U.S. Department
of Transportation

**Maritime
Administration**

Compilation of Maritime Laws

April, 2005

THE

MERCHANT MARINE ACT, 1936,

THE

MARITIME SECURITY ACT OF 2003,

THE

SHIPPING ACT OF 1984,

AND

RELATED ACTS

[As amended through the Second Session of the 108th Congress]

April, 2005

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PREFACE

Each year since 1995, the Maritime Administration has published the Compilation of Maritime Laws as a reference for the benefit of Members of Congress, their staffs and committees, attorneys practicing in the area of Federal Maritime Law and interested members of the general public.

The Maritime Administration believes that it is essential that this publication be made available to ensure access to the current state of significant Maritime Laws including current statutory amendments. What is noteworthy in this publication is the broad area of subject matters covered, reflecting the ever increasing scope of responsibilities entrusted to the Maritime Administration.

This convenient volume includes Maritime Laws of particular importance to the Maritime Administration and is current through the 2nd Session of the 108th Congress. While this Compilation should be a helpful research tool, citation to the law should be made by reference to the United States Code or other official reporters.

The Office of Chief Counsel is pleased to be able to provide this Compilation and particular thanks is extended to Murray Bloom, Esq. and Len Sutter, Esq. of the Office for their diligence in its preparation. Comments are always welcome and may be sent to Len Sutter at (202) 366-5177.

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Chief Counsel
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MERCHANT MARINE ACT, 1936

TITLE I—DECLARATION OF POLICY

SEC. 101. FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE (46 App. U.S.C. 1101 (2004)). It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States[1] insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.

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[1] "Citizen of the United States" is defined in Section 905(c) of the Merchant Marine Act, page 153 as follows: "(c) The words 'citizen of the United States' include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C., title 46, sec. 802) , and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States and, in the case of a corporation,partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum." Section 2 of the Shipping Act, 1916 is located at page 236 .

TITLE II—CREATION AND FUNCTIONS OF MARITIME AGENCIES

SEC. 201. POWERS AND DUTIES OF AGENCIES (46 App. U.S.C. 1111 (2004)).

(c) **Records of Meetings; Seal; Rules and Regulations.** The Commission shall, through its secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein, on every action, order, contract, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) **Expenditures.** The Commission and the Secretary of Transportation may make such expenditures as are necessary in the performance of their functions from funds made available to them by this Act or hereafter (after 6/26/36) appropriated, which further appropriations are hereby authorized.

(e) **Officers and Employees.** Without regard to the civil-service laws,[2] the Commission and the Secretary of Transportation may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission, and not more than three assistants, a clerk to the general counsel, not more than a total of twenty naval architects or marine engineers, twenty special experts, twenty-two examiners, twelve attorneys, and two inspectors for each vessel at each shipyard at which vessels are being constructed by it or under its supervision. The Commission and the Secretary of Transportation may, subject to the provisions of the civil-service laws appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of their functions.

(f) **Traveling and Subsistence Expenses; Pay for Military Officer on Assignment.** Each member, any employee of the Commission or the Secretary of Transportation, and any person detailed to it or the Secretary of Transportation from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission or the Secretary of Transportation. Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Commission or the Secretary of Transportation, he shall receive from the Commission or the Secretary of Transportation, for the period during

[2] Such officers and employees are now generally subject to the civil service laws.

which he is so detailed, such compensation as added to his pay and allowances as an officer in such service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Commission or the Secretary of Transportation, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Commission or the Secretary of Transportation. Expenditures by the Commission or the Secretary of Transportation shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or the Secretary of Transportation or a designated employee thereof.

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REORGANIZATION PLAN NO. 6 OF 1949

Effective Aug. 20, 1949, 14 Fed. Reg. 5228, 63 Stat. 1069. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 20, 1949, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

Sec. 1. Administration of Functions of Commission. The Chairman of the United States Maritime Commission shall be the chief executive and administrative officer of the United States Maritime Commission. In executing and administering on behalf of the Commission its functions (exclusive of functions transferred by the provisions of section 2 of this reorganization plan) the Chairman shall be governed by the policies, regulatory decisions, findings, and determinations of the Commission.

Sec. 2. Transfer of Functions. There are hereby transferred from the United States Maritime Commission to the Chairman of the Commission the functions of the Commission with respect to (1) the appointment and supervision of all personnel employed under the Commission, (2) the distribution of business among such personnel and among organizational units of the Commission, and (3) the use and expenditure of funds for administrative purposes: Provided, That the provisions of this section do not extend to personnel employed regularly and full time in the offices of members of the Commission other than the Chairman: Provided further, That the heads of the major administrative units shall be appointed by the Chairman only after consultation with the other members of the Commission.

Sec. 3. Performance of Transferred Functions. The functions of the Chairman under the provisions of this reorganization plan shall be performed by him or, subject to his supervision and direction, by such officers and employees under his jurisdiction as he shall designate.

REORGANIZATION PLAN NO. 21 OF 1950.

Effective May 24, 1950, 15 Fed. Reg. 3178, 64 Stat. 1273. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

PART I. FEDERAL MARITIME BOARD

Sec. 101-106. [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section 101 established the Federal Maritime Board. Section 102 provided for the composition of the Federal Maritime Board. Section 103 transferred certain functions from the Chairman of the United States Maritime Commission to the Chairman of the Federal Maritime Board. Section 104 transferred regulatory functions of the United States Maritime Commission to the Federal Maritime Board. Section 106 provided that the Board was to be an agency within the Department of Commerce, but would be independent of the Secretary of Commerce with respect to functions transferred to it under section 104. Section 105 transferred subsidy award and other functions of the United States Maritime Commission to the Federal Maritime Board, as follows:

[SEC. 105. Transfer of subsidy award and other functions to the Board. The following functions of the United States Maritime Commission are hereby transferred to the Board:

[(1) The functions with respect to making, amending, and terminating subsidy contracts, and with respect to conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of Title V, VI, and VIII, and section 301, 708, 805(a), and 805(f) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1131, 1151-1182, 1198, 1211-1213, 1223(a), and 1223(f)), together with the functions with respect to making changes, subsequent to entering into an operating differential subsidy contract, in such determinations under the provisions of section 301 of such Act, as amended (46 App. U.S.C. 1131), and readjustments in determinations as to operating cost differentials under the provisions of section 606 of such Act, as amended (46 App. U.S.C. 1176), and with respect to the approval of the sale, assignment, or transfer of any operating subsidy contract under section 608 of such Act (46 App. U.S.C. 1178), and with respect to the approval of the sale, assignment, or transfer of any operating subsidy contract under section 608 of such Act (46 App. U.S.C. 1178): Provided, That, for the purposes of this section 105(1) of this reorganization plan, the term "subsidy contract" shall be deemed to include, in the case of a construction differential subsidy, the contract for the construction, reconstruction, or reconditioning of the vessel and the contract for the sale of the vessel to the subsidy applicant

or the contract to pay a construction differential subsidy and the cost of national defense features, and, in the case of an operating differential subsidy, the contract with the subsidy applicant for the payment of the subsidy: Provided further, That, except as otherwise hereinbefore provided in respect of functions under sections 301, 606, and 608 of the Merchant Marine Act, 1936, as amended, the functions transferred by the provisions of this section 105(1) shall exclude the making of all determinations and the taking of all actions (other than amending or terminating any subsidy contract), subsequent to entering into any subsidy contract, which are involved in administering such contract: Provided further, That actions of the Board in respect to the functions transferred by the provisions of this section 105(1) shall be final.

[(2) The functions with respect to investigating and determining (a) the relative cost of construction of comparable vessels in the United States and foreign countries, (b) the relative cost of operating vessels under the registry of the United States and under foreign registry, and (c) the extent and character of aids and subsidies granted by foreign governments to their merchant marines, under the provisions of subsection (c), (d), and (e) of section 211 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1121(c), (d), and (e)).

[(3) All functions under the provisions of section 12 of the Shipping Act, 1916, as amended (46 App. U.S.C. 811), including such functions with respect to making investigations and reports on relative costs and on marine insurance.

[(4) So much of the functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended (46 App. U.S.C. 820), as relates to the functions of the Board under the provisions of section 105(1) to 105(3), inclusive, of this reorganization plan.

[(5) So much of the functions with respect to adopting rules and regulations, making reports and recommendations to Congress, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under the provisions of sections 204, 208, and 214 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1118, and 1124), as relates to the functions of the Board under the provisions of this reorganization plan.]

