

In subsection (d), the words “certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a))” are substituted for “certificate referred to in paragraph (1) of section 4301(a) of title 38” because section 4301 of title 38 was amended generally by section 2(a) of Public Law 103-353, and before the amendment section 4301(a)(1) referred to a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)).

#### Editorial Notes

##### AMENDMENTS

2018—Subsec. (d). Pub. L. 115-232 substituted “(50 U.S.C. 3808(a))” for “(50 App. U.S.C. 459(a))”.

2017—Subsec. (c)(1)(A)(i). Pub. L. 115-91 substituted “section 57100” for “section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744)”.

### PART C—FINANCIAL ASSISTANCE PROGRAMS

#### Editorial Notes

##### AMENDMENTS

2006—Pub. L. 109-304, §8(b), Oct. 6, 2006, 120 Stat. 1586, inserted “Part C—Financial Assistance Programs”.

### CHAPTER 531—MARITIME SECURITY FLEET

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#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232, div. C, title XXXV, §3546(n), Aug. 13, 2018, 132 Stat. 2327, struck out item 53109 “Special rule regarding age of participating fleet vessel”.

#### § 53101. Definitions

In this chapter:

(1) **BULK CARGO.**—The term “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

(2) **CONTRACTOR.**—The term “contractor” means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary under section 53103.

(3) **FLEET.**—The term “Fleet” means the Maritime Security Fleet established under section 53102(a).

(4) **FOREIGN COMMERCE.**—The term “foreign commerce” means—

(A) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and

(B) commerce or trade between foreign countries.

(5) **PARTICIPATING FLEET VESSEL.**—The term “participating fleet vessel” means any vessel that—

(A) on October 1, 2015—

(i) meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c); and

(ii) is less than 20 years of age if the vessel is a tank vessel, or is less than 25 years of age for all other vessel types; and

(B) on December 31, 2014, is covered by an operating agreement under this chapter.

(6) **PERSON.**—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.

(7) **PRODUCT TANK VESSEL.**—The term “product tank vessel” means a double hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(8) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(9) **TANK VESSEL.**—The term “tank vessel” has the meaning that term has under section 2101 of this title.

(10) **UNITED STATES.**—The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands.

(11) **UNITED STATES CITIZEN TRUST.**—(A) Subject to subparagraph (C), the term “United States citizen trust” means a trust that is qualified under this paragraph.

(B) A trust is qualified under this paragraph with respect to a vessel only if—

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel under chapter 121 of this title includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(C) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(12) UNITED STATES-DOCUMENTED VESSEL.—The term “United States-documented vessel” means a vessel documented under chapter 121 of this title.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1803; amended Pub. L. 112–239, div. C, title XXXV, § 3508(a), Jan. 2, 2013, 126 Stat. 2223.)

### Editorial Notes

#### AMENDMENTS

2013—Par. (4). Pub. L. 112–239, § 3508(a)(1), amended par. (4) generally. Prior to amendment, par. (4) defined “foreign commerce”.

Par. (5). Pub. L. 112–239, § 3508(a)(4), amended par. (5) generally. Prior to amendment, par. (5) defined “participating fleet vessel”.

Pub. L. 112–239, § 3508(a)(2), (3), redesignated par. (6) as (5) and struck out former par. (5). Prior to amendment, text of par. (5) read as follows: “The term ‘LASH vessel’ means a lighter aboard ship vessel.”

Pars. (6) to (13). Pub. L. 112–239, § 3508(a)(3), redesignated pars. (7) to (13) as (6) to (12), respectively. Former par. (6) redesignated (5).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. C, title XXXV, § 3508(j), Jan. 2, 2013, 126 Stat. 2226, provided that: “The amendments made by—

“(1) paragraphs (2), (3), and (4) of subsection (a) [amending this section] take effect on December 31, 2014; and

“(2) subsection (f)(2) [amending section 53106 of this title] take effect on December 31, 2014.”

#### EFFECTIVE DATE

Pub. L. 108–136, div. C, title XXXV, § 3537, Nov. 24, 2003, 117 Stat. 1819, provided that:

“(a) IN GENERAL.—Except as provided in subsections (b) and (c), this subtitle [subtitle C (§§ 3531–3537) of title XXXV of div. C of Pub. L. 108–136, enacting this chapter, amending section 12102 of this title and sections 808 and 1162 of the former Appendix to this title, repealing sections 1187 to 1187e and 1222 of the former Appendix to this title, enacting provisions set out as a note under section 53110 of this title, and amending provisions set out as a note under section 53102 of this title] shall take effect October 1, 2004.”

“(b) REPEALS AND CONFORMING AMENDMENTS.—Section 3534 [amending section 12102 of this title, repealing sections 1187 to 1187e and 1222 of the former Appendix to this title, and amending provisions set out as a note under section 1187 of the former Appendix to this title] shall take effect October 1, 2005.”

“(c) OTHER PROVISIONS.—Sections 3533 [enacting provisions set out as a note under section 53110 of this title], 3535 [not classified to the Code], and this section shall take effect on the date of the enactment of this Act [Nov. 24, 2003].”

#### TEMPORARY PROGRAM AUTHORIZING CONTRACTS WITH ADJUNCT PROFESSORS AT THE UNITED STATES MERCHANT MARINE ACADEMY AND FOR OTHER PURPOSES

Pub. L. 110–417, div. C, title XXXV, § 3506(a)–(f), Oct. 14, 2008, 122 Stat. 4763, 4764, which authorized establishment of a temporary program for the purpose of contracting with not more than 25 individuals as personal services contractors to provide services as adjunct professors at the United States Merchant Marine Academy, was repealed by Pub. L. 111–84, div. C, title XXXV, § 3503(b)(2), Oct. 28, 2009, 123 Stat. 2719. See section 51317 of this title.

