

tion 291e of this title or section 291j of this title, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 291g of this title such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Surgeon General may modify or set aside his order.

(b) Conclusiveness of Surgeon General's findings; remand; new or modified findings

The findings of the Surgeon General as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Review by Supreme Court; stay of Surgeon General's action

The judgment of the court affirming or setting aside, in whole or in part, any action of the Surgeon General shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Surgeon General's action.

(July 1, 1944, ch. 373, title VI, § 608, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 456.)

PRIOR PROVISIONS

A prior section 291h, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, §§ 3(b-d), 8, 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, related to projects for construction, the application required and its contents and approval by the Surgeon General, and provided for a hearing prior to disapproval of the application, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291e of this title.

Provisions similar to those comprising this section were contained in former section 291j(b), act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 28, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85-791, § 27, 72 Stat. 950, prior to the general amendment of this subchapter by Pub. L. 88-443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Sec-

retary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

§ 291i. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 291e of this title, or (B) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984.¹

the amount which the United States is entitled to recover under paragraph (1) with respect to a

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

facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section,

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 291c(e) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (2) of section 291c(e) of this title; and

(B) will meet the obligation of the facility under clause (1) of section 291c(e) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under section 291f of this title.

(July 1, 1944, ch. 373, title VI, § 609, as added Pub. L. 88-443, § 3(a), Aug. 18, 1964, 78 Stat. 456; amended Pub. L. 91-296, title I § 116(d), June 30, 1970, 84 Stat. 342; Pub. L. 98-369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112.)

PRIOR PROVISIONS

A prior section 291i, act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041;

amended June 19, 1948, ch. 544, 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c)-(f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86-70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86-624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87-395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87-688, § 4(a)(2), 76 Stat. 587, related to allotment percentages, and contained various definitions, prior to the general amendment of this subchapter by Pub. L. 88-443. See section 291b of this title.

Provisions similar to those comprising this section were contained in section 291h(e) of this title, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(c), 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, prior to the general amendment of this subchapter by Pub. L. 88-443.

AMENDMENTS

1984—Pub. L. 98-369 amended section generally. Prior to amendment, section read as follows: “If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within twenty years after the completion of construction—

“(a) be sold or transferred to any person, agency, or organization (1) which is not qualified to file an application under section 291e of this title, or (2) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

“(b) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility, unless the Surgeon General determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from this obligation, the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction or modernization under such project or projects. Such right of recovery shall not constitute a lien upon said facility prior to judgment.”

1970—Cl. (b). Pub. L. 91-296 substituted “outpatient facility” for “diagnostic or treatment center”.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

REGULATIONS AND PERSONNEL

Section 2381(c) of Pub. L. 98-369 provided that: “Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section [July 18, 1984], the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section [amending sections 291i and 300s-1a of this title].”

§ 291j. Loans

(a) Authorization; conditions

In order further to assist the States in carrying out the purposes of this subchapter, the Surgeon General is authorized to make a loan of funds to the applicant for any project for con-