PART II. MARITIME ADMINISTRATION

Sec. 201. Creation of Maritime Administration. There is hereby established in the Department of Commerce a Maritime Administration.[3]

Sec. 202. [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section provided for a

[3] Public Law 97-31, approved August 6, 1981 (95 STAT.151), transferred the Maritime Administration from the Department of Commerce to the Department of Transportation.

Maritime Administrator to be at the head of the Maritime Administration, and that the Chairman of the Federal Maritime Board would be such Administrator and would perform duties prescribed by the Secretary of Commerce.]

Sec. 203. Deputy Maritime Administrator. There shall be in the Maritime Administration a Deputy Maritime Administrator, who shall be appointed by the Secretary of Commerce, after consultation with the Administrator, under the classified civil service, and who shall perform such duties as the Administrator shall prescribe. The Deputy Maritime Administrator shall be Acting Maritime Administrator during the absence or disability of the Administrator and, unless the Secretary of Commerce shall designate another person, during a vacancy in the office of Administrator: Provided, That such Deputy Administrator shall at no time sit as a member or acting member of the Federal Maritime Board.

Sec. 204. Transfer of functions. Except as otherwise provided in Part I of this reorganization plan, all functions of the United States Maritime Commission and of the Chairman of said Commission are hereby transferred to the Secretary of Commerce. The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by the Maritime Administrator of any function transferred to such Secretary by the provisions of this reorganization plan.

PART III - GENERAL PROVISIONS

Sec. 301. Under Secretary of Commerce for Transportation. There shall be in the Department of Commerce an additional office of Under Secretary with the title "Under Secretary of Commerce for Transportation." The Under Secretary of Commerce for Transportation shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and shall perform such duties as the Secretary of Commerce shall prescribe.

Sec. 302-307. [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section 302 provided that person who was both Administrator and Chairman was to make joint use of the personnel under his supervision. Section 303 made conflict of interest provisions of the Merchant Marine Act, 1936, applicable to members of the Federal Maritime Board and officers and employees of the Board or of the Maritime Administration. Section 304 allowed the President to make interim appointments to the Federal Maritime Board from officers of the Executive Branch. Section 305 transferred to the Department of Commerce all property, personnel, records, and funds of the United States Maritime Commission. Section 306 abolished the United States Maritime Commission. Section 307 provided that the functions transferred by this reorganization plan would not be subject to Reorg. Plan No. 5 of 1950.]

REORGANIZATION PLAN NO. 7 OF 1961.

Eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840, as amended. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 12, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended.

MARITIME FUNCTIONS

Part I. Federal Maritime Commission

Sec. 101. Creation of Federal Maritime Commission

(a) There is hereby established a Federal Maritime Commission, hereinafter referred to as the Commission.

(b) The Commission shall not be a part of any executive department or under the authority of the head of any executive department.

Sec. 102. Composition of the Commission

(a) The Commission shall be composed of five Commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(b) The President shall from time to time designate one of the Commissioners to be the Chairman of the Commission.

(c) Of the first five Commissioners appointed hereunder, one shall be appointed for a term expiring on June 30, 1962, one for a term expiring on June 30, 1963, one for a term expiring on June 30, 1964, and two for terms expiring on June 30, 1965. Their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds. Not more than three of the Commissioners shall be appointed from the same political party. A vacancy in the office of any such Commissioner shall be filled in the same manner as the original appointment.

(d) A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members serving on the Commission is required to dispose of any matter before the Commission.

Sec. 103. Transfer of Functions to Commission. The following functions, which are now vested in the Federal Maritime Board under the provisions of Reorganization Plan No. 21 of 1950 (64 Stat. 1273), are hereby transferred from that Board to the Commission:

(a) All functions under the provisions of sections 14—20, inclusive, and sections 22—33, inclusive, of the Shipping Act, 1916, as amended (46 U.S.C. 812—819 and 821—832), including such functions with

respect to the regulation and control of rates, services, practices, and agreements of common carriers by water and of other persons.

(b) All functions with respect to the regulation and control of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water under the provisions of the Intercoastal Shipping Act, 1933, as amended (46 App. U.S.C. 843—848).

(c) The functions with respect to the making of rules and regulations affecting shipping in the foreign trade to adjust or meet conditions unfavorable to such shipping, and with respect to the approval, suspension, modification, or annulment of rules or regulations of other Federal agencies affecting shipping in the foreign trade, under the provisions of section 19 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 876), exclusive of subsection (1)(a) thereof.

(d) The functions with respect to investigating discriminatory rates, charges, classifications, and practices in the foreign trade, and with respect to recommending legislation to correct such discrimination, under the provisions of section 212(e) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1122(f)).

(e) To the extent that they relate to functions transferred to the Commission by the foregoing provisions of this section:

(1) The functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended (46 App. U.S.C. 820).

(2) The functions with respect to adopting rules and regulations, making reports and recommendations to Congress, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under the provisions of sections 204, 208, and 214 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114, 1118 and 1124).

Sec. 104. Transfer of Functions to Chairman.

THERE ARE HEREBY TRANSFERRED TO THE CHAIRMAN OF THE COMMISSION:

(a) The functions of the Chairman of the Federal Maritime Board, including his functions derived from the provisions of Reorganization Plan No. 6 of 1949, to the extent that they relate to the functions transferred to the Commission by the provisions of section 103 of this reorganization plan.

(b) The functions of the Secretary of Commerce to the extent that they are necessary for, or incidental to, the administration of the func-

tions transferred to the Commission by the provisions of section 103 of this reorganization plan.

Sec. 105. Authority to Delegate

(a) The Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: Provided, however, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: Provided, however, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(d) There are hereby transferred to the Chairman of the Commission the functions with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to the foregoing subsections of this section.

Part II. Department of Commerce.

Sec. 201. Maritime Administrator.

There shall be at the head of the Maritime Administration (established by the provisions of part II of Reorganization Plan No. 21 of 1950) a Maritime Administrator, hereinafter referred to as the Administrator. The Assistant Secretary of Commerce for Maritime Affairs shall, ex officio, be the Administrator. The Administrator shall perform such duties as the Secretary of Commerce shall prescribe.

Sec. 202. Functions of Secretary of Commerce.

(a) Except to the extent inconsistent with the provisions of sections 101(b) or 104(b) of this reorganization plan, there shall remain vested in the Secretary of Commerce all the functions conferred upon the Secretary by the provisions of Reorganization Plan No. 21 of 1950.

(b) There are hereby transferred to the Secretary of Commerce:

(1) All functions of the Federal Maritime Board under the provisions of section 105(1) to 105(3), inclusive, of Reorganization Plan No. 21 of 1950.

(2) Except to the extent transferred to the Commission by the provisions of section 103(e) of this reorganization plan, the functions described in the said section 103(e).

(3) Any other functions of the Federal Maritime Board not otherwise transferred by the provisions of part I of this reorganization plan.

(4) Except to the extent transferred to the Chairman of the Commission by the provisions of part I of this reorganization plan, the functions of the Chairman of the Federal Maritime Board.

Sec. 203. Delegation of Functions.

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to all functions transferred to the Secretary of Commerce by, or remaining vested in him under, the provisions of this reorganization plan.

Part III. General Provisions

Sec. 301. Conflict of Interest.

The provisions of the last sentence of section 201(b) of the Merchant Marine Act, 1936, as affected by the provisions of Reorganization Plan No. 21 of 1950 (46 U.S.C. 1111(b)) (prohibiting the members of the Federal Maritime Board and all officers and employees of that Board or of the Maritime Administration from being in the employ of any other person, firm, or corporation, or from having any pecuniary interest in or holding any official relationship with any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Board or the Maritime Administration may have business relations) shall hereafter be applicable to the Commissioners composing the Commission and all officers and employees of the Commission.

Sec. 302. Interim Appointments.

Pending the initial appointment hereunder of the Commissioners composing the Commission and of the Maritime Administrator, but not for a period exceeding 90 days, such officers of the executive branch of the Government (including any person who is a member of the Federal

Maritime Board or Deputy Maritime Administrator immediately prior to the taking effect of the provisions of this reorganization plan) as the President shall designate under the provisions of this section shall be Acting Commissioners of the Federal Maritime Commission or Acting Maritime Administrator. The President may designate one of such Acting Commissioners as Acting Chairman of the Commission. Any person who is not while serving under an interim appointment pursuant to the foregoing provisions of this section receiving compensation attached to another Federal office shall receive the compensation herein provided for the office wherein he serves in an interim capacity.