#### ASSISTANCE FOR SMALL SHIPYARDS AND MARITIME COMMUNITIES

Pub. L. 109–163, div. C, title XXXV, § 3506, Jan. 6, 2006, 119 Stat. 3553, formerly set out as a note under this sec-

tion, was transferred to and renumbered as section 54101 of this title by Pub. L. 110–181, div. C, title XXXV, § 3523(a)(6)(B), Jan. 28, 2008, 122 Stat. 599. Later, Pub. L. 110–417, div. C, title XXXV, § 3508(b), Oct. 14, 2008, 122 Stat. 4769, directed repeal of section 3506 of Pub. L. 109–163. Pub. L. 110–417, § 3508(b), was itself amended generally by Pub. L. 111–84, div. A, title X, § 1073(c)(14), Oct. 28, 2009, 123 Stat. 2475, effective Oct. 14, 2008, and as if included in Pub. L. 110–417 as enacted, and, as so amended, Pub. L. 110–417, § 3508(b), no longer directed the repeal of section 3506 of Pub. L. 109–163. Section 3506 of Pub. L. 109–163 was subsequently repealed by Pub. L. 111–383, div. A, title X, § 1075(m), Jan. 7, 2011, 124 Stat. 4378.

#### MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM

Pub. L. 108–136, div. C, title XXXV, § 3517, Nov. 24, 2003, 117 Stat. 1796, as amended by Pub. L. 109–163, div. C, title XXXV, § 3503, Jan. 6, 2006, 119 Stat. 3548; Pub. L. 110–417, div. C, title XXXV, § 3505, Oct. 14, 2008, 122 Stat. 4763, provided that:

“(a) AUTHORITY TO ENTER AGREEMENTS.—

“(1) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program under which the Secretary shall enter into an agreement with 1 or more contractors under chapter 531 of title 46, United States Code, regarding maintenance and repair of 1 or more vessels that are subject to an operating agreement under that chapter.

“(2) REQUIREMENT OF AGREEMENT.—The Secretary shall, subject to the availability of appropriations, require 1 or more persons to enter into an agreement under this section as a condition of awarding an operating agreement to the person under chapter 531 of title 46, United States Code, for 1 or more vessels that normally make port calls in the United States.

“(3) EXISTING OPERATING AGREEMENTS.—The Secretary of Transportation shall, subject to the availability of appropriations, seek to enter into an agreement under this section with one or more contractors under an operating agreement under that chapter that is in effect on the date of the enactment of this paragraph [Oct. 14, 2008], regarding maintenance and repair of all vessels that are subject to the operating agreement.

“(b) TERMS OF AGREEMENT.—An agreement under this section—

“(1) shall require that except as provided in subsection (c), all qualified maintenance or repair on the vessel shall be performed in the United States;

“(2) shall require that the Secretary shall reimburse the contractor in accordance with subsection (d) for the costs of qualified maintenance or repair performed in the United States; and

“(3) shall apply to qualified maintenance or repair performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

“(c) EXCEPTION TO REQUIREMENT TO PERFORM WORK IN THE UNITED STATES.—A contractor shall not be required to have qualified maintenance or repair work performed in the United States under this section if—

“(1) the Secretary determines that there is no facility capable of meeting all technical requirements of the qualified maintenance or repair in the United States located in the geographic area in which the vessel normally operates available to perform the work in the time required by the contractor to maintain its regularly scheduled service;

“(2) the Secretary determines that there are insufficient funds to pay reimbursement under subsection (d) with respect to the work; or

“(3) the Secretary fails to make the certification described in subsection (e)(2).

“(d) REIMBURSEMENT.—

“(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, reimburse a contractor for costs incurred by the contractor for quali-

fied maintenance or repair performed in the United States under this section.

“(2) AMOUNT.—The amount of reimbursement shall be equal to the difference between—

“(A) the fair and reasonable cost of obtaining the qualified maintenance or repair in the United States; and

“(B) the fair and reasonable cost of obtaining the qualified maintenance or repair outside the United States, in the country in which the contractor would otherwise undertake the qualified maintenance or repair.

“(3) DETERMINATION OF FAIR AND REASONABLE COSTS.—The Secretary shall determine fair and reasonable costs for purposes of paragraph (2).

“(e) NOTIFICATION REQUIREMENTS.—

“(1) NOTIFICATION BY CONTRACTOR.—The Secretary is not required to pay reimbursement to a contractor under this section for qualified maintenance or repair, unless the contractor—

“(A) notifies the Secretary of the intent of the contractor to obtain the qualified maintenance or repair, by not later than 90 days before the date of the performance of the qualified maintenance or repair; and

“(B) includes in such notification—

“(i) a description of all qualified maintenance or repair that the contractor should reasonably expect may be performed;

“(ii) a description of the vessel’s normal route and port calls in the United States;

“(iii) an estimate of the cost of obtaining the qualified maintenance or repair described under clause (i) in the United States; and

“(iv) an estimate of the cost of obtaining the qualified maintenance or repair described under clause (i) outside the United States, in the country in which the contractor otherwise would undertake the qualified maintenance or repair.

“(2) CERTIFICATION BY SECRETARY.—

“(A) Not later than 30 days after the date of receipt of notification under paragraph (1), the Secretary shall certify to the contractor—

“(i) whether the cost estimates provided by the contractor are fair and reasonable;

“(ii) if the Secretary determines that such cost estimates are not fair and reasonable, the Secretary’s estimate of fair and reasonable costs for such work;

“(iii) whether there are available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to such work; and

“(iv) that the Secretary commits such funds to the contractor for such reimbursement, if such funds are available for that purpose.

