For that purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All regulations prescribed under this subsection that are not earlier superseded by final rules shall expire 270 days after the date of the enactment of this Act.”

SECRETARY OF COMMERCE: FISHING VESSEL INSURANCE

Secretary of Commerce authorized to exercise authority in relation to issuance of insurance on fishing vessels comparable to authority of Secretary of Commerce under this subchapter, see note set out under section 1275 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 1272. Federal Ship Financing Fund

There is created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this subchapter, and there shall be allocated to such fund the sum of \$1,000,000 out of funds made available to the Secretary under the appropriation authorized by section 1279¹ of this Appendix. Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

(June 29, 1936, ch. 858, title XI, §1102, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, §2, 68 Stat. 1268; Pub. L. 86-123, §1(2), July 31, 1959, 73 Stat. 269; Pub. L. 92-507, §2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166.)

REFERENCES IN TEXT

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

AMENDMENTS

1981—Pub. L. 97-31 struck out “of Commerce” after “Secretary” in two places.

1972—Pub. L. 92-507 substituted “Federal Ship Financing Fund” for “Federal Ship Mortgage Insurance Fund”, and “Fund” for “fund” in four places.

1959—Pub. L. 86-123 substituted “section 1110” for “section 1109” of act June 29, 1936, which for purposes of codification has been changed to “section 1279 of this Appendix”.

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1274, 1274a, 1275, 1279c of this Appendix; title 16 section 742c-1.

§ 1273. Authorization of Secretary to guarantee obligations

(a) Principal and interest

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

(b) Security interest

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require to protect the interest of the United States.

(c) Amount of guarantee; percentage limitation; determination of actual cost of vessel

The Secretary shall not guarantee the principal of obligations in an amount in excess of 75

¹ See References in Text note below.

per centum, or 87½ per centum, whichever is applicable under section 1274¹ of this Appendix, of the amount, as determined by the Secretary which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary, unless the obligor creates an escrow fund as authorized by section 1279a of this Appendix, in which case the Secretary may guarantee 75 per centum or 87½ per centum, whichever is applicable under section 1274 of this Appendix, of the actual cost of such vessel or vessels.

(d) Pledge of United States

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) Proof of obligations

Any guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect.

(f) Limitation on outstanding amount

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which (1) \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter, and (2) \$3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

(g) Restrictions on commitments to guarantee obligations on eligible export vessels

(1) The Secretary may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available,

the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of those obligations.

(h) Risk categories

(1) The Secretary shall—

(A) establish in accordance with this subsection a system of risk categories for obligations guaranteed under this subchapter, that categorizes the relative risk of guarantees made under this subchapter with respect to the risk factors set forth in paragraph (3); and

(B) determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this subchapter for obligations in the category.

(2)(A) Before making a guarantee under this section for an obligation, the Secretary shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).

(B) The Secretary shall consider the aggregate amount available to the Secretary for making guarantees under this subchapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this subchapter for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the Secretary under this subchapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary may not guarantee obligations under this subchapter after the aggregate amount available to the Secretary under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

¹ See References in Text note below.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, any guarantee related to the project, other than the guarantee under this subchapter for which the risk factor is applied.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this subchapter is or will be in effect during the construction period of the project.

(4) In this subsection, the term “cost” has the meaning given that term in section 661a of title 2.

(June 29, 1936, ch. 858, title XI, §1103, as added June 23, 1938, ch. 600, §46, 52 Stat. 969; amended Aug. 15, 1953, ch. 513, §1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, §3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, §1(a), (c), (d), 70 Stat. 1087; Pub. L. 91-469, §30, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, §3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 93-70, §3, July 10, 1973, 87 Stat. 168; Pub. L. 94-127, §5, Nov. 13, 1975, 89 Stat. 681; Pub. L. 95-298, §5, June 26, 1978, 92 Stat. 340; Pub. L. 96-320, title II, §203(b)(1), Aug. 3, 1980, 94 Stat. 994; Pub. L. 96-561, title II, §220(2), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97-31, §12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, §1606(a), (b), Aug. 13, 1981, 95 Stat. 752; Pub. L. 97-424, title IV, §425, Jan. 6, 1983, 96 Stat. 2167; Pub. L. 98-595, §1(1), Oct. 30, 1984, 98 Stat. 3130; Pub. L. 99-509, title V, §5002, Oct. 21, 1986, 100 Stat. 1912; Pub. L. 103-160, div. A, title XIII, §1356(2), (5), Nov. 30, 1993, 107 Stat. 1812, 1814; Pub. L. 104-239, §13(a), Oct. 8, 1996, 110 Stat. 3134.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (h). Pub. L. 104-239 added subsec. (h).

1993—Subsec. (a). Pub. L. 103-160, §1356(5), substituted “The Secretary is authorized” for “The Secretary, upon application by a citizen of the United States, is authorized”.

Subsec. (f). Pub. L. 103-160, §1356(2)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: “The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which \$1,650,000,000 shall be limited to

obligations pertaining to commercial [sic] demonstration ocean thermal energy conversion facilities or plantships guaranteed under section 1279c of this Appendix, and of which \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter.”