Sec. 303. Incidental Transfers.

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission or to the Chairman of the Commission by the provisions of part I of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Commission at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) Subject to the foregoing provisions of this section, the Secretary of Commerce may transfer within the Department of Commerce personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions which were transferred to the Department of Commerce (including the Federal Maritime Board and the Chairman thereof) by the provisions of Reorganization Plan No. 21 of 1950.

Sec. 304. Abolition of Federal Maritime Board.

The Federal Maritime Board, including the offices of the members of the Board, is hereby abolished, and the Secretary of Commerce shall provide for the termination of any outstanding affairs of the said Board not otherwise provided for in this reorganization plan.

Sec. 305. Status of Prior Plan.

The following provisions of Reorganization Plan No. 21 of 1950 are hereby superseded:

(1) Part I.
(2) Section 202.
(3) Sections 302 to 307, inclusive.

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SEC. 202. OPERATION OF PROPERTY BY SECRETARY (46 App. U.S.C. 1112 (2004)). Notwithstanding any other provision of law, the Secretary of Transportation may, in accordance with good business methods and on such terms and conditions as he determines to effectuate the policy of this Act, operate or lease any lands, docks, wharves, piers, or real property under his control, and all money heretofore or hereafter received from such operation or lease shall be available for expenditure by the Secretary of Transportation as provided in this Act. The Secretary of Transportation may, upon such terms and conditions as he may prescribe in accordance with sound business practice, make such extensions and accept such renewals of the notes and other evidences of indebtedness hereby transferred, and of mortgages and other contracts securing the same, as he may deem necessary to carry out the objects of this Act.

SEC. 204. TRANSFER OF POWERS; RULES AND ORDERS (46 App. U.S.C. 1114 (2004)).

(a) **Transfer of Functions, Powers and Duties.** All the functions, powers, and duties vested in the former United States Shipping Board by the Shipping Act, 1916, the Merchant Marine Act, 1920, the Merchant Marine Act, 1928, and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive Order of June 10, 1933, are hereby transferred to the Federal Maritime Commission and the Secretary of Transportation: Provided, however, That after the date of the passage of this Act (6/29/36) no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended.

(b) **Rules and Regulations.** The Commission and the Secretary of Transportation are hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in them by this Act.

(c) **Enforcement of Orders; Penalties for Violations.** The orders issued by the Federal Maritime Commission and the Secretary of Transportation in the exercise of the powers transferred to them by this title shall be enforced in the same manner as heretofore provided by law for enforcement of the orders issued by the former United States Shipping Board, and violation of such orders shall subject the person or corporation guilty of such violation to the same penalties or punishment as heretofore provided for violation of the orders of said Board.

SEC. 205. DISCRIMINATION AT PORTS BY CARRIERS BY WATER AGAINST OTHER CARRIERS (46 App. U.S.C. 1115 (2004)). Without limiting the power and authority otherwise

vested in the Federal Maritime Commission and the Secretary of Transportation, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

SEC. 206. CONSTRUCTION FUND (46 App. U.S.C. 1116 (2004)). All sums of money now (6/29/36) in the construction loan fund created by section 11 of the Merchant Marine Act, 1920, as amended, together with the proceeds of all debts, accounts, choses in action, and the proceeds of all notes, mortgages, and other evidences of indebtedness, hereby transferred to the Department of Transportation, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest thereon, and, notwithstanding any other provision of law, all money representing amounts of unclaimed wages, salvage awards and miscellaneous unclaimed items carried as liabilities on the books of the United States Shipping Board Merchant Fleet Corporation and all money heretofore or hereafter received from the operation or leasing of lands, docks, wharves, piers, or real property shall be deposited in the Treasury of the United States and there maintained as a revolving fund, herein designated as the construction fund, and shall be available for expenditure by the Secretary of Transportation in carrying out the provisions of this Act. All moneys received by the Department of Transportation under the provisions of this Act shall be deposited in its construction fund, and all disbursements made by the Secretary of Transportation under authority of this Act shall be paid out of said fund, and, notwithstanding any other provision of law, all disbursements applicable to the money referred to in this section may be made by the Secretary of Transportation out of said fund. Further appropriations by Congress to replenish said fund are hereby authorized.

APPLICATION TO OBLIGATIONS AGAINST EMERGENCY SHIP CONSTRUCTION FUND (46 App. U.S.C. 1116a (2004)).[4] Hereafter the United States Maritime Commission construction fund shall be available for the payment of obligations previously incurred against the emergency ship construction fund.

[4] Enacted as part of the Act of March 22, 1947 (61 STAT. 1116), and not as part of the Merchant Marine Act, 1936. Applies after March 22, 1947.

SEC. 207. POWER TO CONTRACT, AUDIT OF ACCOUNTS; REPORTS OF COMPTROLLER GENERAL (46 App. U.S.C. 1117 (2004)). The Federal Maritime Commission and the Secretary of Transportation may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its or his discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve the collateral held by the Commission or Secretary to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's and Secretary's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): Provided, That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission or Secretary from the provisions of this Act.

SEC. 208.[5] REPORTS TO CONGRESS (46 App. U.S.C. 1118 (2004)). The Federal Maritime Commission and the Secretary of Transportation shall, by April 1 each year, make a report to Congress, which shall include the results of its or his investigations, a summary of its or his transactions, its or his recommendations for legislation, a statement of all receipts under this Act, and the purposes for which all expenditures were made.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1119 (2004)).

(a) Except as provided in subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) Notwithstanding any other provision of this Act, or any other law, there are authorized to be appropriated after December 31, 1967, for the use of the Maritime Administration for—

(1) acquisition, construction, or reconstruction of vessels;

(2) construction-differential subsidy incident to the construction, reconstruction, or reconditioning of ships;

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[5] Section 3506 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-494), the Department of Defense Authorization Act for FY 2001, provides: "Sec. 3506. Reporting of Administered and Oversight Funds. The Maritime Administration, in its annual report to the Congress under section 208 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1118), and in its annual budget estimate submitted to the Congress, shall state separately the amount, source, intended use, and nature of any funds (other than funds appropriated to the Administration or to the Secretary of Transportation for use by the Administration) administered, or subject to oversight, by the Administration."

(3) cost of national defense features;

(4) payment of obligations incurred for operating-differential subsidy;

(5) expenses necessary for research and development activities (including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental ship operations);

(6) reserve fleet expenses;

(7) maritime training at the Merchant Marine Academy at Kings Point, New York;

(8) financial assistance to State maritime academies under section 1304 of this Act;

(9) the Vessel Operations Revolving Fund;

(10) expenses necessary for additional training provided under section 1305 of this Act;

[(11)](10) expenses necessary to carry out title XIII of this Act; and;

[(12)](11) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, or general administration;

only such sums as the Congress may specifically authorize by law: Provided, however, That the Congress hereby finds and declares that the national policy set forth in section 101 of this Act requires that there should be authorized and appropriated for fiscal years 1971 through 1980 such sums as may be necessary to construct 300 ships of such sizes, types and designs as the Secretary of Transportation may consider best suited to carry out the purposes and policy of this Act.

SEC. 210. SURVEY OF EXISTING MERCHANT MARINE FOR CREATION OF ADEQUATE AMERICAN-OWNED FLEET (46 App. U.S.C. 1120 (2004)). It shall be the duty of the Secretary of Transportation to make a survey of the American merchant marine, as it now exists, to determine what additions and replacements are required to carry forward the national policy declared in section 101 of this Act, and the Secretary of Transportation is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

First, the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service essential for maintaining the flow of the foreign commerce of the United States, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Secretary of Transportation is directed to cooperate closely with the Navy

Department as to national-defense needs and the possible speedy adaptation of the merchant fleet to national-defense requirements.

Second, the ownership and the operation of such a merchant fleet by citizens of the United States[6] insofar as may be practicable.

Third, the planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

Fourth, the creation and maintenance of efficient shipbuilding and repair capacity in the United States with adequate numbers of skilled personnel to provide an adequate mobilization base.

SEC. 211. INVESTIGATIONS, STUDIES, AND RECORDS, ETC. (46 App. U.S.C. 1121 (2004)).

The Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of—

(a) **Suitable Ocean Routes and Lines to Foreign Ports; Vessels and Costs of Operation.** The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching his determination the Secretary of Transportation shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States, to the national defense, and to other national requirements;

(b) **Bulk Cargo Carrying Services.** The bulk cargo carrying services that should, for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and for the national defense or other national requirements be provided by United States- flag vessels whether or not operating on particular services, routes, or lines;

(c) **Vessels Required in Proposed Routes.** The type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, which should be employed in such

[6] See Footnote No. 1, page 1, for a definition of "citizen of the United States."

services or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view to furnishing adequate, regular, certain, and permanent service, or which should be employed to provide the bulk cargo carrying services necessary to the promotion, maintenance, and expansion of the foreign commerce of the United States and its national defense or other national requirements whether or not such vessels operate on a particular service, route, or line;

(d) **Cost of Construction in United States and Abroad.** The relative cost of construction of comparable vessels in the United States and in foreign countries;

(e) **Relative Cost of Operation under laws of United States and Foreign Countries.** The relative cost of marine insurance, maintenance, repairs, wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels under the laws, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American vessel;

(f) **Foreign Subsidies.** The extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(g) **Shipyards.** The number, location, and efficiency of the shipyards existing on the date of the enactment of this Act (6/29/36) or thereafter built in the United States;

(h) **Laws applicable to Aircraft.** To investigate and determine what provisions of this Act and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce in order to further the policy expressed in this Act, and to recommend appropriate legislation to this end;

(i) **Transportation to Foreign Ports of cotton, coal, lumber, and cement.** The advisability of enactment of suitable legislation authorizing the Secretary of Transportation, in an economic or commercial emergency, to aid the farmers and cotton, coal, lumber, and cement producers in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Secretary of Transportation, until such time as the Secretary of Transportation shall deem such special rate reduction and operation unnecessary for the benefit of the American farmers and such producers; and

(j) **New Designs of Vessels; Intercoastal and Inland Water Transportation.** New designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of American foreign trade in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

SEC. 212. MARITIME PROBLEMS; COOPERATION WITH OTHERS; CARGO CARRIAGE; RECOMMENDATIONS (46 App. U.S.C. 1122 (2004)).

The Secretary of Transportation is authorized and directed—

(a) **Study of Maritime Problems.** To study all maritime problems arising in the carrying out of the policy set forth in title I of this Act;

(b) **Inducing Preferences for American Vessels; Construction of super-liners.** To study, and to cooperate with vessel owners in devising means by which—

(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

(2) there may be constructed by or with the aid of the United States express-liner or super-liner vessels comparable with those of other nations, especially with a view to their use in national emergency, and the use in connection with or in lieu of such vessels of transoceanic aircraft service;

(c) **Collaboration with Owners and Builders.** To collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits accruing from standardized production where practicable and desirable;

(d) **Liaison with other Agencies and Trade Organizations.** To establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly, with any movement of commodities in the water-borne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities;

(f) **Development and Implementation of new methods of Cargo Carriage; preferences for cargo containers.** To study means and methods of encouraging the development and implementation of new concepts for the carriage of cargo in the domestic and foreign commerce of the United States, and to study the economic and technological aspects of the use of cargo containers as a method of carrying out the declaration of policy set forth in title I of this Act, and in carrying out the provisions of this clause and such policy the United States shall not give preference as between carriers upon the basis of length, height, or width of cargo containers or length, height, or width of cargo container cells and this requirement shall be applicable to all existing container vessels and any container vessel to be constructed or rebuilt; and.

(g) **Recommendations for further Legislation.** To make recommendations to Congress, from time to time, for such further legislation as he deems necessary better to effectuate the purpose and policy of this Act.

SEC. 212(A). VESSEL UTILIZATION AND PERFORMANCE REPORTS; FILING; CIVIL PENALTY; LIEN UPON VESSEL; REMISSION OR MITIGATION OF PENALTY (46 App. U.S.C. 1122a (2004)). The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Transportation may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of $50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Transportation may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

SEC. 212(B). MOBILE TRADE FAIRS (46 App. U.S.C. 1122b (2004)).

(a) **Use of United States flag vessels and aircraft insofar as practicable.** The Secretary of Commerce shall encourage and promote the development and use of mobile trade fairs which are designed to show and sell the products of United States business and agriculture at foreign ports and at other commercial centers throughout the world where the operator or operators of the mobile trade fairs use insofar as practicable United States flag vessels and aircraft in the transportation of their exhibits.

(b) **Technical and financial assistance; exceptions.** The Secretary of Commerce is authorized to provide to the operator or operators of such mobile trade fairs technical assistance and support as well as financial assistance for the purpose of defraying certain expenses incurred abroad (other than the cost of transportation on foreign-flag vessels and aircraft), when the Secretary determines that such operations provide an economical and effective means of promoting export sales.

(c) **Use of foreign currencies.** In addition to any amounts appropriated to carry out trade promotion activities, the President may use foreign currencies owned by or owed to the United States to carry out this section.

(d) **Report to Congress.** The Secretary of Commerce shall submit annually to the Congress a report on his activities under this Act.

SEC. 213. OBSOLETE TONNAGE; TRAMP SERVICE; RELATIVE COSTS AT YARDS (46 App. U.S.C. 1123 (2004)).

The Secretary of Transportation shall make studies of and make reports to Congress on the following—

(1) **Removal of obsolete tonnage.** The scrapping or removal from service of old or obsolete merchant tonnage owned by the United States or in use in the merchant marine.

(2) **Tramp shipping; participation in by Americans.** Tramp shipping service and the advisability of citizens of the United States[7] participating in such service with vessels under United States registry.

SEC. 214. WITNESSES (46 App. U.S.C. 1124 (2004)).

(a) **Summoning; oaths; production of books and papers; fees.** For the purpose of any investigation which, in the opinion of the Secretary of Transportation, is necessary and proper in carrying out this Act, the Secretary may subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of books, papers, or other documents that are relevant to the matter under investigation. The attendance of witnesses and the production of books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof at any designated place of hearing. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) **Refusal to obey subpoena; court orders; contempt.** Upon failure of any person to obey a subpoena issued by the Secretary, the Secretary may invoke the aid of any district court of the United States within the jurisdiction in which the person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring the person to appear before the Secretary, or an employee designated by the Secretary, there to produce books, papers, or other documents, if so ordered, or to give testimony relevant to the matter under investigation. A failure to obey an order of the court may be punished by the court as a contempt thereof. Process in such a case may be served in the judicial district in which the person resides or may be found.

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[7] See Footnote No. 1, page 1, for a definition of "citizen of the United States."

SEC. 215. ACQUISITION OF VESSELS (46 App. U.S.C. 1125 (2004)). The Secretary of Transportation is authorized to acquire by purchase or otherwise such vessels constructed in the United States as he may deem necessary to establish, maintain, improve, or effect replacements upon any service, route, or line in the foreign commerce of the United States determined to be essential under section 211 of this Act, and to pay for the same out of his construction fund: Provided, That the price paid therefor shall be based upon a fair and reasonable valuation, but it shall not exceed by more than 5 per centum the cost of such vessel to the owner (excluding any construction-differential subsidy and the cost of national defense features paid by the Secretary of Transportation) plus the actual cost previously expended thereon for reconditioning less depreciation based upon a twenty-five year[8] life expectancy of the vessel. No such vessel shall be acquired by the Secretary of Transportation unless the Secretary of the Navy has certified to the Secretary of Transportation that such vessel is suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States in time of war or national emergency. Every vessel acquired under authority of this section that is not documented under the laws of the United States at the time of its acquisition shall be so documented as soon as practicable.

CONSTRUCTION, REPAIR, ETC., OF VESSELS FOR GOVERNMENT AGENCIES (46 App. U.S.C. 1125a (2004)). The Secretary of Transportation is authorized to construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the Government, to the extent that such other department or agency is authorized by law to do so for its own account, and any obligations heretofore or hereafter incurred by the Secretary for any of the aforesaid purposes shall not diminish or otherwise affect any contract authorization granted to the Secretary: Provided, The obligations incurred or the expenditures made are charged against and, to the amount of such obligation or expenditure, diminish the existing appropriation or contract authorization of such department or agency.[9]

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[8] Public Law 86-518, approved June 12, 1960 (74 STAT. 216), as amended by Public Law 88-225, approved December 23, 1963 (77 STAT. 469), generally extended the statutory life of vessels to 25 years, and provided for this period's application to certain vessels and contracts existing on the date. However, the Act retained a 20 year statutory life for tankers and other liquid bulk carriers and for vessels delivered prior to January 1, 1946. See Section 8 of Public Law 88-225, for the application to vessels delivered prior to January 1, 1960. It should also be noted that Title XI of the Merchant Marine Act, 1936, generally provides a twenty-five year life for Title XI guaranteed vessels.