“(B) If the contractor notification described in paragraph (1) does not include an estimate of the cost of obtaining qualified maintenance and repair in the United States, then not later than 30 days after the date of receipt of such notification, the Secretary shall—

“(i) certify to the contractor whether there is a facility capable of meeting all technical requirements of the qualified maintenance and repair in the United States located in the geographic area in which the vessel normally operates available to perform the qualified maintenance and repair described in the notification by the contractor under paragraph (1) in the time period required by the contractor to maintain its regularly scheduled service; and

“(ii) if there is such a facility, require the contractor to resubmit such notification with the required cost estimate for such facility.

“(f) REGULATIONS.—

“(1) REQUIREMENT TO ISSUE NOTICE OF PROPOSED RULE MAKING.—The Secretary shall—

“(A) by not later than 30 days after the effective date of this subsection [probably means effective

date of Pub. L. 109–163, Jan. 6, 2006], issue a notice of proposed rule making to implement this section;

“(B) in such notice, solicit the submission of comments by the public regarding rules to implement this section; and

“(C) provide a period of at least 30 days for the submission of such comments.

“(2) INTERIM RULES.—Upon expiration of the period for submission of comments pursuant to paragraph (1)(C), the Secretary may prescribe interim rules necessary to carry out the Secretary’s responsibilities under this section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. At the time interim rules are issued, the Secretary shall solicit comments on the interim rules from the public and other interested persons. Such period for comment shall not be less than 90 days. All interim rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subsection.

“(g) QUALIFIED MAINTENANCE OR REPAIR DEFINED.—In this section the term ‘qualified maintenance or repair’—

“(1) except as provided in paragraph (2), means—

“(A) any inspection of a vessel that is—

“(i) required under chapter 33 of title 46, United States Code; and

“(ii) performed in the period in which the vessel is subject to an agreement under this section;

“(B) any maintenance or repair of a vessel that is determined, in the course of an inspection referred to in subparagraph (A), to be necessary; and

“(C) any additional maintenance or repair the contractor intends to undertake at the same time as the work described in subparagraph (B); and

“(2) does not include—

“(A) maintenance or repair not agreed to by the contractor to be undertaken at the same time as the work described in paragraph (1); or

“(B) any emergency work that is necessary to enable a vessel to return to a port in the United States.

“(h) ANNUAL REPORT.—The Secretary shall submit to the Congress by not later than September 30 each year a report on the program under this section. The report shall include a listing of future inspection schedules for all vessels included in the Maritime Security Fleet under section 53102 of title 46, United States Code.

“(i) AUTHORIZATION OF APPROPRIATIONS.—In addition to the other amounts authorized by this title [see Short Title of 2003 Amendment note set out under section 101 of this title], for reimbursement of costs of qualified maintenance or repair under this section there is authorized to be appropriated to the Secretary of Transportation \$19,500,000 for each of fiscal years 2006 through 2011.”

#### NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE

Pub. L. 108–136, div. C, title XXXV, subtitle D, Nov. 24, 2003, 117 Stat. 1820, as amended by Pub. L. 108–375, div. C, title XXXV, §3503, Oct. 28, 2004, 118 Stat. 2195; Pub. L. 109–163, div. C, title XXXV, §3504, Jan. 6, 2006, 119 Stat. 3551; Pub. L. 109–364, div. C, title XXXV, §3502(b)(2), Oct. 17, 2006, 120 Stat. 2516, provided that:

“SEC. 3541. NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM.

“The Secretary of Transportation shall establish a program for the provision of financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels—

“(1) to be operated in commercial service in foreign commerce; and

“(2) to be available for national defense purposes in time of war or national emergency pursuant to an Emergency Preparedness Plan approved by the Secretary of Defense pursuant to section 3543(e).

“SEC. 3542. APPLICATION PROCEDURE.

“(a) REQUEST FOR PROPOSALS.—Within 90 days after the date of the enactment of this subtitle [Nov. 24, 2003], and on an as-needed basis thereafter, the Secretary, in consultation with the Secretary of Defense, shall publish in the Federal Register a request for competitive proposals for the construction of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under this subtitle.

“(b) QUALIFICATION.—Any citizen of the United States or any shipyard in the United States may submit a proposal to the Secretary of Transportation for purposes of constructing a product tank vessel with assistance under this subtitle.

“(c) REQUIREMENT.—The Secretary, with the concurrence of the Secretary of Defense, may enter into an agreement with the submitter of a proposal for assistance under this subtitle if the Secretary determines that—

“(1) the plans and specifications call for construction of a new product tank vessel of not less than 35,000 deadweight tons and not greater than 60,000 deadweight tons, that—

“(A) will meet the requirements of foreign commerce;

“(B) is capable of carrying militarily useful petroleum products, and will be suitable for national defense or military purposes in time of war, national emergency, or other military contingency; and

“(C) will meet the construction standards necessary to be documented under the laws of the United States;

“(2) the shipyard in which the vessel will be constructed has the necessary capacity and expertise to successfully construct the proposed number and type of product tank vessels in a reasonable period of time as determined by the Secretary of Transportation, taking into consideration the recent prior commercial shipbuilding history of the proposed shipyard in delivering a vessel or series of vessels on time and in accordance with the contract price and specifications; and

“(3) the person proposed to be the operator of the proposed vessel possesses the ability, experience, financial resources, and any other qualifications determined to be necessary by the Secretary for the operation and maintenance of the vessel.

“(d) PRIORITY.—The Secretary—

“(1) subject to paragraph (2), shall give priority consideration to a proposal submitted by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 ([former] 46 U.S.C. App. 802) [see 46 U.S.C. 50501]; and

“(2) may give priority to consideration of proposals that provide the best value to the Government, taking into consideration—

“(A) the costs of vessel construction;

“(B) the commercial and national security needs of the United States; and

“(C) with respect to any proposal for financial assistance to be provided from amounts appropriated for a fiscal year after fiscal year 2005, acceptance of the vessel to be constructed with the assistance for participation in the Shipboard Technology Evaluation Program as outlined in Navigation and Vessel Inspection Circular 01-04, issued by the Commandant of the United States Coast Guard on January 2, 2004.

