

(c)(1)(A) with respect to which the application is submitted.

(c) CERTIFICATION DETERMINATION.—Not later than 20 days after the date the Secretary receives from an individual an application for certification under this subsection, the Secretary shall—

- (1) determine whether the individual—
  - (A) was employed in the activation or operation of a vessel—

- (i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) in a period in which the vessel was in use or being activated for use under subsection (b) of that section;

- (ii) requisitioned or purchased under chapter 563 of this title; or

- (iii) owned, chartered, or controlled by the United States Government and used by the Government for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

- (B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or 73 of this title; and

- (2) if the Secretary makes affirmative determinations under subparagraphs (A) and (B) of paragraph (1), certify that individual under this subsection.

(d) EQUIVALENCE TO MILITARY SELECTIVE SERVICE ACT CERTIFICATE.—For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)).

(Pub. L. 109-304, §8(b), Oct. 6, 2006, 120 Stat. 1585.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
52101 .....	46 App.:1132.	June 29, 1936, ch. 858, title III, § 302, as added Pub. L. 104-239, § 10(a), Oct. 8, 1996, 110 Stat. 3133.

In subsection (c)(1)(B), the words “(as applicable)” are omitted as unnecessary.

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)).

PART C—FINANCIAL ASSISTANCE PROGRAMS  
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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§ 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) LASH VESSEL.—The term “LASH vessel” means a lighter aboard ship vessel.

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

- (A) on October 1, 2005—

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

- (ii) is less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and

- (B) on December 31, 2004, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.).<sup>1</sup>

(7) 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.

(8) 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.

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

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

(11) UNITED STATES.—The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern

<sup>1</sup> Section repealed by Pub. L. 112-239 without corresponding amendment of chapter analysis.

<sup>1</sup> See References in Text note below.

Mariana Islands, Guam, American Samoa, the Virgin Islands.

(12) 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.

(13) 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.)

#### AMENDMENT OF SECTION

*Pub. L. 112-239, div. C, title XXXV, § 3508(a)(2)-(4), (j)(1), Jan. 2, 2013, 126 Stat. 2223, 2226, provided that, effective Dec. 31, 2014, this section is amended:*

(1) *by striking paragraph (5);*

(2) *by redesignating paragraphs (6) through (13) as paragraphs (5) through (12), respectively; and*

(3) *by amending paragraph (5), as so redesignated, to read as follows:*

(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.*

*See 2013 Amendment notes below.*

#### REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in par. (6)(B), is act June 29, 1936, ch. 858, 49 Stat. 1985. Subtitle B of title VI of the Act was classified generally to part B (§1187 et seq.) of subchapter VI of chapter 27 of the former Appendix to this title prior to repeal by Pub. L. 108-136, div. C, title XXXV, §3534(a)(1), Nov. 24, 2003, 117 Stat. 1818. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

#### AMENDMENTS

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).

#### 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 section, 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 qualified 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 availability 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 organi-

zations 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-differential 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 ves-

sel 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 Trans-

portation 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 Transportation. 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, sub-

ject 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-differen-

tial 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 [50 U.S.C. App. 1744(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 de-

termine 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 restated 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 operat-

ing 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 begin-

ning 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, provided as follows:

##### Subtitle A—Operating-Differential Subsidy Program

##### Subsidy Authorized for Operation of Vessels in Foreign Trade or in Off-Season Cruises

“SEC. 601. (a) The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the

term ‘essential service’ means the operation of a vessel on a service, route, or line described in section 211(a) [now 46 U.S.C. 50103(a)(1)] or in bulk cargo carrying service described in section 211(b) [now 46 U.S.C. 50103(b)]. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns, or leases or can and will build or purchase, or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and 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]. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

“(b) Every application for an operating-differential subsidy under the provisions of this title shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of a misdemeanor.”

(As 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.)

##### Determination of Necessity of Subsidy To Meet Competition

“SEC. 602. Except with respect to cruises authorized under section 613 of this title, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.”

(As 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.)

##### Contracts for Payment of Subsidy

“SEC. 603. (a) If the Secretary of Transportation approves the application, he may enter into a contract

with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

“(b) Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 613 of this Act, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 501(b) [set out above]) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: *Provided, however*, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 211(b) [now 46 U.S.C. 50103(b)], pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 613 of this Act, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: *Provided, however*, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 613 of this Act) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

“(c)(1) When used in this section—

“(A) The term ‘collective bargaining costs’ means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 613 of this Act and costs relating to:

“(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: *Provided*, That the Secretary of Transportation shall afford representatives of the collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: *And provided further*, That in determining whether officers or members of the crew are necessary for the efficient and economi-

cal operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

“(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following the date of enactment of this subsection [Oct. 21, 1970], to be unnecessary for the efficient and economical operation of the vessel.

“(B) The term ‘base period costs’ means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following the date of enactment of this subsection [Oct. 21, 1970], and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term ‘base period costs’ means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: *Provided*, That in no event shall the base period cost be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period.

“(C) The term ‘base period’ means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

“(D) The term ‘subsidizable wage costs of United States officers and crews’ in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

“(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

“(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

“(d) Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation,

the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

“(e) The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor’s certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in ‘collective-bargaining costs’ but are not included in the daily rate because they are unpredictably timed.