[9] Enacted as section 4 of the Act of February 6, 1941 (55 STAT. 5), as amended, and not as part of the Merchant Marine Act, 1936.

TITLE III—AMERICAN SEAMEN

SEC. 301. MANNING AND WAGE SCALES; SUBSIDY CONTRACTS (46 App. U.S.C. 1131 (2004)).

(a) **Investigation of Wages and Working Conditions; Establishment of Wage and Manning Scales; Incorporation in Subsidy Contracts.** 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 minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-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) **Subsidy Contracts; Provisions Relative to Officers and Crew.** 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 Naval 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;

(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 Naval Reserve.[10]

SEC. 302. REEMPLOYMENT RIGHTS FOR CERTAIN MERCHANT SEAMEN (46 App. U.S.C. 1132 (2004)).[11]

(a) An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

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

(1) determine whether or not 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, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

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[10] Section 517 of Public Law 108-375, approved October 28, 2004 (118 STAT. 1884), generally authorizes the Secretary of the Navy, with the approval of the President, to redesignate the reserve component known as the Naval Reserve as the "Navy Reserve". Set forth at page 221.

[11] Section 302 was added by Section 10(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996. Section 10(b) provides: "(b) **Application.**–The amendment made by subsection (a) shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936, as amended by subsection (a), occurring after the date of enactment of this Act.

(ii) that is requisitioned or purchased under section 902 of this Act; or

(iii) that is owned, chartered, or controlled by the United States and used by the United States 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 chapter 73 (as applicable) of title 46, United States Code; and

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

(d) 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 referred to in paragraph (1) of section 4301(a) of title 38, United States Code.

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PROTECTION AGAINST DISCRIMINATION OF SEAMEN.[12]

46 U.S.C. 2114 (2004). Protection of seamen against discrimination

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred; or

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the

[12] Section 428 of Public Law 107-295 (116 STAT. 2064, 2127), the Maritime Transportation Security Act of 2002, amended 46 U.S.C. 2114(a), to expand the protection of seamen against discrimination to prohibit anyone to discharge or discriminate against any seaman who reports a violation of a maritime law to the Coast Guard or refuses to perform duties which he believes would result in his or another individual's injury. 46 U.S.C. 2114 was not enacted as part of the Merchant Marine Act, 1936.

performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including—

(1) restraining violations of this section;

(2) reinstatement to the seaman's former position with back pay;

(3) an award of costs and reasonable attorney's fees to a prevailing plaintiff not exceeding $ 1,000; and

(4) an award of costs and reasonable attorney's fees to a prevailing employer not exceeding $ 1,000 if the court finds that a complaint filed under this section is frivolous or has been brought in bad faith.

SEC. 611. MERCHANT MARINERS' DOCUMENTS PILOT PROGRAM. The Secretary of the department in which the Coast Guard is operating may conduct a pilot program to demonstrate methods to improve processes and procedures for issuing merchant mariners' documents.[13]

[13] Enacted as Section 611 of Public Law 108-293, approved August 9, 2004 (118 STAT. 1028, 1058), the Coast Guard and Maritime Transportation Act of 2004.

TITLE V–CONSTRUCTION-DIFFERENTIAL SUBSIDY[14]

SEC. 501. SUBSIDY AUTHORIZED FOR VESSELS TO BE OPERATED IN FOREIGN TRADE (46 App. U.S.C. 1151 (2004)).

(a) **Application for Subsidy for Construction; Conditions Precedent to Granting.** 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. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity.

(b) **Submission of Plans to Navy Department; Certification of Approval.** 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.

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[14] Throughout Title V, (a) the statutory life of vessels is generally provided as 25 years. But see footnote 8, page 22, and (b) The term "citizen of the United States" is defined as provided in footnote 1, page 1.

(c) **Application for Subsidy for Reconstruction or Reconditioning; Conditions Precedent to Granting; Contracts.** 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 the Secretary of Transportation has adopted as provided in section 204(b) of this Act; 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.

SEC. 502. CONSTRUCTION OF VESSELS; BIDS; SUBSIDIES (46 App. U.S.C. 1152 (2004)).

(a) **Approval of Bids; Contract with Bidder; Acceptance of Negotiated Price; Shipyard Records, Availability; Contract with Applicant or Qualified Citizen for Purchase of Vessel.** 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 a proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence

that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel, at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

(b) **Basis for Fixing Subsidy; Cost of Construction in Foreign Yards; Annual Recomputation and Publication of Foreign Cost; Limitation on Construction Differential; Report on American Shipbuilding Industry.** 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 the 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) **Terms of Sale of Vessel to Purchaser.** 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.

(e) **Construction in Navy Yards; Sales to Citizens; Terms.** 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 collu-

sive, 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) **Survey of Shipbuilding Capability; Correction of Inadequacies; Reimbursement of Certain Vessel Construction and Delivery Expenses.** 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, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection

shall be subject to all of the terms and conditions of this Act, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

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

(g) **Sale of Vessels Acquired by Secretary.** 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, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation, less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act, notwithstanding the provisions of section 601(a)(1), and section 610(1), or any other provision of law.

(h) **Installation or Removal of National Defense Features; Title to Such Features.** 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, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act, 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) **Plans, Specifications, and Proposals for National Defense Features; Certification of Approval.** 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.

SEC. 503. DOCUMENTATION OF COMPLETED VESSEL UNDER LAWS OF UNITED STATES; DELIVERY TO PURCHASER, FIRST MORTGAGE TO SECURE DEFERRED PAYMENT (46 App. U.S.C. 1153 (2004)).

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 purchase 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, 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.

SEC. 504. 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 (46 App. U.S.C. 1154 (2004)). 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.

505. ELIGIBLE SHIPYARDS; MATERIALS; CONDITIONS OF CONTRACTS; LIMITATION TO AMERICAN SHIPYARDS; AMERICAN MATERIALS, WAIVER; ABILITY OF BIDDERS; FILING BIDS AND DATA (46 APP. U.S.C. 1155 (2004)). 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; 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 explana-

tion 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.

SEC. 506. OPERATION OF SUBSIDY CONSTRUCTED VESSEL LIMITED TO FOREIGN TRADE; REPAYMENTS TO SECRETARY FOR DEVIATIONS (46 App. U.S.C. 1156 (2004)). Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it 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.

SEC. 507. CONSTRUCTION OF NEW VESSEL TO REPLACE OBSOLETE; PURCHASE OF OLD VESSEL BY SECRETARY; BOND OF SELLER AGAINST LIENS (46 App. U.S.C. 1157 (2004)). 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 a 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.

SEC. 508.[15] DISPOSITION OF VESSELS TRANSFERRED TO MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1158 (2004)). (a) Authority to Scrap or Sell Obsolete Vessels. If the Secretary of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisement[16] and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: Provided, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the

[15] Note the various scrapping provisions set forth under VESSEL SCRAPPING, commencing at page 351.

[16] Section 1 of the Act of June 29, 1949 (63 STAT. 349), as amended (46 App. U.S.C. 864b) provides: "On or after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price."

sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

(b) **Authority to Convey Vessels.**

(1) In General. Notwithstanding section 510(j) of this Act, the Secretary of Transportation may convey the right, title, and interest of the United States Government in any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation, if—

(A) the recipient is a non-profit organization, a State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof, or the District of Columbia;

(B) the recipient agrees not to use, or allow others to use, the vessel for commercial transportation purposes;

(C) the recipient agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;

(D) the recipient agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;

(E) the recipient has a conveyance plan and a business plan that describes the intended use of the vessel, each of which have been submitted to and approved by the Secretary;

(F) the recipient has provided proof, as determined by the Secretary, of resources sufficient to accomplish the transfer, necessary repairs and modifications, and initiation of the intended use of the vessel; and

(G) the recipient agrees that when the recipient no longer requires the vessel for use as described in the business plan required under subparagraph (E)—

(i) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

(ii) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State in which the recipient is incorporated, then—

(I) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code, or to the Federal Government or a State or local government for a public purpose; and

(II) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to

such organizations as the court shall determine are organized exclusively for public purposes.