“SEC. 3543. AWARD OF ASSISTANCE.

“(a) IN GENERAL.—If after review of a proposal, the Secretary determines that the proposal fulfills the requirements under this subtitle, the Secretary may enter into a contract with the proposed purchaser and the proposed shipyard for the construction of a product tank vessel with assistance under this subtitle.

“(b) AMOUNT OF ASSISTANCE.—The contract shall provide that the Secretary shall pay, subject to the avail-

ability of appropriations, the actual construction cost of the vessel, but in no case more than \$50,000,000 per vessel.

“(c) CONSTRUCTION IN UNITED STATES.—A contract under this section shall require that construction of a vessel with assistance under this subtitle shall be performed in a shipyard in the United States.

“(d) DOCUMENTATION OF VESSEL.—

“(1) CONTRACT REQUIREMENT.—A contract under this section shall require that, upon delivery of a vessel constructed with assistance under the contract, the vessel shall be documented under chapter 121 of title 46, United States Code, with a registry endorsement only.

“(2) RESTRICTION ON COASTWISE ENDORSEMENT.—A vessel constructed with assistance under this subtitle shall not be eligible for a certificate of documentation with a coastwise endorsement.

“(3) AUTHORITY TO REFLAG NOT APPLICABLE.—Section 9(g) [probably should be 9(e)] of the Shipping Act, 1916, ([former] 46 U.S.C. App. 808(g) [probably should be 808(e)]) [now 46 U.S.C. 56101(c)] shall not apply to a vessel constructed with assistance under this subtitle.

“(e) EMERGENCY PREPAREDNESS AGREEMENT.—

“(1) IN GENERAL.—A contract under this section shall require that the person who will be the operator of a vessel constructed with assistance under the contract shall enter into an Emergency Preparedness Agreement for the vessel under section 53107 of title 46, United States Code, as amended by this Act.

“(2) TREATMENT AS CONTRACTOR.—For purposes of the application, under paragraph (1), of section 53107 of title 46, United States Code, to a vessel constructed with assistance under this subtitle, the term ‘contractor’ as used in that section means the person who will be the operator of a vessel constructed with assistance under this subtitle.

“(f) ADDITIONAL TERMS.—The Secretary shall incorporate in the contract the requirements set forth in this subtitle, and may incorporate in the contract any additional terms the Secretary considers necessary.

“SEC. 3544. PRIORITY FOR TITLE XI ASSISTANCE.

[Amended section 1273 of the former Appendix to this title.]

“SEC. 3545. DEFINITIONS.

“In this subtitle the definitions set forth in section 53101 of title 46, United States Code, as amended by this Act, shall apply.

“SEC. 3546. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary to carry out this subtitle a total of \$250,000,000 for fiscal years after fiscal year 2004.”

SALE OF INACTIVE PASSENGER VESSELS UNDER OPERATING-DIFFERENTIAL SUBSIDY TO FOREIGN OWNERSHIP

Pub. L. 92-296, §1, May 16, 1972, 86 Stat. 140; Pub. L. 97-31, §12(38), Aug. 6, 1981, 95 Stat. 156, provided that:

“Notwithstanding any other provision of law or of prior contract with the United States, any vessel heretofore operated as a passenger vessel, as defined in section 613(a) of the Merchant Marine Act, 1936, as amended [act June 29, 1936, ch. 858, set out below], under an operating-differential subsidy contract with the United States and now in inactive or layup status, except the steamship Independence and the steamship United States, may be sold and transferred to foreign ownership, registry, and flag, with the prior approval of the Secretary of Transportation. Such approval shall require (1) approval of the purchaser; (2) payment of existing debt and private obligations related to the vessel; (3) approval of the price, including terms of payment, for the sale of the vessel; (4) the seller to enter into an agreement with the Secretary whereby an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale shall within a reasonable period not to exceed twelve months of receipt be committed and

thereafter be used as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]; and (5) the purchaser to enter into an agreement with the Secretary, binding upon such purchaser and any later owner of the vessel and running with title to the vessel, that (a) the vessel will not carry passengers or cargo in competition, as determined by the Secretary, with any United States-flag passenger vessel for a period of two years from the date the transferred vessel goes into operation; (b) the vessel will be made available to the United States in time of emergency and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242) [now 46 U.S.C. 56301 et seq.]; (c) the purchaser will comply with such further conditions as the Secretary may impose as authorized by sections 9, 37, and 41 of the Shipping Act, 1916, as amended ([former] 46 U.S.C. [App.] 808, 835, and 839) [see 46 U.S.C. 56101 to 56104 and 57109]; and (d) the purchaser will furnish a surety bond in an amount and with a surety satisfactory to the Secretary to secure performance of the foregoing agreements.

"In addition to any other provision such agreements may contain for enforcement of (4) and (5) above, the agreements therein required may be specifically enforced by decree for specific performance or injunction in any district court of the United States. In the agreement with the Secretary the purchaser shall irrevocably appoint a corporate agent within the United States for service of process upon such purchaser in any action to enforce the agreement."

#### OFF-SEASON CRUISES ADDITIONAL TO VOYAGES ON REGULAR SERVICE, ROUTE, OR LINE

Pub. L. 87-45, § 7, May 27, 1961, 75 Stat. 91, provided that: "The cruises authorized by section 613 [of act June 29, 1936, ch. 858, set out below] shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service."

