

TITLE XII—WAR RISK INSURANCE

SEC. 1201. DEFINITIONS (46 App. U.S.C. 1281 (2002)). As used in this title⁵⁸ —

(a) The term “American vessels” includes any vessel registered, enrolled, or licensed under the laws of the United States and any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof and any tug or barge or other watercraft (documented or undocumented) owned by a citizen of the United States used in essential water transportation or in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(b) The term “transportation in the water-borne commerce of the United States” includes the operation of vessels in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(c) The term “war risks” includes to such extent as the Secretary may determine—

(1) all or any part of any loss that is excluded from marine insurance coverage under a “free of capture or seizure” clause, or under analogous clauses; and

(2) other losses from hostile acts, including confiscation, expropriation, nationalization, or deprivation..

(d) The term “citizen of the United States” includes corporations, partnerships, and associations existing, authorized, or organized under the laws of the United States or any State, district, Territory, or possession thereof.

(e) The term “Secretary” shall mean the Secretary of Transportation.

SEC. 1202. AUTHORITY TO PROVIDE INSURANCE; CONSIDERATION OF RISK (46 App. U.S.C. 1282 (2002)).

(a) The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage by war risks in the manner and to the extent provided in this title, whenever it appears to the Secretary that such insurance adequate for the needs of the waterborne commerce of the United States can not be obtained on the reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

(b) Any insurance or reinsurance issued under any of the provisions of this Act shall be based, insofar as practicable, upon consideration of the risk involved.

⁵⁸ Section 1201(d) sets forth a definition of “citizen of the United States” for the purpose of Title XII of the Merchant Marine Act, 1936.

(c) Insurance and reinsurance for vessels may be provided by the Secretary under this title only on the condition that such vessels be available for the United States in time of war or national emergency.

SEC. 1203. PERSONS, PROPERTY, AND INTERESTS INSURABLE (46 App. U.S.C. 1283 (2002)). The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest:

(a) American vessels, including vessels under construction, foreign-flag vessels owned by citizens of the United States or engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged. In determining whether to grant such insurance or reinsurance to foreign-flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer. American- and foreign-flag vessels so insured or reinsured shall be subject to such vessel location reporting requirements as the Secretary may establish by regulation.

(b) Cargoes shipped or to be shipped on any such vessels, including shipments by express or registered mail; cargoes owned by citizens or residents of the United States, its Territories or possessions; cargoes imported to, or exported from, the United States, its Territories or possessions, and cargoes sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions; cargoes shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions. For the purposes of this title, the term "cargo" shall include loaded or empty containers located aboard such vessels.

(c) The disbursements, including advances to masters and general average disbursements, and freight and passage moneys of such vessels.

(d) The personal effects of the masters, officers, and crews of such vessels, and of other persons transported on such vessels.

(e) Masters, officers, members of the crews of such vessels and other persons employed or transported thereon against loss of life, injury, detention by an enemy of the United States following capture.

(f) Statutory or contractual obligations or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance.

SEC. 1204. RISKS OTHER THAN WAR RISKS (46 App. U.S.C. 1284 (2002)).

Whenever the Secretary shall insure any risk included under subsection (d), (e), or (f) of section 1203, insofar as it concerns liabilities relating to the masters, officers, and crews of such vessels or to other persons transported thereon, the insurance on such risks may include risks other than war risks to the extent that the Secretary determines to be necessary or advisable.

SEC. 1205. INSURANCE ON PROPERTY OF GOVERNMENT DEPARTMENTS AND AGENCIES (46 App. U.S.C. 1285 (2002)).

(a) Any department or agency of the United States may, with the approval of the President, procure from the Secretary any of the insurance as provided for in this title, except as provided in sections 1 and 2 of the Act of July 8, 1937 (50 Stat. 479).