Subsec. (g). Pub. L. 103-160, §1356(2)(B), added subsec. (g).

1986—Subsec. (a). Pub. L. 99-509 inserted at end “A guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation.”

1984—Subsec. (e). Pub. L. 98-595 inserted “Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect.”

1983—Subsec. (f). Pub. L. 97-424 inserted provision that no additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts, and that no vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

1981—Subsecs. (a) to (c), (e). Pub. L. 97-31 struck out “of Commerce” after “Secretary” wherever appearing.

Subsec. (f). Pub. L. 97-35, §1606(b), increased maximum amount from \$10,000,000,000 to \$12,000,000,000, and substituted provisions relating to monetary limitations and criteria for obligations, for former pars. (1) and (2) relating to percentage limitations and criteria for obligations, and required aggregate amount.

1980—Subsec. (f). Pub. L. 96-561 added pars. (1) and (2) and provision that the aggregate amount reserved for the purposes set forth in pars. (1) and (2) equal 10 percent of such sum.

Pub. L. 96-320, §203(b), which, effective Oct. 1, 1981, substituted “\$12,000,000,000, of which \$2,000,000,000 shall be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix” for “\$10,000,000,000” was later repealed by Pub. L. 97-35. See Repeals note set out below.

1978—Subsec. (f). Pub. L. 95-298 increased limitation on amount of outstanding obligations from \$7,000,000,000 to \$10,000,000,000.

1975—Subsec. (f). Pub. L. 94-127 increased limitation on amount of outstanding obligations from \$5,000,000,000 to \$7,000,000,000.

1973—Subsec. (f). Pub. L. 93-70 increased limitation on amount of outstanding obligations from \$3,000,000,000 to \$5,000,000,000.

1972—Subsec. (a). Pub. L. 92-507 incorporated provisions of former subsecs. (a) and (b) into subsec. (a) and substituted provisions authorizing the Secretary to guarantee the payment of principal and interest on the obligation for provisions authorizing the Secretary to insure a mortgage or a loan.

Subsec. (b). Pub. L. 92-507 added subsec. (b). Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsec. (c). Pub. L. 92-507 substituted provisions making the Secretary’s determination of actual cost of the vessel conclusive for the purposes of determining the maximum amount which may be guaranteed, for provisions making the mortgagee or lender the beneficiary of insurance contracts.

Subsec. (d). Pub. L. 92-507 substituted provisions pledging the full faith and credit of the United States for payment of all guarantees with interest, for provisions pledging the faith of the United States to the payment of principal and interest of each mortgage and loan.

Subsec. (e). Pub. L. 92-507 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 92-507 redesignated former subsec. (e) as subsec. (f), and in subsec. (f) as so redesignated,

substituted “obligations guaranteed” for “mortgages and loans insured”.

1970—Subsec. (e). Pub. L. 91-469 increased limitation on outstanding amount of mortgages and loans insured under this section from one to three billion dollars.

1956—Subsec. (a). Act Aug. 7, 1956, §1(a), (c), struck out “90 per centum of” before “the unpaid balance” and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible mortgages.

Subsec. (b). Act Aug. 7, 1956, §1(a), (c), struck out “90 per centum of” before “the unpaid balance” and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible loans.

Subsec. (d). Act Aug. 7, 1956, §1(d), struck out “the” before “interest on and” and “90 per centum of” after such words.

Act June 25, 1956, pledged the faith of the United States, in the case of special-purpose vessels, to the payment of the interest on and 100 per centum of the unpaid balance of the principal amount of each mortgage and loan insured under this subchapter.

1954—Act Sept. 3, 1954, provided for the insurance of mortgages by Secretary up to 90 per centum of unpaid balance except that vessels essential to national defense may be insured up to 100 per centum, to provide for insurance contracts, pledged the United States as security, and limited aggregate unpaid principal to \$1,000,000,000.

1953—Act Aug. 15, 1953, designated existing provisions as subsec. (a), inserted “90 per centum of the unpaid balance” after “provided” and struck out last sentence relating to aggregate amount of mortgage obligations, and added subses. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 13(b) of Pub. L. 104-239 provided that: “Subsection (h)(2) of section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), as amended by subsection (a) of this section, shall apply to guarantees that the Secretary of Transportation makes or commits to make with any amounts that are unobligated on or after the date of enactment of this Act [Oct. 8, 1996].”

EFFECTIVE DATE OF 1956 AMENDMENT

Act June 25, 1956, provided that the amendment made by that act is effective Sept. 3, 1954.

REPEALS

Pub. L. 96-320, title II, §203(b), Aug. 3, 1980, 94 Stat. 994, cited as a credit to this section, which amended subsec. (f) of this section, effective Oct. 1, 1981, by increasing the aggregate unpaid principal amount of obligations guaranteed under this section to \$12,000,000,000 of which \$2,000,000,000 was to be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix, was repealed by Pub. L. 97-35, title XVI, §1606(a), Aug. 13, 1981, 95 Stat. 752.