#### MINIMUM MANNING, WAGE SCALES, AND WORKING CONDITIONS ON SUBSIDIZED VESSELS

Act June 29, 1936, ch. 858, title III, § 301, 49 Stat. 1992; June 23, 1938, ch. 600, §§ 5, 6, 52 Stat. 955; 1946 Reorg. Plan No. 3, §§ 101-104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; Pub. L. 97-31, § 12(82), Aug. 6, 1981, 95 Stat. 160; Pub. L. 109-163, div. A, title V, § 515(g)(2)(A), Jan. 6, 2006, 119 Stat. 3236, provided that:

"(a) The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under titles VI and VII of this Act [former 46 U.S.C. App. 1171 et seq., 1191 et seq., see Disposition Table preceding section 101 of this title] minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-dif-

ferential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: *Provided, however*, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

"(b) Every contract executed under authority of titles VI and VII of this Act shall require—

"(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

"(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

"(3) Licensed officers who are members of the United States Navy Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation or the Coast Guard;

"(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

"(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Navy Reserve."

#### CONSTRUCTION-DIFFERENTIAL SUBSIDY

Act June 29, 1936, ch. 858, title V, 49 Stat. 1995, as amended, provided as follows:

#### Subsidy Authorized for Vessels To Be Operated in Foreign Trade

"SEC. 501. (a) Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title]. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the

construction of ships of higher transport capability and productivity.

“(b) The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

“(c) Any citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations of the Secretary of Transportation has adopted as provided in section 204(b) of this Act [former 46 U.S.C. App. 1114(b), repealed by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710]; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.”

(As amended June 23, 1938, ch. 600, §8, 52 Stat. 955; July 17, 1952, ch. 939, §§1, 2, 66 Stat. 760, 761; Pub. L. 91-469, §§6, 35(a), (c), (d), Oct. 21, 1970, 84 Stat. 1019, 1035; Pub. L. 91-603, §4(a), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97-31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

#### Construction of Vessels; Bids; Subsidies

“SEC. 502. (a) If the Secretary of the Navy certifies his approval under section 501(b) of this Act, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 505 of this Act with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of

three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], of building such vessel in a foreign shipyard.

“(b) The amount of the reduction in selling price which is herein termed ‘construction differential subsidy’ shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of that type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary’s consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 505) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

“(c) In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transpor-

tation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

“(d) [Repealed. Pub. L. 87-877, §2(a), Oct. 24, 1962, 76 Stat. 1200.]

“(e) If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

“(f) The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under titles V and VII [former 46 U.S.C. App. 1191 et seq., see Disposition Table preceding section 101 of this title], upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance

with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this Act, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

“If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under title V, except section 509) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: *Provided*, That no interest shall be paid on any refund authorized under this Act. If the vessel is constructed under section 509 the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

“(g) Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 215 [former 46 U.S.C. App. 1125, see 46 U.S.C. 57105], the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act

[former 46 U.S.C. App. 1171 et seq., see Disposition Table preceding section 101 of this title], notwithstanding the provisions of section 601(a)(1), and section 610(1) [set out below], or any other provision of law.

“(h) The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946 [former 50 U.S.C. 4405(a), now 46 U.S.C. 57100(a)], (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936 [former 46 U.S.C. App. 1242, now 46 U.S.C. 56301 et seq.], (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act [former 46 U.S.C. App. 1271 et seq., see 46 U.S.C. 53701 et seq.], or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

“(i) The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.”

(As amended June 23, 1938, ch. 600, §§9-14, 52 Stat. 955-957; Aug. 4, 1939, ch. 417, §6, 53 Stat. 1183; July 26, 1956, ch. 737, 70 Stat. 657; Pub. L. 86-518, §§1, 2, June 12, 1960, 74 Stat. 216; Pub. L. 86-607, §1, July 7, 1960, 74 Stat. 362; Pub. L. 87-877, §§1, 2(a), (e), (f), Oct. 24, 1962, 76 Stat. 1200, 1201; Pub. L. 88-370, July 11, 1964, 78 Stat. 313; Pub. L. 88-410, §1, Aug. 10, 1964, 78 Stat. 385; Pub. L. 89-127, Aug. 14, 1965, 79 Stat. 519; Pub. L. 89-589, Sept. 19, 1966, 80 Stat. 811; Pub. L. 90-572, Oct. 12, 1968, 82 Stat. 1004; Pub. L. 91-40, July 8, 1969, 83 Stat. 44; Pub. L. 91-469, §§7, 35(a), (e)-(g), Oct. 21, 1970, 84 Stat. 1019, 1035, 1036; Pub. L. 91-603, §4(b), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 93-71, July 10, 1973, 87 Stat. 169; Pub. L. 94-372, §§2, 3, July 31, 1976, 90 Stat. 1042; Pub. L. 96-210, Mar. 17, 1980, 94 Stat. 100; Pub. L. 96-387, §3, Oct. 7, 1980, 94 Stat. 1545; Pub. L. 97-31, §12(84), (85), Aug. 6, 1981, 95 Stat. 161.)

#### Documentation of Completed Vessel Under Laws of United States; Delivery to Purchaser; First Mortgage to Secure Deferred Payments

“SEC. 503. Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this title and its delivery by the shipbuilder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchaser price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: *Provided*, That notwithstanding any

other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 4(b) of the Merchant Ship Sales Act of 1946 [former 50 U.S.C. App. 1737(b)], reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under title V of this Act, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation, such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920 [former 46 U.S.C. App. 868, repealed by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710].”

(As amended June 23, 1938, ch. 600, §15, 52 Stat. 957; July 17, 1952, ch. 939, §3, 66 Stat. 761; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 91-469, §§8, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97-31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

#### Purchase of Vessel Constructed in Accordance With Application for Subsidy; Bid or Negotiated Price Basis for Subsidy and Payments for Cost of National Defense Features; Documentation

“SEC. 504. If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 502, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 502(a) or under a contract negotiated by the Secretary of Transportation as provided in section 502(b) in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.”