(2) **Other Equipment.** At the Secretary's discretion, additional equipment from other obsolete vessels of the National Defense Reserve Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.

(3) **Additional Terms.** The Secretary may require any additional terms the Secretary considers appropriate.

(4) **Delivery of Vessel.** If conveyance is made under this subsection the vessel shall be delivered to the recipient at a time and place to be determined by the Secretary. The vessel shall be conveyed in an "as is" condition.

(5) **Limitations.** If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of a vessel would better serve the interests of the Government, the Secretary shall pursue the more favorable disposition of the obsolete vessel and shall not be liable for any damages that may result from an intended recipient's reliance upon a proposed transfer.

(6) **Revision.** The Secretary shall include in any conveyance under this subsection terms under which all right, title, and interest conveyed by the Secretary shall revert to the United States if the Secretary determines the vessel has been used other than as described in the business plan required under paragraph (1)(E).

SEC. 509. VESSELS TO BE OPERATED IN DOMESTIC TRADE, TERMS AND CONDITIONS OF CONSTRUCTION AID AND SALE TO PURCHASER (46 App. U.S.C. 1159 (2004)). 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 vessels. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, or 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 12 $^{1}/_{2}$ 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 provision 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.

SEC. 510. ACQUISITION OF OBSOLETE VESSELS (46 App. U.S.C. 1160 (2004)).

(a) **Definitions.** When used in this section—

(1) The term "obsolete vessel" means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term "new vessel" means a vessel or vessels, each of which (A) is constructed under the provisions of this Act, and is acquired within two years from the date of completion of such vessel, or is purchased under section 714, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this Act, and documented under the laws of the United States.

(b) **Promotion of Construction of New Vessels; Allowance on Obsolete Vessels.** In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign water-borne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be determined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel constructed under the provisions of this Act, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this Act. In case the new vessel is not constructed under the provisions of this Act, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) **Utility Value of New Vessel; Gross Tonnage.** The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) **Amount of Allowance on Obsolete Vessel; Determination of Amount.** The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world

trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of construction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) **Recognition of Gain for Income Tax Purposes; Basis for Gain or Loss.** No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) **Report to Congress.** The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) **Use of Vessels 25 Years Old or More.** An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 902 of this Act, as amended, and except as otherwise provided in this Act for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(i)[17] **Exchange of Vessels; Valuation; Scrapping of Traded-Out Vessels.** The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, the acquired and obso-

[17] Note the various scrapping provisions set forth under VESSEL SCRAPPING, commencing at page 351.

lete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

(j) **Placement in National Defense Reserve Fleet of Acquired Vessels.** Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this title or in titles VII or XI of this Act.

SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS, TAXATION (46 App. U.S.C. 1161 (2004)).

(a) **"New Vessel" Defined.** When used in this section the term "new vessel" means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) **Establishment of Construction Reserve Funds.** For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the

foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

(c) **Recognition of Gain for Taxation Where Proceeds of Sale or Indemnity for Loss Deposited in Fund.** In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within

sixty days after it is received by the taxpayer.

As used in this subsection the term "net proceeds" and the term "net indemnity" mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) **Basis for Determining Gain or Loss and for Depreciation of New Vessels.** The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g), in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c).

(e) **Order, Proportions, etc., of Deposits and Withdrawals.** For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and (3) if any deposit consists in part of gain not recognized under subsection (c), any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) **Amounts in Fund as Accumulation of Earnings or Profits.** With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code (of 1939).

(g) **Benefits of Section Conditioned upon Manner and Time of Expenditure of Deposits.** The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for

a part interest therein), or, with the approval of the Secretary of Transportation for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12 $^1/_2$ per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Secretary of Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) **Authorizations of Extensions of Time.** The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extension of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: Provided, That until January 1, 1965, in

addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) **Taxation of Deposits upon Failure of Conditions.** Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) **Assessment and Collection of Deficiency Tax.** Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: Provided, however, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

(k) **Taxable Years Governed by this Section.** This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(l) **Vessels Deemed Constructed or Acquired by Taxpayers Owning Stock in Corporations Constructing or Acquiring Vessels.** For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the

total number of shares of each class of stock of the corporation.

(m) **Definitions.** The terms used in this section shall have the same meaning as in chapter 1 of Title 26.

(n) **"Contract for the construction" and "construction contract" defined.** The terms "contract for the construction" and "construction contract", as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(o) **"Reconstruction and reconditioning" defined.** The terms "reconstruction and reconditioning", as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the objectives of this Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a "new vessel" within the meaning of this section for such reconstruction, reconditioning, or modernization.

SEC. 512.[18] LIMITATION ON RESTRICTIONS (46 App. U.S.C. 1162 (2004)

(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 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

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

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

[18] As amended by Section 3532(b) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1818), effective October 1, 2004.

TITLE VI–VESSEL OPERATING ASSISTANCE PROGRAMS[19]

SUBTITLE A–OPERATING DIFFERENTIAL SUBSIDY PROGRAM[20]

SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES (46 App. U.S.C. 1171 (2004)).

(a) **Application for subsidy; conditions precedent to granting.** 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) or in bulk cargo carrying service described in section 211(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

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[19] Title VI - Vessel Operating Assistance Programs consists of three Subtitles: Subtitle A - Operating-differential Subsidy Program; Subtitle B - Maritime Security Fleet; and Subtitle C - Maritime Security Fleet.

Title VI of the Merchant Marine Act, 1936, as amended (Title VI), provides for the Operating-differential Subsidy Program.

Title VI was amended by Section 2 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3118). the Maritime Security Act of 1996, to designate the existing Title VI as Subtitle A - Operating-Differential Subsidy Program (Subtitle A), and by adding a new Subtitle B - Maritime Security Fleet Program (Subtitle B). Subtitle B generally replaced Subtitle A. Subtitle A was not repealed.

Section 3531 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1803), the National Defense Authorization Act for Fiscal Year 2004, enacted a new Subtitle C - Maritime Security Fleet of the Maritime Security Act of 2003 (Subtitle C) to replace Subtitle B. Subtitle C is not part of Title VI of the Merchant Marine Act, 1936; see 46 U.S.C. 53101. Subtitle B was repealed by section 3534(a)(1) of Public Law 108-136 (117 STAT. 1818). Section 3537(b) of Public Law 108-136 (117 STAT. 1820), provides that this repeal is effective October 1, 2005. Section 3537 of Public Law 108-136 (117 STAT. 1819), also provides that, other than Sections 3533 and 3535, Subtitle C shall take effect on October 1, 2004. Sections 3533 and 3535 are effective upon the date of enactment, November 24, 2003. As a result, Subtitle B is repealed on October 1, 2005, and the major operative provisions of Subtitle C do not become effective until that date.

[20] Throughout Subtitle A of Title VI of the Merchant Marine Act, 1936, the term "citizen of the United States" is defined as provided in footnote 1, page 1.

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. 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) **Statements as to financial interests to accompany application; penalty for false statements.** 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 misdemeanor.

SEC. 602. DETERMINATIONS OF NECESSITY OF SUBSIDY TO MEET COMPETITION (46 App. U.S.C. 1172 (2004)). 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.

SEC. 603. CONTRACTS FOR PAYMENT OF SUBSIDY (46 App. U.S.C. 1173 (2004)).

(a) **Authorization of contracts.** 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, 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) **Amount of subsidy.** 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)) 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), 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) **"Collective bargaining costs", "base period costs", "base period", and "subsidizable wage costs of United States officers and crews" defined; determination of collective bargaining costs and establishment of new base periods; wage change index..**

(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 economical 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, 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, 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 subdi-

vision (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 costs 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 nonagricultural 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) **Foreign wage computation; foreign manning.** 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) **Monthly payment of wage subsidy; procedures for calculation and payment of subsidy on certain expenses.** 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) **Monthly percentage payment of other than wage subsidy; security for refund of overpayments; payment of remainder after audit of voyage accounts.** 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.

SEC. 604. ADDITIONAL SUBSIDY; WHEN AUTHORIZED (46 App. U.S.C. 1174 (2004)). 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.

SEC. 605. VESSELS EXCLUDED FROM SUBSIDY (46 App. U.S.C. 1175 (2004)).

