

§ 57522. Books and records, balance sheets, and inspection and auditing

Every contract executed by the Secretary of Transportation under this chapter shall contain provisions requiring (1) that, the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission, the United States shall be relieved of all further liability on such contract.

(Added and amended Pub. L. 114-120, title III, § 313(c)(1), Feb. 8, 2016, 130 Stat. 58.)

Editorial Notes

CODIFICATION

Section consists of text of act June 29, 1936, ch. 858, title VIII, § 801, 49 Stat. 2011, as amended by Pub. L. 97-31, § 12(119), Aug. 6, 1981, 95 Stat. 164. Section 801 of act June 29, 1936, ch. 858, which was formerly set out as a note under section 53101 of this title, was transferred to this section by Pub. L. 114-120, title III, § 313(c)(1)(A), Feb. 8, 2016, 130 Stat. 58.

AMENDMENTS

2016—Pub. L. 114-120, § 313(c)(1)(B)(i), inserted “Books and records, balance sheets, and inspection and auditing” in section catchline.

Pub. L. 114-120, § 313(c)(1)(B)(ii), which directed substitution of “this chapter” for “the provision of title VI or VII of this Act”, was executed by making the substitution for “the provisions of title VI or VII of this Act” to reflect the probable intent of Congress.

Pub. L. 114-120, § 313(c)(1)(B)(iii), struck out “: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission” after “prescribed by the Secretary of Transportation”.

SUBCHAPTER III—MISCELLANEOUS

§ 57531. Construction and charter of vessels for unsuccessful routes

(a) **IN GENERAL.**—If the Secretary of Transportation finds that a trade route determined to be

essential under section 50103 of this title cannot be successfully developed and maintained and the Secretary’s replacement program cannot be achieved under private operation of the trade route by a citizen of the United States with vessels documented under chapter 121 of this title, without further aid by the United States Government in addition to the financial aid authorized under title V of the Merchant Marine Act, 1936, the Secretary, without advertisement or competition, may—

(1) have constructed, in private shipyards or in navy yards, vessels of the types necessary for the trade route; and

(2) demise charter those new vessels to the operator of vessels of the United States established on the trade route.

(b) **AMOUNT OF CHARTER HIRE.**—

(1) **IN GENERAL.**—The annual charter hire under subsection (a) shall be at least 4 percent of the price (referred to in this section as the “foreign cost”) at which the vessel would be sold if constructed under title V of the Merchant Marine Act, 1936, plus—

(A) a percentage of the depreciated foreign cost computed annually determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth percent; and

(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

(2) **DEPRECIATION.**—Depreciation under paragraph (1)(A) shall be based on—

(A) a 25-year life for dry-cargo and passenger vessels; and

(B) a 20-year life for tankers and other bulk liquid carrier vessels.

(c) **OPTION TO PURCHASE.**—The charter may contain an option to the charterer to purchase the vessels from the Secretary of Transportation within 5 years after delivery under the charter, on the same terms and conditions as provided in title V of the Merchant Marine Act, 1936, for the purchase of new vessels from the Secretary. However—

(1) the purchase price shall be the foreign cost less depreciation to the date of purchase based on the useful life specified in subsection (b)(2);

(2) the required cash payment payable at the time of the purchase shall be 25 percent of the purchase price;

(3) the charter may provide that any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of the purchase;

(4) the balance of the purchase price shall be paid within the remaining years of useful life (as specified in subsection (b)(2)) after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first installment, which shall be payable on the next ensuing anniversary date of the delivery under the charter, shall be

a proportionate part of the annual installment; and

(5) interest shall be payable on the unpaid balances from the date of purchase, at a rate not less than—

(A) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the average maturities of the loans, adjusted to the nearest one-eighth percent; plus

(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

(d) OPERATION OF VESSEL.—

(1) PERMISSIBLE VOYAGES.—The charter shall provide for operation of the vessel exclusively—

(A) in foreign trade;

(B) on a round-the-world voyage;

(C) on a round voyage from the west coast of the United States to a European port that includes an intercoastal port of the United States;

(D) on a round voyage from the Atlantic coast of the United States to the Orient that includes an intercoastal port of the United States; or

(E) on a voyage in foreign trade on which the vessel may stop at Hawaii or an island territory or possession of the United States.