REACTIVATION OF CLOSED SHIPYARDS

Pub. L. 104-324, title XI, §1139, Oct. 19, 1996, 110 Stat. 3989, provided that:

“(a) IN GENERAL.—The Secretary may issue a guarantee or a commitment to guarantee obligations under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), upon such terms as the Secretary may prescribe, to assist in the reactivation and modernization of any shipyard in the United States that is closed on the date of the enactment of this Act [Oct. 19, 1996], if the Secretary finds that—

“(1) the closed shipyard historically built military vessels and responsible entities now seek to reopen it as an internationally competitive commercial shipyard;

“(2)(A) the closed shipyard has been designated by the President as a public-private partnership project; or

“(B) has a reuse plan approved by the Navy in which commercial shipbuilding and repair are primary activities and has a revolving economic conversion fund approved by the Department of Defense; and

“(3) the State in which the shipyard is located, and each other involved State, or a State-chartered agency, is making a significant financial investment in the overall cost of reactivation and modernization as its contribution to the reactivation and modernization project, in addition to the funds required by subsection (d)(2) of this section.

“(b) WAIVERS.—Notwithstanding any other provision of title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), the Secretary shall not apply the requirements of section 1104A(d) of that Act [46 App. U.S.C. 1274(d)] when issuing a guarantee or a commitment to guarantee an obligation under this section.

“(c) CONDITIONS.—The Secretary shall impose such conditions on the issuance of a guarantee or a commitment to guarantee under this section as are necessary to protect the interests of the United States from the risk of a default. The Secretary shall consider the interdependency of such shipyard modernization and reactivation projects and related vessel loan guarantee requests pending under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.) before issuing a guarantee or a commitment to guarantee under this section.

“(d) FUNDING PROVISIONS.—

“(1) The Secretary may not guarantee or commit to guarantee obligations under this section that exceed \$100,000,000 in the aggregate.

“(2) The amount of appropriated funds required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) [2 U.S.C. 661 et seq.] in advance of the Secretary’s issuance of a guarantee or a commitment to guarantee under this section shall be provided by the State in which the shipyard is located, and other involved States, or by a State-chartered agency, and deposited by the Secretary in the financing account established under the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) for loan guarantees issued by the Secretary under title XI of the Merchant Marine Act of 1936 (46 App. U.S.C. 1271 et seq.). No federally appropriated funds shall be available for this purpose. The funds deposited into that financing account shall be held and applied by the Secretary in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.), except that, unless the Secretary shall have earlier paid an obligee or been required to pay an obligee pursuant to the terms of a loan guarantee, the funds deposited in that financing account shall be returned, upon the expiration of the Secretary’s loan guarantee, to the State, States, or State-chartered agency which originally provided the funds to the Secretary.

“(3) Notwithstanding the provisions of any other law or regulation, the cost (as that term is defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.)) of a guarantee or commitment to guarantee issued under this section—

“(A) may only be determined with reference to the merits of the specific closed shipyard reactivation project which is the subject of that guarantee or commitment to guarantee, without reference to any other project, type of project, or averaged risk; and

“(B) may not be used in determining the cost of any other project, type of project, or averaged risk applicable to guarantees or commitments to guarantee issued under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.).

“(e) SUNSET.—No commitment to guarantee obligations under this section shall be issued by the Secretary after one year after the date of enactment of this section [Oct. 19, 1996].

“(f) DEFINITION.—As used in this section, the term ‘Secretary’ means the Secretary of Transportation.”

Similar provisions were contained in the following prior appropriation Act:

Pub. L. 104-208, div. A, title I, §101(a) [title VI, §618], Sept. 30, 1996, 110 Stat. 3009, 3009-68.

ELECTION OF COVERAGE

Section 7 of Pub. L. 92-507 provided that: “Any citizen of the United States to whom the Secretary of Commerce issued an approval in principle of an application for loan or mortgage insurance or a commitment with respect to such insurance under the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], prior to the effective date of this Act [Oct. 19, 1972] may elect, with respect to the vessels covered by such approval or commitment, to be bound either by the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], as in effect prior to the effective date of this Act [Oct. 19, 1972] or by the provisions of this Act [see Short Title of 1972 Amendment note under section 1245 of this Appendix].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1274a, 1279c, 1279e of this Appendix.

§ 1274. Eligibility for guarantee

(a) Purpose of obligations

Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this Appendix for purposes of subchapter V of this chapter; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade;¹ *Provided, however,* That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities

for which obligations were guaranteed under this subchapter that, under the provisions of section 1275 of this Appendix:

- (A) are vessels or fishery facilities for which obligations were accelerated and paid;
- (B) were acquired by the Fund; or
- (C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to subchapter V of this chapter;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this subchapter, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 1853(d)(4) of title 16.

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this subchapter in the same manner and to the same extent as an obligation guaranteed under this subchapter which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this subchapter that by their nature can only be applied to vessels.

(b) Contents of obligations

Obligations guaranteed under this subchapter—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) of this section and subsection (i) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: *Provided, however,* That in the case of a vessel, the size and speed of which are approved by the Secretary; and which is or would have been eligible for mortgage aid for construction under section 1159 of this Appendix (or would have been eligible for mortgage aid under section 1159 of this Appendix except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12½ per centum of the cost of such vessel,

¹ So in original. The semicolon probably should be a colon.