

(subject to subparagraph (B)) by the Operating Agency.

(B) **ADDITIONAL TERMS.**—The Operating Agency and a Contractor may agree to additional or modifying terms appropriate to the Contractor’s circumstances.

(c) **DEFENSE MEASURES AGAINST UNAUTHORIZED SEIZURES.**—(1) The Contingency Agreement shall require that any vessel operating under the direction of the Operating Agency operating in an area that is designated by the Coast Guard as an area of high risk of piracy shall be equipped with, at a minimum, appropriate non-lethal defense measures to protect the vessel and crew from unauthorized seizure at sea.

(2) The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall jointly prescribe the non-lethal defense measures that are required under this paragraph.

(d) **PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.**—Except as provided by section 53205(d), the Operating Agency may not require, through a Contingency Agreement or an Operating Agreement, that a Contractor continue to participate in a Contingency Agreement after the Operating Agreement with the Contractor has expired according to its terms or is otherwise no longer in effect.

(e) **RESOURCES MADE AVAILABLE.**—The resources to be made available in addition to the vessel under a Contingency Agreement shall include all equipment, personnel, supplies, management services, and other related services as the Operating Agency may determine to be necessary to provide the Cable Services required by the Operating Agency.

(f) **COMPENSATION.**—

(1) **IN GENERAL.**—The Operating Agency shall include in each Contingency Agreement provisions under which the Operating Agency shall pay fair and reasonable compensation for use of the vessel and all Cable Services provided pursuant to this section and the Contingency Agreement.

(2) **SPECIFIC REQUIREMENTS.**—Compensation under this subsection—

(A) shall be at the rate specified in the Contingency Agreement;

(B) shall be provided from the time that a vessel is required by the Operating Agency under the Contingency Agreement until the time it is made available by the Operating Agency available to reenter commercial service; and

(C) shall be in addition to and shall not in any way reflect amounts payable under section 53206.

(g) **LIABILITY OF THE UNITED STATES FOR DAMAGES.**—

(1) **LIMITATION ON THE LIABILITY OF THE U.S.**—Except as otherwise provided by law, the Government shall not be liable for disruption of a Contractor’s commercial business or other consequential damages to a Contractor arising from the activation of the Contingency Agreement.

(2) **AFFIRMATIVE DEFENSE.**—In any action in any Federal or State court for breach of third-party contract, there shall be available as an

affirmative defense that the alleged breach of contract was caused predominantly by action taken to carry out a Contingent Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

(Added Pub. L. 116–92, div. C, title XXXV, §3521(a), Dec. 20, 2019, 133 Stat. 1995.)

**§ 53208. Regulatory relief**

The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an Operating Agreement under this chapter shall be deemed to satisfy all Federal Communication Commission equipment certification requirements, if—

(1) such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) that country has not been identified by the Secretary of the Department in which the Coast Guard is operating as inadequately enforcing international regulations as to that vessel; and

(3) at the end of its useful life, such equipment shall be replaced with equipment that meets Federal Communication Commission equipment certification standards.

(Added Pub. L. 116–92, div. C, title XXXV, §3521(a), Dec. 20, 2019, 133 Stat. 1997.)

**§ 53209. Authorization of appropriations**

There are authorized to be appropriated for payments under section 53206, \$10,000,000 for each of the fiscal years 2021 through 2035.

(Added Pub. L. 116–92, div. C, title XXXV, §3521(a), Dec. 20, 2019, 133 Stat. 1997.)

**CHAPTER 533—CONSTRUCTION RESERVE FUNDS**

Sec.	
53301.	Definitions.
53302.	Authority for construction reserve funds.
53303.	Persons eligible to establish funds.
53304.	Vessel ownership.
53305.	Eligible fund deposits.
53306.	Recognition of gain for tax purposes.
53307.	Basis for determining gain or loss and for depreciating new vessels.
53308.	Order and proportions of deposits and withdrawals.
53309.	Accumulation of deposits.
53310.	Obligation of deposits and period for construction of certain vessels.
53311.	Taxation of deposits on failure of conditions.
53312.	Assessment and collection of deficiency tax.