(a) **Vessels engaged in coastwise or intercoastal trade; vessels on inland waterways.** No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coast-

wise 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 to be operating in foreign trade.

(b) **Limitation on payments for older vessels.** 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,[21] that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) **Vessels to be operated in an essential service served by citizens of the United States.** 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

[21] The Maritime Security Act of 1996, was enacted on October 8, 1996.

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.

SEC. 606. READJUSTMENTS, CHANGE IN SERVICE, WITHDRAWAL FROM SERVICE; PAYMENT OF EXCESS PROFITS; WAGES, ETC.; AMERICAN MATERIALS (46 App. U.S.C. 1176 (2004)). 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, he 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-differential 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 operat-

ing-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 service, 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, 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.

SEC. 607. CAPITAL CONSTRUCTION FUND (46 App. U.S.C. 1177 (2004)).[22]

(a) **Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals.** Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(l)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the "fund") with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable

[22] Section 261 of Public Law 99-514, approved October 22, 1986 (100 STAT. 2085), the Tax Reform Act of 1986, coordinated the application of the Internal Revenue Code of 1986 (Code) with the Capital Construction Fund program. Section 261 of Public Law 99-514 amended section 26(b)(2) of the Code and section 607 of the Merchant Marine Act, 1936, and added a new section 7518 to Chapter 77 of the Code. These amendments apply to taxable years beginning after December 31, 1986.

income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

(b) **Ceiling on deposits; lessees; "agreement vessel" defined.**

(1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of;

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term "agreement vessel" includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

(c) **Investment requirements; depositories; fiduciary requirements; interest-bearing securities; stock: percentage for domestic issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues.** Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary; except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men

of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

(d) **Nontaxability of deposits; eligible deposits.**

(1) For purposes of the Internal Revenue Code of 1954—

(A) taxable income (determined without regard to this section and section 7518 of such Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A),

(B) gain from a transaction referred to in subsection (b)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section and section 7518 of such Code, and

(E) in applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

(e) **Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses.** For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

(A) the capital account,

(B) the capital gain account, and

(C) the ordinary income account.

(2) The capital account shall consist of—

(A) amounts referred to in subsection (b)(1)(B),

(B) amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),

(C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) interest income exempt from taxation under section 103 of such Code.

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A),

(B) (i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

(f) **Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations.**

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under or any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

(g) **Tax treatment of qualified withdrawals; basis reduction.**

(1) Any qualified withdrawal from a fund shall be treated—

(A) first as made out of the capital account,

(B) second as made out of the capital gain account, and

(C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred

to in subsection (h)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

(h) **Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate.**

(1) Except as provided in subsection (i), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

(A) first as made out of the ordinary income account,

(B) second as made out of the capital gain account, and

(C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 of such Code and no addition to the tax shall be payable under section 6651 of such Code,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified with-

drawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

(5) ***Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal.***

(A) **In general.** The applicable percentage of any amount which remains in a capital construction fund at the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualifed withdrawal in accordance with the following table:

If the amount remains in the fund at the close of the—	*The applicable percentage is—*
26th taxable year	20 percent
27th taxable year	40 percent
28th taxable year	60 percent
29th taxable year	80 percent
30th taxable year	100 percent.

(B) **Earnings treated as deposits.** The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) **Amounts committed treated as withdrawn.** For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) **Authority to treat excess funds as withdrawn.** If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal

under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) **Amounts in fund on January 1, 1987.** For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

(6) **Nonqualified withdrawals taxed at highest marginal rate.**

(A) **In general.** In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined— (i) by excluding such withdrawal from gross income, and (ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 15 percent (34 percent in the case of a corporation).[23]

(B) **Tax benefit rule.** If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

(i) **Corporate reorganizations and partnership changes.** Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1954 applies may be treated as if such transaction did not constitute a nonqualified withdrawal, and

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[23] Section 301(a)(2)(E) of Public Law 108-27, approved May 28, 2003 (117 STAT. 758), the Jobs and Growth Tax Relief Reconciliation Act of 2003, amended Section 607(h)(6)(A) of the Merchant Marine Act, 1936, to reduce from 20 to 15 percent the amount of tax in that provision. Section 303 of Public Law 108-27 (117 STAT. 764) provides: "All provisions of, and amendments made by, this title shall not apply to taxable years beginning after December 31, 2008, and the Internal Revenue Code of 1986 shall be applied and administered to such years as if such provisions and amendments had never been enacted."

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K of such Code.

(j) **Treatment of existing funds; relation of old to new fund.**

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as "old fund") under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) may not simultaneously maintain such old fund and a new fund established under this section, and

(C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C), the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) **Definitions.**[24] For the purposes of this section—

(1) The term "eligible vessel" means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

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[24] Note 46 App. U.S.C. 1177-1, provides: "In addition to any other vessel which may be deemed an 'eligible vessel' and a 'qualified vessel' under section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177), a commercial fishing vessel under five net tons but not under two net tons—(1) which is constructed in the United States and, if reconstructed, is reconstructed in the United States; (2) which is owned by a citizen of the United States; (3) which has a home port in the United States; and(4) which is operated in the commercial fisheries of the United States, shall be considered to be an 'eligible vessel' and a 'qualified vessel' for the purposes of such section 607."

(2) The term "qualified vessel" means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) which the person maintaining the fund agrees with the Secretary will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term "agreement vessel" means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term "United States", when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term "United States foreign trade" includes (but is not limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 506 of this Act.

(6) The term "joint regulations" means regulations prescribed under subsection (l)

(7) The term "vessel" includes cargo handling equipment which the Secretary of Commerce determines is intended for use primarily on the vessel. The term "vessel" also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term "noncontiguous trade" means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term "Secretary" means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(l) **Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations.** Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be

necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) **Departmental reports and certification.**

(1) ***In general.*** For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) ***Contents of reports.*** Each report shall set forth the name and taxpayer identification number of each person—

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

SEC. 608. SALE OR ASSIGNMENT OF CONTRACT; CONSENT OF SECRETARY; PURCHASER SUBJECT TO TERMS OF CONTRACT; RESCINDING CONTRACT ON TRANSFER WITHOUT CONSENT (46 App. U.S.C. 1178 (2004)). 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 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 assign-

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

SEC. 609. WITHHOLDING PAYMENT TO DEFAULTING CONTRACTOR (46 App. U.S.C. 1179 (2004)). 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.

SEC. 610. VESSELS ELIGIBLE FOR SUBSIDY (46 App. U.S.C. 1180 (2004)). 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 the passage of this Act 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.

SEC. 611. TRANSFER OF VESSELS TO FOREIGN REGISTRY ON DEFAULT OF UNITED STATES (46 App. U.S.C. 1181 (2004)).

(a) **Application; hearing; grant or denial.** The contractor, upon compliance with the provisions of this section, may transfer to foreign reg-

istry 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) **Appeal from denial of application.** 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) **Effectiveness of transfer.** 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.

SEC. 613. OFF-SEASON CRUISES BY PASSENGER VESSELS (46 App. U.S.C. 1183 (2004)).

(a) **"Passenger vessel" defined.** 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) **Authorization for payment of subsidy.** 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) **Authorization for payment of subsidy to passenger vessels providing domestic service.** 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) **Conditions for cruises or domestic service while on voyages in an essential service in foreign commerce.** 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.

(4) Any other provisions of the Merchant Marine Act, 1936, or of the Shipping Act, 1916, 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 section 605(a) and section 506 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) **Application for approval of cruise; notice to other American flag operators.** 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.

OFF-SEASON CRUISES ADDITIONAL TO RIGHT OF OPERATOR TO MAKE VOYAGES ON REGULAR SERVICE, ROUTE, OR LINE, INCLUDING APPROVED DEVIATIONS (46 App. U.S.C. 1183a (2004)).[25] The cruises autho-

[25] Enacted as section 7 of Public Law 87-45, approved May 27, 1961 (75 STAT. 91), and not as part of the Merchant Marine Act, 1936.

rized by section 613 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.

SEC. 614. SUSPENSION OF OPERATING DIFFERENTIAL SUBSIDY CONTRACTS BY OPERATOR RECIPIENTS (46 App. U.S.C. 1184 (2004)).

(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.

SEC. 615.[26] CONSTRUCTION, RECONSTRUCTION, OR ACQUISITION OF VESSELS OVER FIVE THOUSAND DEADWEIGHT TONS IN FOREIGN SHIPYARDS; PRECONDITIONS (46 App. U.S.C. 1185 (2004)).