(As amended June 23, 1938, ch. 600, §16, 52 Stat. 958; July 17, 1952, ch. 939, §4, 66 Stat. 761; Pub. L. 91-469, §§9, 35(a), Oct. 21, 1970, 84 Stat. 1021, 1035; Pub. L. 97-31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Eligible Shipyards; Materials; Conditions of Contracts; Limitation to American Shipyards; American Materials, Waiver; Ability of Bidders; Filing Bids and Data

“SEC. 505. All construction in respect of which a construction-differential subsidy is allowed under this title shall be performed in a shipyard of the United States as the result of competitive bidding, after due advertisement, with the right reserved in the Secretary of Transportation to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in paragraph K of section 401 of the Tariff Act of 1930 [now 19 U.S.C. 1401(h)]; *Provided, however,* That with respect to other than major components of the hull, superstructure, and any material used in the construction thereof, (1) if the Secretary of Transportation determines that the requirements of this sentence will unreasonably delay completion of any vessel beyond its contract delivery date, and (2) if such determination includes or is accompanied by a concise explanation of the basis therefor, then the Secretary of Transportation may waive such requirements to the extent necessary to prevent such delay. No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary of Transportation shall be accompanied by all detailed estimates upon which it is based. The Secretary of Transportation may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file until disposed of as provided by law. For the purposes of this title V, the term ‘shipyard of the United States’ means shipyards within any of the United States and the Commonwealth of Puerto Rico.”

(As amended June 23, 1938, ch. 600, §§17, 40(a), 52 Stat. 958, 964; Oct. 25, 1951, ch. 562, §3(4), 65 Stat. 639; Pub. L. 86-624, §35(a), July 12, 1960, 74 Stat. 421; Pub. L. 91-469, §§10, 35(a), Oct. 21, 1970, 84 Stat. 1022, 1035; Pub. L. 97-31, §12(84), Aug. 6, 1981, 95 Stat. 161.)

Operation of Subsidy Constructed Vessel Limited to Foreign Trade; Repayments to Secretary for Deviations

“SEC. 506. Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such 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. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act [former 46 U.S.C.

App. 1101 et seq., see Disposition Table preceding section 101 of this title]. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.”

(As amended June 23, 1938, ch. 600, §18, 52 Stat. 958; Mar. 18, 1959, Pub. L. 86-3, §18(b)(1), 73 Stat. 12; Pub. L. 86-518, §3, June 12, 1960, 74 Stat. 216; Pub. L. 97-31, §12(87), Aug. 6, 1981, 95 Stat. 161.)

Construction of New Vessel to Replace Obsolete; Purchase of Old Vessel by Secretary; Bond of Seller Against Liens

“SEC. 507. If a contract is made by the Secretary of Transportation under authority of this title for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided,* That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further,* That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.”

(As amended June 23, 1938, ch. 600, §19, 52 Stat. 959; July 17, 1952, ch. 939, §5, 66 Stat. 761; Pub. L. 86-518, §1, June 12, 1960, 74 Stat. 216; Pub. L. 97-31, §12(88), Aug. 6, 1981, 95 Stat. 161.)

Disposition of Vessels Transferred to Maritime Administration of Department of Transportation

[Section 508 was classified to section 1158 of the former Appendix to this title and was repealed and re-stated as sections 57102 and 57103 of this title by Pub. L. 109-304, §§8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710.]

Vessels To Be Operated in Domestic Trade; Terms and Conditions of Construction Aid and Sale to Purchaser

“SEC. 509. Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this title, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons

and to be capable of a sustained speed of not less than eight knots, in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12½ per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: *Provided*, That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 503 of this Act, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section."

(As amended June 23, 1938, ch. 600, § 20, 52 Stat. 959; June 6, 1939, ch. 186, 53 Stat. 810; July 17, 1952, ch. 939, § 6, 66 Stat. 761; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 87-877, § 2(b), Oct. 24, 1962, 76 Stat. 1200; Pub. L. 90-183, Dec. 10, 1967, 81 Stat. 559; Pub. L. 90-214, Dec. 18, 1967, 81 Stat. 660; Pub. L. 91-469, § 11, Oct. 21, 1970, 84 Stat. 1022; Pub. L. 92-374, Aug. 10, 1972, 86 Stat. 528; Pub. L. 95-173, § 8, Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95-505, Oct. 24, 1978, 92 Stat. 1755; Pub. L. 97-31, § 12(90), Aug. 6, 1981, 95 Stat. 161.)

#### Acquisition of Obsolete Vessels

[Section 510 was classified to section 1160 of the former Appendix to this title and was primarily repealed and restated in subtitle V of this title by Pub. L. 109-304, §§ 8(b), (c), 19, Oct. 6, 2006, 120 Stat. 1556, 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.]

#### Reserve Funds for Construction or Acquisition of Vessels; Taxation

[Section 511 was classified to section 1161 of the former Appendix to this title and was primarily repealed and restated as chapter 533 of this title by Pub. L. 109-304, §§ 8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.]

#### Limitation on Restrictions

"SEC. 512. (a) Except as provided in subsection (b), notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 [set out below] applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

"(b)(1) Except as provided in paragraph (2), the restrictions and requirements of section 506 shall terminate upon the expiration of the 20-year period beginning on the date of the original delivery of the vessel from the shipyard for operation of a vessel in any domestic trade in which it has operated at any time since 1996.

"(2) Paragraph (1) shall not affect any requirement to make payments under section 506."

(As added Pub. L. 104-239, § 7, Oct. 8, 1996, 110 Stat. 3133; amended Pub. L. 108-136, div. C, title XXXV, § 3532(b), Nov. 24, 2003, 117 Stat. 1818.)