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary. The signature of the President (or of an official designated by the President) on the agreement shall be treated as an expression of the approval required under section 1202(a) to provide the insurance.³⁹

SEC. 1206. LIABILITY INSURANCE FOR PERSONS PERFORMING SERVICES OR PROVIDING FACILITIES FOR VESSELS (46 App. U.S.C. 1286 (2002)). The Secretary is authorized to provide insurance for any person who performs services or provides facilities for or with respect to any American- or foreign-flag vessels, public or private, against legal liabilities that may be incurred by such person in connection with the performance of such services or the providing of such facilities. Such insurance shall not be issued against liability to employees in respect of employers' liability of workmen's compensation. No such insurance shall be provided unless, in the opinion of the Secretary, such insurance is required in the prosecution of the war effort or in connection with national defense and can not be obtained at

³⁹See 10 U.S.C. 2645. Indemnification of Department of Transportation for Losses Covered by Vessel War Risk Insurance, set forth on page 160, *infra*.

Section 1071(a) of Public Law 105-261, approved October 17, 1998 (112 STAT. 1920, 2137), added the final sentence to section 1205(b). Section 1071(b) provides that "The amendment made by subsection (a) shall apply only to a signature of the President (or of an official designated by the President) on or after the date of the enactment of this Act."

reasonable rates or upon reasonable conditions from approved companies authorized to do insurance business in any State of the United States.

SEC. 1207. REINSURANCE; RATES; ALLOWANCES TO INSURANCE CARRIERS (46 App. U.S.C. 1287 (2002)).

(a) To the extent that he is authorized by this title to provide marine, war risk, and liability insurance, the Secretary may reinsure, in whole or in part, any company authorized to do an insurance business in any State of the United States. The Secretary may reinsure with, or cede or retrocede to, any such company any insurance or reinsurance provided by the Secretary in accordance with the provisions of this title.

(b) Reinsurance shall not be provided by the Secretary at rates less than nor obtained by the Secretary at rates more than the rates established by the Secretary on the same or similar risks or the rates charged by the insurance carrier for the insurance so reinsured whichever is most advantageous to the Secretary, except that the Secretary may make to the insurance carrier such allowances for expenses on account of the cost of services rendered or facilities furnished as he deems reasonable to accord with good business practice, but such allowance to the carrier shall not provide for any payment by the carrier on account of solicitation for or stimulation of insurance business.

SEC. 1208. INSURANCE FUND; INVESTMENTS; APPROPRIATIONS (46 App. U.S.C. 1288 (2002)).

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Division of Disbursement, Treasury Department. Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

(b) Such sums as shall be necessary to carry out the provisions of this title are authorized to be appropriated to such fund.

TRANSFER OF FUNDS FROM VESSEL OPERATIONS REVOLVING FUND (46 App. U.S.C. 1288a (2002)).⁶⁰ For the

⁶⁰Enacted as section 601 of the Act of November 1, 1951 (65 STAT. 746), as amended, and not as part of the Merchant Marine Act, 1936.

war-risk insurance revolving fund, authorized by title XII of the Merchant Marine Act, 1936, as amended (Public Law 763, approved September 7, 1950), the Secretary of Transportation is authorized to transfer to said fund, at such times as it may become necessary in order to place into effect the insurance coverage authorized by said title, and in such amounts as he may determine, not to exceed a total of \$10,000,000 from the "Vessel operations revolving fund".

SEC. 1209. ADMINISTRATIVE PROVISIONS (46 App. U.S.C. 1289 (2002)).

(a) Issuance of Policies, Rules, and Regulations; Settlement of Claims; Valuation; Rejection and Review of Valuation.

(1) The Secretary, in the administration of this title, may issue such policies, rules, and regulations as he deems proper and may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this title.

(2) In respect of hull insurance, the valuation in the policy for actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Secretary which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That in the event of an election by the insured to reject the

stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading "Maritime Activities" in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading "Maritime Activities" in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although 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 such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

(b) **Forms and Policies; Rates; Fees.** The Secretary may prescribe and change forms and policies, and fix, adjust, and change the amounts insured and rates of premium provided for in this title. The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, the employment of underwriting agents, and the appointment of experts.