**§ 53301. Definitions**

(a) **IN GENERAL.**—In this chapter:

(1) **CONSTRUCTION CONTRACT.**—The term “construction contract” includes, for a taxpayer constructing a new vessel in a shipyard owned by that taxpayer, an agreement between the taxpayer and the Secretary of Transportation for that construction con-

taining provisions the Secretary considers advisable to carry out this chapter.

(2) NEW VESSEL.—The term “new vessel” means—

(A) a vessel—

(i) constructed in the United States after December 31, 1939, constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title;

(ii) documented or agreed with the Secretary to be documented under the laws of the United States; and

(iii)(I) of a type, size, and speed that the Secretary determines is suitable for use on the high seas or Great Lakes in carrying out this subtitle, but not less than 2,000 gross tons or less than 12 knots speed unless the Secretary certifies in each case that a vessel of lesser tonnage or speed is desirable for use by the United States Government in case of war or national emergency; or

(II) constructed to replace a vessel bought or requisitioned by the Government; and

(B) a vessel reconstructed or reconditioned for use only on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary finds that the reconstruction or reconditioning will promote the objectives of this subtitle.

(b) ADDITIONAL TAX-RELATED TERMS.—Other terms used in this chapter have the same meaning as in chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53301(a)(1) ..	46 App.:1161(n).	June 29, 1936, ch. 858, title V, §511(n), as added Dec. 23, 1944, ch. 714, §2, 58 Stat. 920; Pub. L. 97–31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(a) (2)(A).	46 App.:1161(a).	June 29, 1936, ch. 858, title V, §511(a), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; Pub. L. 97–31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(a) (2)(B).	46 App.:1161(o).	June 29, 1936, ch. 858, title V, §511(o), as added July 17, 1952, ch. 939, §14, 66 Stat. 764; Pub. L. 97–31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53301(b) .....	46 App.:1161(m).	June 29, 1936, ch. 858, title V, §511(m), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

In subsection (a)(2)(A)(i), the words “constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title” are substituted for “the construction of which has been financed under subchapters V or VII of this chapter, or the construction of which has been aided by a mortgage insured under subchapter XI of this chapter” because of the reorganization of the material and the omission from the revised title of the provisions relating to the construction-differential subsidy program.

Subsection (a)(2)(B) is substituted for the source provision to state more directly that a vessel described in the source provision is a new vessel for purposes of this chapter.

Editorial Notes

REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in subsec. (a)(2)(A)(i), is act June 29, 1936, ch. 858, 49 Stat. 1985. Title V of the Act enacted provisions set out as notes under section 53101 of this title. For complete classification of this Act to the Code, see Short Title of 1936 Amendment note set out under section 101 of this title and Tables.

§ 53302. Authority for construction reserve funds

(a) GENERAL AUTHORITY.—An eligible person under section 53303 of this title may establish a construction reserve fund for the construction, reconstruction, reconditioning, or acquisition of a new vessel or for other purposes authorized by this chapter.

(b) APPLICATION OF CERTAIN LAWS AND REGULATIONS.—The fund shall be established, maintained, expended, and used as provided by this chapter and regulations prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1587.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53302(a) .....	46 App.:1161(b) (1st sentence words before 6th comma and between 10th and 16th commas).	June 29, 1936, ch. 858, title V, §511(b) (1st sentence words before 6th comma and between 10th and 16th commas, last sentence), as added Oct. 10, 1940, ch. 849, 54 Stat. 1106; June 17, 1943, ch. 130, subd. (a), 57 Stat. 157; July 17, 1952, ch. 939, §9, 66 Stat. 762; Pub. L. 97–31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.
53302(b) .....	46 App.:1161(b) (last sentence).	

In subsection (a), the words “necessary to carrying out the policy set forth in section 1101 of this Appendix” are omitted as unnecessary.

§ 53303. Persons eligible to establish funds

A construction reserve fund may be established by a citizen of the United States that—

(1) is operating a vessel in the foreign or domestic commerce of the United States or in the fisheries;

(2) owns, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries;

(3) was operating a vessel in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the United States Government;

(4) owned, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government; or

(5) had acquired or was having constructed a vessel to operate in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government.