“(f) Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.”

(As 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.)

#### Additional Subsidy; When Authorized

“SEC. 604. If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State, that the subsidy provided for in this title is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.”

(As 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.)

#### Vessels Excluded From Subsidy

“SEC. 605. (a) No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however,* That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or 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 if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] to be operating in foreign trade.

“(b) No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Security Act of 1996 [Oct. 8,

1996], that it is in the public interest to grant such financial aid for the operation of such vessel.

“(c) No contract shall be made under this title with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.”

(As 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.)

#### Readjustments; Change in Service; Withdrawal From Service; Payment of Excess Profits; Wages, Etc.; American Materials

“SEC. 606. Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], it may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-dif-

ferential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential services and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner, and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein [set out above], except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency."

(As 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.)

#### Capital Construction Fund

[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.]

Sale or Assignment of Contract; Consent of Secretary; Purchaser Subject to Terms of Contract; Rescinding Contract on Transfer Without Consent

"SEC. 608. No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Secretary of Transportation. If he consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary of Transportation, or if the operation of the service, route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary of Transportation shall have the right to modify or rescind such contract, without further liabil-

ity thereon by the United States, and is vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended."

(As amended Pub. L. 97-31, §12(98), Aug. 6, 1981, 95 Stat. 162.)

#### Withholding Payment to Defaulting Contractor

"SEC. 609. The Secretary of Transportation shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt."

(As amended June 23, 1938, ch. 600, §29, 52 Stat. 961; Pub. L. 97-31, §12(99), Aug. 6, 1981, 95 Stat. 162.)

#### Vessels Eligible for Subsidy

"SEC. 610. An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after June 29, 1936 it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency."

(As amended Pub. L. 97-31, §12(99), Aug. 6, 1981, 95 Stat. 162.)

#### Transfer of Vessels to Foreign Registry on Default of United States

"SEC. 611. (a) The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancellation shall file an application in writing with the Secretary of Transportation setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancellation. The Secretary of Transportation shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary of Transportation, he shall, within a reasonable time, grant or deny the application by order.

"(b) If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary of Transportation be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Transportation or any officer designated by him for that purpose, and thereupon the Secretary of Transportation shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such

order. The judgment and decree of the court affirming or setting aside any such order of the Secretary of Transportation shall be final.

“(c) No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the Government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary of Transportation may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary of Transportation or the court to exist.”

(As 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.)

#### Subordination of Secretary's Interest to Reconstruction Finance Corporation

[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.]

#### Off-Season Cruises by Passenger Vessels

“SEC. 613. (a) In this section, ‘passenger vessel’ means a vessel which (1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

“(b) If the Secretary of Transportation finds that the operation of any passenger vessel with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 603 of this title effective before January 2, 1960, is not required for all of each year, in order to furnish adequate service on the service, route, or line covered by such contract, he may amend such contract to agree to pay an operating-differential subsidy for operation of the vessel (1) on such service, route, or line for some part or no part of each year, and (2) on cruises for all or part of each year if such specific cruise is approved by the Secretary of Transportation under subsection (e) of this section: *Provided, however,* That no such vessel may cruise for more than seven months of each year to ports which are regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

“(c) The Secretary of Transportation may authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports while the vessels are on voyages in an essential service in the foreign commerce of the United States without reduction of operating-differential subsidy and the partial payback of construction-differential subsidy for operating in the domestic trades, if he finds that such domestic service will not result in a substantial deviation from the service, route, or line for which operating-differential subsidy is paid and will not adversely affect service on such service, route, or line.

“(d) When a vessel is being operated on cruises or has been authorized under this section to provide domestic passenger services while on voyages in an essential service in foreign commerce of the United States—

“(1) except as provided in subdivision (4) of this subsection, it shall carry no mail unless required by law, or cargo except passengers’ luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

“(2) it may not carry one-way passengers between those ports served by another United States carrier on its regular service assigned by contract, without the consent of such carrier, except between those ports between which it may carry one-way passengers on its own regular service assigned by contract;

“(3) it shall stop at other domestic ports only for the same time and the same purpose as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port, except that a cruise may end at a different port or coast from that where it began and may embark or disembark passengers at other domestic ports, either when not involving transportation in the domestic offshore trade in competition with a United States-flag passenger vessel offering berth service therein, or, if involving such transportation, with the consent of such carrier: *Provided, however,* That nothing herein shall be construed to repeal or modify section 805(a) of this Act [now 46 U.S.C. 58101].

“(4) Any other provisions of the Merchant Marine Act, 1936 [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] or of the Shipping Act, 1916 [former 46 U.S.C. App. 801 et seq., see Disposition Table preceding section 101 of this title], to the contrary notwithstanding, with the approval of the Secretary of Transportation, it may carry cargo and mail between ports to the extent such carriage is not in direct competition with a carrier offering United States-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering United States-flag berth service between such ports, with the consent of the next scheduled United States-flag carrier, which consent shall not be unreasonably withheld in the judgment of the Maritime Administrator.