(c) **Commercial Practice Controlling; Limitation on Fees.** The Secretary, in administering this title, may exercise his powers, perform his duties and functions, and make his expenditures, in accordance with commercial practice in the marine insurance business. Except as authorized in subsection (d) of this section, no insurance broker or other person acting in a similar intermediary capacity shall be paid any fee or other consideration by the Secretary by virtue of his participation in arranging any insurance wherein the Secretary directly insures any of the risk thereof.

(d) **Underwriting Agents.** The Secretary may, and whenever he finds it practical to do so shall, employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States, to act as his underwriting agent. The Secretary may allow such companies or groups of companies fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agent for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this title, but no claim shall be paid unless and until it has been approved by the Secretary. Such

compensation may include an allowance for expenses reasonably incurred by such agent, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

(e) **Employment of Marine Insurance Experts.** The Secretary without regard to the laws, rules, or regulations relating to the employment of employees of the United States, may appoint and prescribe the duties of such number of experts in marine insurance as he deems necessary under this title.

(f) **Utilization of Services of other Government Agencies.** The Secretary with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this title.

SEC. 1210. SEAMEN'S RIGHTS UNAFFECTED (46 App. U.S.C. 1290 (2002)). This title shall not affect rights of seamen under existing law.

SEC. 1211. REPORTS TO CONGRESS (46 App. U.S.C. 1291 (2002)). The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this title for the period covered by such report.

SEC. 1212. ACTION ON CLAIMS FOR LOSSES; JURISDICTION OF COURTS; LIMITATION OF ACTIONS (46 App. U.S.C. 1292 (2002)). Upon disagreement as to a loss insured under this title, suit may be maintained against the United States in admiralty in the district in which the claimant or his agent resides, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this title. If the claimant has no residence in the United States, suit may be brought in the district court of the District of Columbia or in such other district court in which the Attorney General of the United States agrees to accept service. Such suits shall be heard and determined under the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdiction, and for other purposes," approved March 9, 1920, as amended (known as the Suits in Admiralty Act). All persons having or claiming or who might have an interest in such insurance, may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and

there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the District Court for the District of Columbia, or in the district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in said Suits in Admiralty Act shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary and for sixty days thereafter: Provided, however, That such claim shall be deemed to have been administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

SEC. 1213. ADDITIONAL INSURANCE WITH OTHER UNDERWRITERS (46 App. U.S.C. 1293 (2002)). A person having an insurable interest in a vessel may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary of Transportation, and in that event the Secretary of Transportation shall not be entitled to the benefit of such insurance.

SEC. 1214. EXPIRATION OF AUTHORITY TO PROVIDE INSURANCE (46 App. U.S.C. 1294 (2002)). The authority of the Secretary to provide insurance and reinsurance under this title shall expire June 30, 2005.

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INDEMNIFICATION OF DEPARTMENT OF TRANSPORTATION FOR LOSSES COVERED BY VESSEL WAR RISK INSURANCE (10 U.S.C. 2645 (2002))⁶¹

(a) Prompt Indemnification Required.

(1) In the event of a loss that is covered by vessel war risk insurance,

⁶¹ This provision of law was enacted as Section 1079(b) of Public Law 104-201, approved September 23, 1996 (110 STAT. 2669), the National Defense Authorization Act, Fiscal Year 1997, and not as part of the Merchant Marine Act, 1936.

the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) Source of Funds for Payment of Indemnity. The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) Deposit of Funds. Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(d) Notice to Congress. In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, the Secretary of Defense shall submit to Congress—

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.

(e) Implementing Matters.

(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(f) Construction With Other Transfer Authority. Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

(g) Annual Report on Contingent Liabilities. Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).

(h) Definitions. In this section:

(1) *Vessel War Risk Insurance.* The term “vessel war risk insurance” means, insurance and reinsurance provided through policies issued by the Secretary of Transportation under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.) that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) *Vessel War Risk Insurance Fund.* The term “Vessel War Risk Insurance Fund” means the insurance fund referred to in the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(3) *Loss.* The term “loss” includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.