[Title V of act June 29, 1936, ch. 858, comprising this note, consisted of sections 501 to 512 which were classified to sections 1151 to 1162, respectively, of the former Appendix to this title, prior to the enactment of Pub. L. 109-304 and elimination of that Appendix. For complete disposition of those sections, see Disposition Table preceding section 101 of this title.]

[Pub. L. 87-877, § 5, Oct. 24, 1962, 76 Stat. 1202, provided that: "The amendment made by the first section of this Act [amending section 502 of act June 29, 1936, ch. 858, set out above] shall be effective only with respect to contracts entered into with respect to (a) the construction of a vessel the keel of which was laid after June 30, 1959, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Secretary may, with the consent of the parties thereto, modify any such contract entered into prior to the date of the enactment of this Act [Oct. 24, 1962] to the extent authorized by the amendment made by this Act."]

[Pub. L. 86-607, § 2, July 7, 1960, 74 Stat. 362, as amended by Pub. L. 87-222, Sept. 13, 1961, 75 Stat. 494, provided that: "The amendment made by this Act [amending section 502 of act June 29, 1936, ch. 858, set out above] shall be effective only with respect to any contract entered into not later than two years after the date of enactment of this Act [July 7, 1960] under the provisions of section 502 of the Merchant Marine Act, 1936 [act June 29, 1936, ch. 858], with respect to (a) the construction of a vessel the keel of which was laid, or (b) the reconstruction or reconditioning of a vessel the shipyard contract for which was entered into after June 30, 1959, and the Federal Maritime Board may, with the consent of the parties thereto, modify any such contract entered into prior to the date of enactment of the first amendment to Public Law 86-607 (74 Stat. 362) [Sept. 13, 1961], to the extent authorized by the amendment made by this Act, as amended."]

[Pub. L. 86-518, § 8(a), June 12, 1960, 74 Stat. 216, provided that: "The amendments made by this Act [amending sections 502, 503, 506, 507, 509, 605, and 611 of act June 29, 1936, ch. 858, set out above and below] shall apply only to vessels delivered by the shipbuilder on or after January 1, 1946, and with respect to such vessels shall become effective on January 1, 1960. With respect to vessels delivered by the shipbuilder before January 1, 1946, the provisions of the Merchant Marine Act, 1936 [act June 29, 1936, ch. 858, see Tables for classification], existing immediately before the date of enactment of this Act [June 12, 1960] shall continue in effect."]

#### OPERATING-DIFFERENTIAL SUBSIDY

Act June 29, 1936, ch. 858, title VI, 49 Stat. 2001, as amended, was repealed by Pub. L. 114-120, title III, § 313(a), Feb. 8, 2016, 130 Stat. 58.

[Subtitle A—Operating-Differential Subsidy Program]

Section 601, amended Pub. L. 87-45, § 2, May 27, 1961, 75 Stat. 90; Pub. L. 91-469, §§ 14, 35(a), (h), Oct. 21, 1970, 84 Stat. 1023, 1035, 1036; Pub. L. 91-603, § 4(c), (d), Dec. 31, 1970, 84 Stat. 1675; Pub. L. 97-31, § 12(93), Aug. 6, 1981, 95 Stat. 161, related to subsidy authorized for operation of vessels in foreign trade or in off-season cruises.

Section 602, amended June 23, 1938, ch. 600, § 40(b), 52 Stat. 964; Pub. L. 87-45, § 3, May 27, 1961, 75 Stat. 91; Pub. L. 91-469, § 35(a), Oct. 21, 1970, 84 Stat. 1035; Pub. L. 97-31, § 12(94), Aug. 6, 1981, 95 Stat. 161, related to determination of necessity of subsidy to meet competition.

Section 603, amended Aug. 4, 1939, ch. 417, § 8, 53 Stat. 1185; Pub. L. 87-45, § 4, May 27, 1961, 75 Stat. 91; Pub. L. 87-243, Sept. 14, 1961, 75 Stat. 513; Pub. L. 91-469, §§ 15-17, 35(a), (i), Oct. 21, 1970, 84 Stat. 1023, 1024, 1035, 1036; Pub. L. 97-31, § 12(94), Aug. 6, 1981, 95 Stat. 161, related to contracts for payment of subsidy.

Section 604, amended June 23, 1938, ch. 600, § 21, 52 Stat. 959; Aug. 4, 1939, ch. 417, § 9, 53 Stat. 1185; Pub. L. 97-31, § 12(95), Aug. 6, 1981, 95 Stat. 162, related to authorization of additional subsidy.

Section 605, amended July 17, 1952, ch. 939, § 15, 66 Stat. 764; Pub. L. 86-3, § 18(b)(2), Mar. 18, 1959, 73 Stat. 12; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 89-348, § 1(9), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 91-469, §§ 18, 19, 26(b), 35(a), (j), Oct. 21, 1970, 84 Stat. 1025, 1026, 1034-1036; Pub. L. 97-31, § 12(96), Aug. 6, 1981, 95 Stat. 162; Pub. L. 104-239, § 3(a), Oct. 8, 1996, 110 Stat. 3126, related to vessels excluded from subsidy.

Section 606, amended June 23, 1938, ch. 600, § 22, 52 Stat. 960; July 17, 1952, ch. 939, § 16, 66 Stat. 764; May 10, 1956, ch. 247, § 1, 70 Stat. 148; Pub. L. 86-624, § 35(b), July 12, 1960, 74 Stat. 421; Pub. L. 87-45, § 5, May 27, 1961, 75 Stat. 91; Pub. L. 91-469, §§ 20, 35(a), (k), Oct. 21, 1970, 84 Stat. 1026, 1035, 1036; Pub. L. 97-31, § 12(96), Aug. 6, 1981, 95 Stat. 162, related to readjustments, change in service, withdrawal from service, payment of excess profits, wages, etc., and American materials.

