

(ii) The party may also reimburse its general funds for expenditures which could have been paid initially by a qualified withdrawal, if such reimbursements are made within 120 days of such expenditure.

(iii) The party may reimburse its general funds for expenditures made prior to the time an agreement or amendment is entered into, but after the party has made application therefor, if such expenditures would otherwise qualify for reimbursement pursuant to paragraphs (c)(3) (i) and (ii) of this section but for the fact that an agreement or amendment has not been executed, and if such reimbursement is effected within 120 days of the execution of an agreement or amendment.

(3) *Prepayment of indebtedness.* The party shall not prepay principal on indebtedness with qualified withdrawals without the prior written consent of the Maritime Administrator.

(4) *Qualified withdrawals paid to related persons.* A withdrawal, including payments for indebtedness, paid to a related person, within the meaning of section 482 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, shall not constitute a qualified withdrawal unless the Maritime Administrator determines that no portion of such payment constitutes a dividend, a return of capital or a contribution of capital under the Internal Revenue Code. Transactions which include payments to a related person, will be approved if the cost of the item to be acquired, constructed or reconstructed through qualified withdrawals is or was at the time of the acquisition, construction or reconstruction its fair market value. The party must obtain the prior written permission of the Maritime Administrator before any qualified withdrawals may be paid to a related person. Any such withdrawal prior to approval shall be a nonqualified withdrawal.

(d) *Permission to make qualified withdrawals.* Once a program has been approved, prior approval of the Maritime Administrator is not required for specific qualified withdrawals except as provided in paragraphs (c)(4) and (c)(5) of this section. However, the Maritime Administrator will give prior approval

to qualified withdrawals upon written request.

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§ 390.10 Nonqualified withdrawals.

(a) *In general—(1) Defined.* Any withdrawal from a fund which is not a qualified withdrawal is a nonqualified withdrawal.

(2) *Tax aspects of a nonqualified withdrawal.* For the tax aspects of a nonqualified withdrawal, see 46 U.S.C. 53511 and §3.7 of the joint regulations (§391.7 of this chapter).

(b) *Permission required—(1) In general.* The prior written permission of the Maritime Administrator is required before a nonqualified withdrawal may be made.

(2) *Failure to secure permission.* A nonqualified withdrawal made without the prior written permission of the Maritime Administrator shall constitute a material breach of the agreement unless the Maritime Administrator shall determine that failure to obtain prior written consent was excusable. See §390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(3) *Types of nonqualified withdrawals which will be permitted.* Generally, the Maritime Administrator will give permission to make nonqualified withdrawals when:

(i) The party has incurred operating losses from the operations of agreement vessels which have impaired his working capital and it becomes necessary to reimburse its general funds to the extent of such losses;

(ii) The party desires to make an expenditure for research, development or design and such an expenditure is incident to new and advanced ship design, machinery and equipment;

(iii) The withdrawal would be a qualified withdrawal except for the fact that there is no tax basis left that can be reduced; or

(iv) The party demonstrates, to the satisfaction of the Maritime Administrator, that it cannot fulfill its program due to circumstances beyond its

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control or due to a change in circumstances which makes the completion of its program economically unfeasible.

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§ 390.11 Sale or other disposition of agreement vessels.

(a) *Eligible agreement vessels.* The sale or other disposition (including mortgages) of eligible agreement vessels shall not require prior approval of the Maritime Administrator, but shall require written notification within 10 days after the sale or other disposition. Such notification shall include a description of the transaction, the identity of the transferee, the proceeds to be realized, the date of the transaction and whether the proceeds will be deposited into the fund.

(b) *Qualified agreement vessels—(1) In general.* If a qualified agreement vessel whose basis has been reduced through the application of qualified withdrawals is sold or disposed of (including mortgaged) within one year, interest on the amount of gain attributable to the basis reduction shall attach if the Maritime Administrator determines that the disposition was contrary to the policies of the Act, the joint regulations or these regulations. See § 390.13 (relating to failure to fulfill a substantial obligation under the agreement).

(2) *Period of one year defined.* The one-year period shall mean 365 days from the date of final delivery from the shipyard in the case of construction or reconstruction and 365 days from the date of first loading of the vessel in the case of an acquisition.

(3) *Prior approval.* The party shall obtain the written approval of the Maritime Administrator prior to the sale or other disposition (including mortgage) of a qualified agreement vessel.

(4) *Deposit requirement.* The Maritime Administrator will not normally require the deposit of the net proceeds from the sale of a qualified agreement vessel but shall require the deposit of the net proceeds from the mortgage of a qualified agreement vessel for which qualified withdrawals from the fund have been made.

(c) *Sale or other disposition of agreement vessels to related persons—(1) In*

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general. Section 3.2(c)(4) of the joint regulations (§ 391.2(c)(4) of this chapter) requires that the net proceeds from the sale or other disposition of an agreement vessel shall be the fair market value of the vessel when the party and the purchaser are owned or controlled directly or indirectly by the same interests within the meaning of section 482 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. In such case, the party shall furnish data to establish that the amount realized or to be realized is the fair market value.

(2) *Data to be submitted.* Sufficient data must be submitted to support a determination by the Maritime Administrator of the fair market value including the original cost of the vessel, dates of original delivery, acquisition and reconstruction, as applicable, cost of improvements, sales price, costs of sale and any other information which would assist in making such determination.

[41 FR 4265, Jan. 29, 1976, as amended at 73 FR 56740, Sept. 30, 2008]

§ 390.12 Liquidated damages.

(a) *Liquidated damages—(1) In general.* Each agreement entered into under Chapter 535 shall contain a liquidated damages provision for the purpose of placing the party into its prefund position for each day a qualified agreement vessel is operated in violation of the geographic trading restrictions contained in the Act and § 390.5. The liquidated damages provision requires that the party repay the time value of the deferral of Federal Income Tax which the party has received.

(2) *Calculation of liquidated damages.* The liquidated damages specified in this paragraph shall be calculated as follows:

(i) With respect to each vessel operated in violation of the applicable trading restrictions, add (A) the sum of qualified withdrawals for the vessel which have been made from the ordinary income and capital gain accounts to the date of breach, and (B) the amount of any unpaid principal on indebtedness for the vessel which may be paid from the fund less any portion of such amount which by operation of law