“Section 605(c) of this Act shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of sections 605(a) and 506 [set out above] of this Act requiring the reduction of operating differential subsidy and the partial payback of construction differential subsidy for operating in the domestic trades, such reduction of operating subsidy and partial payback of construction subsidy under sections 605(a) and 506, respectively, shall not apply to cruises or domestic services authorized under this section.

“(e) Upon the application of any operator for approval of a specific cruise, the Secretary of Transportation, after notice to all other American flag operators who may be affected and after affording all such operators an opportunity to submit written data, views or arguments, with or without opportunity to present the same orally in any manner, and after consideration of all relevant matter presented, shall approve the proposed cruise, if he determines that the proposed cruise will not substantially adversely affect an existing operator’s service performed with passenger vessels of United States registry. Such approval shall not be given more than two years in advance of the beginning of the cruise.”

(As 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.)

#### Suspension of Operating Differential Subsidy Contracts by Operator Recipients

“SEC. 614. (a) Any operator receiving operating differential subsidy funds may elect, for all or a portion of its ships, to suspend its operating differential subsidy contract with all attendant statutory and contractual restrictions, except as to those pertaining to the domestic intercoastal or coastwise service, including any agreement providing for the replacement of vessels, if—

“(1) the vessel is less than ten years of age;

“(2) the suspension period is not less than twelve months;

“(3) the operator’s financial condition is maintained at a level acceptable to the Secretary of Commerce; and

“(4) the owner agrees 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 the portion of the suspension period during which the vessel is operated in any preference trade from which a subsidized vessel would otherwise be excluded by law or contract bears to the entire economic life of the vessel.

“(b) Any operator making an election under this section is entitled to full reinstatement of the suspended contract on request. The Secretary of Commerce may prescribe rules and regulations consistent with the purpose of this section.”

(As added Pub. L. 97-35, title XVI, §1603, Aug. 13, 1981, 95 Stat. 751.)

Construction, Reconstruction, or Acquisition of Vessels Over Five Thousand Deadweight Tons in Foreign Shipyards; Preconditions

“SEC. 615. (a) The Secretary of Commerce may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this title to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator’s application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States built for the purposes of this title, section 901(b) of this Act [now 46 U.S.C. 55305], and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7) [391a(7)]) [now 46 U.S.C. 3704-3709]: *Provided*, That the provisions of section 607 of this Act shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

“(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least \$100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on the effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a).”

(As added Pub. L. 97-35, title XVI, §1610, Aug. 13, 1981, 95 Stat. 753.)

Wind-Up of Program

“SEC. 616. (a) After the date of enactment of the Maritime Security Act of 1996 [Oct. 8, 1996], the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

“(b) Notwithstanding any other provision of this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title], any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1996 [Oct. 8, 1996], shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

“(c) The essential service requirements of section[s] 601(a) and 603(b), and the provisions of sections 605(c) and 809(a) [set out as a note below], shall not apply to the operating-differential subsidy program under this subtitle effective upon the earlier of—

“(1) the date that a payment is made, under the Maritime Security Program established by subtitle B [former 46 U.S.C. App. 1187 et seq.] to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

“(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

“(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

“(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

“(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

“(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902 [now 46 U.S.C. 56301 et seq.]”

(As added Pub. L. 104-239, §3(b), Oct. 8, 1996, 110 Stat. 3127.)

[Title VI of act June 29, 1936, ch. 858, comprising 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, provided as follows:

Provision for Books and Records; Filing Balance Sheets; Inspection and Auditing by Secretary; Rescission of Contract on Failure to Comply With Provisions

“SEC. 801. Every contract executed by the Secretary of Transportation under the provisions of title VI or 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] shall contain provisions requiring (1) that, the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation: *Provided*, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission, the United States shall be relieved of all further liability on such contract.”

(As amended Pub. L. 97-31, §12(119), Aug. 6, 1981, 95 Stat. 164.)

Purchase or Requisition of Vessels by United States;  
Amount of Payment

“SEC. 802. Every contract executed by the Secretary of Transportation under authority of title V of this Act



[former 46 U.S.C. App. 1151 et seq., see Disposition Table preceding section 101 of this title] shall provide that—

“In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differential subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Secretary of Transportation, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue [Internal Revenue Service] for income-tax purposes.

“The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.”

(As 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.)

Contracts Designed Equitably for All Ports; Minimum Allocation of Funds; Report to Congress; Preference to Citizens of United States

“SEC. 809. (a) Contracts under this Act [former 46 U.S.C. App. 1101 et seq., see Disposition Table preceding section 101 of this title] shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: *Provided, however,* That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section, the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purposes of section 605(c) [set out above], such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternate routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 208 of this Act [former 46 U.S.C. App. 1118, see 46 U.S.C. 50111(a)] a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

“(b) [Repealed. Pub. L. 109-304, § 19, Oct. 6, 2006, 120 Stat. 1710.]”

(As 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.)

#### 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—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, but—

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

(c) REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS, CHARTERERS, AND OPERATORS.—

(1) VESSEL OWNED AND OPERATED BY SECTION 50501 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by one or more persons that are citizens of the United States under section 50501 of this title.