Section 607 was classified to section 1177 of the former Appendix to this title and was primarily repealed and restated as chapter 535 of this title by Pub. L. 109-304, §§ 8(c), 19, Oct. 6, 2006, 120 Stat. 1586, 1710. For disposition of sections of the former Appendix to this title, see Disposition Table preceding section 101 of this title.

Section 608, amended Pub. L. 97-31, § 12(98), Aug. 6, 1981, 95 Stat. 162, related to sale or assignment of contract, consent of Secretary, purchaser subject to terms of contract, and rescinding contract on transfer without consent.

Section 609, amended June 23, 1938, ch. 600, § 29, 52 Stat. 961; Pub. L. 97-31, § 12(99), Aug. 6, 1981, 95 Stat. 162, related to withholding payment to defaulting contractor.

Section 610, amended Pub. L. 97-31, § 12(99), Aug. 6, 1981, 95 Stat. 162, related to vessels eligible for subsidy.

Section 611, added June 23, 1938, ch. 600, § 30, 52 Stat. 961; and amended Pub. L. 85-791, § 17, Aug. 28, 1958, 72 Stat. 947; Pub. L. 86-518, § 4, June 12, 1960, 74 Stat. 216; Pub. L. 97-31, § 12(100), Aug. 6, 1981, 95 Stat. 162, related to transfer of vessels to foreign registry on default of United States.

Section 612 was classified to section 1182 of the former Appendix to this title and was repealed by Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

Section 613, added Pub. L. 87-45, § 1, May 27, 1961, 75 Stat. 89; and amended Pub. L. 90-358, §§ 1, 2, June 22, 1968, 82 Stat. 248; Pub. L. 91-250, May 14, 1970, 84 Stat. 215; Pub. L. 92-323, June 30, 1972, 86 Stat. 389; Pub. L. 97-31, § 12(102), Aug. 6, 1981, 95 Stat. 162, related to off-season cruises by passenger vessels.

Section 614, added Pub. L. 97-35, title XVI, § 1603, Aug. 13, 1981, 95 Stat. 751, related to suspension of operating differential subsidy contracts by operator recipients.

Section 615, added Pub. L. 97-35, title XVI, § 1610, Aug. 13, 1981, 95 Stat. 753, related to construction, reconstruction, or acquisition of vessels over five thousand deadweight tons in foreign shipyards and preconditions.

Section 616, added Pub. L. 104-239, § 3(b), Oct. 8, 1996, 110 Stat. 3127, related to wind-up of program.

Title VI of act June 29, 1936, ch. 858, which comprised this note, consisted of sections 601 to 611 and 613 to 616 which were classified to sections 1171 to 1181 and 1183 to 1185a, respectively, of the former Appendix to this title, prior to the enactment of Pub. L. 109-304 and elimination of that Appendix. For complete disposition of those sections, see Disposition Table preceding section 101 of this title.

#### CONTRACT PROVISIONS

Act June 29, 1936, ch. 858, title VIII, §§ 801, 802, 809, 49 Stat. 2011, 2015, as amended, was repealed or transferred

by Pub. L. 114-120, title III, § 313(a), (c)(1)(A), Feb. 8, 2016, 130 Stat. 58.

Section 801, amended Pub. L. 97-31, § 12(119), Aug. 6, 1981, 95 Stat. 164, which related to provision for books and records, filing balance sheets, inspection and auditing by Secretary, and rescission of contract on failure to comply with provisions, was transferred to section 57522 of this title by Pub. L. 114-120, title III, § 313(c)(1)(A), Feb. 8, 2016, 130 Stat. 58.

Section 802, amended June 29, 1936, ch. 858, title VIII, § 802, 49 Stat. 2011; June 23, 1938, ch. 600, § 33, 52 Stat. 962; Aug. 7, 1939, ch. 555, § 2, 53 Stat. 1254; Pub. L. 97-31, § 12(120), Aug. 6, 1981, 95 Stat. 164, related to purchase or requisition of vessels by United States and amount of payment, prior to repeal by Pub. L. 114-120, title III, § 313(a), Feb. 8, 2016, 130 Stat. 58.

Section 809, amended Pub. L. 91-469, § 26(a), Oct. 21, 1970, 84 Stat. 1034; Pub. L. 94-10, § 3, Mar. 23, 1975, 89 Stat. 16; Pub. L. 94-127, § 4, Nov. 13, 1975, 89 Stat. 680; Pub. L. 96-470, title II, § 201(a), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 97-31, § 12(121), Aug. 6, 1981, 95 Stat. 164; Pub. L. 97-35, title XVI, § 1604, Aug. 13, 1981, 95 Stat. 751; Pub. L. 109-304, §§ 14(b), 19, Oct. 6, 2006, 120 Stat. 1702, 1710, which consisted of subsecs. (a) and (b), related to requirement that contracts designed equitably for all ports, minimum allocation of funds, report to Congress, and preference to citizens of United States, prior to repeal by Pub. L. 114-120, title III, § 313(a), Feb. 8, 2016, 130 Stat. 58. Subsec. (b) of section 809 had already been repealed by Pub. L. 109-304, § 19, Oct. 6, 2006, 120 Stat. 1710.

#### ENROLLMENT IN SEALIFT READINESS PROGRAM

Act June 29, 1936, ch. 858, title IX, § 909, as added by Pub. L. 97-35, title XVI, § 1605, Aug. 13, 1981, 95 Stat. 752, provided that: "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."

#### § 53102. Establishment of Maritime Security Fleet

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Defense, shall establish a fleet of active, commercially viable, militarily useful, privately owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-documented vessels for which there are in effect operating agreements under this chapter, and shall be known as the Maritime Security Fleet.

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

(3) the vessel is self-propelled and—

(A) is a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet; or

(B) is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel—

(A) is suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense; and

(B) is commercially viable, as determined by the Secretary; and

(5) the vessel—