(2) DOMESTIC TRADE.—The charter shall provide if the vessel is operated in domestic trade on any of the services specified in paragraph (1), the charterer will pay annually to the Secretary of Transportation that proportion of $\frac{1}{25}$ of the difference between the domestic and foreign cost of the vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1668; Pub. L. 114-120, title III, §313(b)(2), Feb. 8, 2016, 130 Stat. 58.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
57531	46 App.:1204.	June 29, 1936, ch. 858, title VII, §714, 49 Stat. 2011; June 23, 1938, ch. 600, §32, 52 Stat. 962; Aug. 4, 1939, ch. 417, §12, 53 Stat. 1186; Pub. L. 86-3, §18(b)(3), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86-518, §5, June 12, 1960, 74 Stat. 216; Pub. L. 91-469, §22, Oct. 21, 1970, 84 Stat. 1032; Pub. L. 97-31, §12(116), Aug. 6, 1981, 95 Stat. 164.

In subsection (a)(2), the words “demise charter” are substituted for “demise . . . or bare-boat charter” to eliminate unnecessary words. The words “operator of vessels of the United States” are substituted for “American-flag operator” for consistency in the revised title.

Subsection (b)(2) is substituted for “Upon the basis of a twenty-five year life of the vessel” because of section 9 of Public Law 86-518 (June 12, 1960, 74 Stat. 217), which provided that “Nothing in any amendment made by this Act [including section 5 substituting ‘twenty-five’

for ‘twenty’ in 46 App. U.S.C. 1204] shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as amended, relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.”

In subsection (c), in paragraphs (1) and (4), references to the useful life specified in subsection (b)(2) are substituted for references to the twenty-five year useful life for the reason stated in explaining subsection (b)(2).

Editorial Notes

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsections (a), (b)(1), (c), is act June 29, 1936, ch. 858, 49 Stat. 1985. Title V of the Act enacted provisions set out as a note under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-120 substituted “title V” for “titles V and VI” in introductory provisions.

§ 57532. Operation of experimental vessels

(a) DEFINITION.—In this section, the term “experimental vessel” means a vessel owned by the United States Government (including a vessel in the National Defense Reserve Fleet) that has been constructed, reconditioned, or remodeled for experimental or testing purposes.

(b) AUTHORITY TO OPERATE.—The Secretary of Transportation, for the purpose of practical development, trial, and testing, may operate an experimental vessel under a bareboat charter or general agency agreement in the foreign or domestic trade of the United States or for use for the account of a department or agency of the Government, without regard to other provisions of this subtitle and other laws related to chartering and general agency operations. Not more than 10 vessels may be operated and tested under this section in any one year.

(c) TERMS OF OPERATION.—Operation of a vessel under this section shall be on terms the Secretary considers appropriate to carry out the purposes of this subtitle. A bareboat charter under this section shall be at reasonable rates and include restrictions the Secretary considers appropriate to protect the public interest, including provisions for recapture of profits under section 57517 of this title. A charter or general agency agreement under this section shall be reviewed annually to determine whether conditions exist to justify continuance of the charter or agreement.

(d) RIGHTS OF SEAMEN.—A seaman engaged in vessel operations of the Secretary under this section and employed through a general agent in connection with a charter or agreement under this section is entitled to all the rights and remedies provided in sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 U.S.C. 4701(a), (c), 4703(c), and 4704).

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1670; Pub. L. 115-232, div. C, title XXXV, §3546(u), Aug. 13, 2018, 132 Stat. 2327.)