(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

[26] See also section 134 of Public Law 98-151, approved November 14, 1983 (97 STAT. 981), providing certain foreign construction authority.

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 build for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7)): 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).

SEC. 616.[27] WIND-UP OF SUBTITLE A PROGRAM (46 App. U.S.C. 1185a (2004)).

(a) After the date of enactment of the Maritime Security Act of 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, 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 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 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), 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 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

[27] Section 616 was added by Section 3(b) of Public Law 104-239, approved October 8, 1996, the Maritime Security Act of 1996.

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.

SUBTITLE B–MARITIME SECURITY FLEET PROGRAM[28]

SEC. 651. ESTABLISHMENT OF FLEET (46 App. U.S.C. 1187 (2004)).

(a) **In General.** The Secretary of Transportation shall establish a fleet of active, 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-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

(b) **Vessel Eligibility.** A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

(1)(A) is operated by a person as an ocean common carrier;

(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(2)(A)(i) is a United States-documented vessel; and

(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

(I) a LASH vessel that is 25 years of age or less; or

(II) any other type of vessel that is 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

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[28] Section 3534(a)(1) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1818), the National Defense Authorization Act for Fiscal Year 2004, repealed Subtitle B. Section 3537(b) of Public Law 108-136 (117 STAT. 1820), provides that this repeal shall take effect October 1, 2005.

(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

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PROVISIONS OF LAW THAT AFFECT THE MARITIME SECURITY PROGRAM

Section 1136(c) and (d) and Section 1137 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987), set forth provisions of law that affect the Maritime Security Program.

Subtitle B - Maritime Security Fleet Program, consists of Sections 651 through 656 of the Merchant Marine Act, 1936. The term "citizen of the United States" appears in Sections 652 and 656. In Subtitle B, the general U.S. citizenship requirements, as set forth in footnote 1, page 1, have been amended by Section 1136(c) and (d) of Public Law 104-324, as follows:

(c) **Trust Charterers.**-Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that. subtitle) if-

(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and

(2)(A) the vessel-

(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or

(ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such a vessel; or

(B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

(d) **Indirect Vessel Owners.**-Notwithstanding any other provision of law, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 the following vessels are deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if the vessels are owned, directly or indirectly, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C 802):

(1) Any vessel constructed under a shipbuilding contract signed on December 21, 1995, and having hull number 3077, 3078, 3079, or 3080.

(2) Any vessel delivered by a shipbuilder, following completion of construction, on or after May 1, 1995, and before January 31, 1996.

(3) Any vessel owned on September 1, 1996, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916, or a replacement for such a vessel.

(4) Any vessel with respect to which payments have been made under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

In addition, Section 1137 of Public law 104-324, provides:

Sec. 1137. Vessel Standards.[29]

(a) **Certificate of Inspection.**—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 651(b) of the Merchant Marine Act, 1936, but which on the date of enactment of this Act is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

(1) the vessel is classed by and designed in accordance with the rules of ,the American Bureau of Shipping or another classification society accepted by the Secretary;

(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(b) **Continued Eligibility for Certificate.**—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

(c) **Reliance on Classification Society.—**

(1) ***In General.***—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

(2) ***Foreign Classification Society.***—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal

[29] Section 1137 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3988), the Coast Guard Authorization Act of 1996.

basis to the American Bureau of Shipping; and

(B) if the foreign classification society has offices and maintains records in the United States.

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CONTINUATION OF THE MERCHANT MARINE ACT, 1936

SEC. 652. OPERATING AGREEMENTS (46 App. U.S.C. 1187a (2004)).

(a) **In General.** The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

(b) **Requirements for Operation.** An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

(c) **Regulatory Relief.** A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810. Participation in the program established by this subtitle shall not subject a contractor to section 805 or to any provision of subtitle A. The restrictions of section 901(b)(1) of this Act concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments under an operating agreement under the subtitle.[30]

[30] Section 3603(b) of Public Law 105-85, approved November 18, 1997, added the final sentence to Section 652(c). Section 901(b)(1) of the Merchant Marine Act, 1936, page 138 sets forth the Cargo Preference Act of 1954, that generally precludes vessels that were constructed or reconstructed outside the United States, or documented under

(d) **Effectiveness and Annual Payment Requirements of Operating Agreements.**

(1) ***Effectiveness.*** The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

(2) ***Annual Payment.*** An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to $2,300,000 for fiscal year 1996 and $2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(e) **Certification Required for Payment.** As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(f) **Operating Agreement is Obligation of United States Government.** An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(g) **Limitations.** The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

(2) not operated or maintained in accordance with an operating agreement under this subtitle; or

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any foreign registry from transporting the cargoes reserved to U.S. vessels by that section until they have been documented under the laws of the United States for a period of three years. Section 3603(b) of Public Law 105-85 amended section 652(c) to remove this restriction from vessels receiving MSP payments. Upon acceptance of a foreign constructed vessel into the MSP, it becomes immediately eligible to transport cargoes under the Cargo Preference Act of 1954.

(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

(A) is modernized after January 1, 1994,

(B) is modernized before it is 25 years of age, and

(C) is not more than 30 years of age.

(h) **Payments.** With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241-1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(i) **Priority for Awarding Agreements.** Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(1) ***Vessels Owned by Citizens.***

(A) *Priority.*—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916;[31] or

(ii) less than 10 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

[31] Note the various exceptions to this requirement set forth in the provisions of law on page 76.

(B) *Limitation on Number of Operating Agreements.*—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

(C) *Treatment of Related Parties.*—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) ***Other Vessels Owned by Citizens and Government Contractors.*** To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

(A) a citizen of the United States under section 2 of the Shipping Act, 1916[26], that has not been awarded an operating agreement under the priority established under paragraph (1); or

(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(3) ***Other Vessels.*** To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

(j) **Transfer of Operating Agreements.** A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

(k) **Reversion of Unused Authority.** The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in

operation of the vessel for which such payment is required—

(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

(l) **Procedure for Considering Application; Effective Date for Certain Vessels.**

(1) ***Procedures***. No later than 30 days after the date of the enactment of the Maritime Security Act of 1996, the Secretary shall accept applications for enrollment of vessels in the Fleet, and within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

(2) ***Effective Date.*** Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

(m) **Early Termination.** An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation and the Secretary of Defense.

(n) **Nonrenewal for Lack of Funds.** If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by section 655 for that fiscal year, the Secretary of Transportation shall notify the Congress that operating agreements

authorized under this subtitle for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If funds are not appropriated under the authority provided by section 655 for any fiscal year by the 60th day of that fiscal year, then each vessel covered by an operating agreement under this subtitle for which funds are not available is thereby released from any further obligation under the operating agreement, and the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registration of the vessel under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

(o) **Award of Operating Agreements.—**

(1) ***In General.*** The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.

(2) ***Number of Agreements Awarded.*** Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

(3) ***Treatment of Related Parties.*** For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

(4) ***Preference for United States-Built Vessels.*** In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

(p) **Notice to United States Shipbuilders Required.** The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

NATIONAL SECURITY REQUIREMENTS

SEC. 653. (a) EMERGENCY PREPAREDNESS AGREEMENT (46 App. U.S.C. 1187b (2004)).

(1) **Requirement to Enter Agreement.** The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

(2) **Terms of Agreement.** An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security (including any natural disaster, international peace operation, or contingency operation (as that term is defined in section 101 of title 10, United States Code)), a contractor for a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreements shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

(3) **Participation After Expiration of Operating Agreement.** Except as provided by section 652(m), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement when the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

(b) **Resources Made Available.** The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such non-vessel resources for activation as the Secretary may determine to be

necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(c) **Compensation.—**

(1) ***In General.*** The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) ***Specific Requirements.*** Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources;

(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

(3) ***Approval of Amount by Secretary of Defense.*** No compensation may be provided for a vessel under this subsection unless the amount of the compensation is approved by the Secretary of Defense.

(d) **Temporary Replacement Vessels.** Notwithstanding any other provision of this subtitle or of other law to the contrary—

(1) a contractor or other person that commits to make available a vessel or vessel capacity under the Emergency Preparedness Program or another primary sealift readiness program approved by the Secretary of Defense may, during the activation of that vessel or capacity under that program, operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for the activated vessel or capacity; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241-1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

(e) **Redelivery and Liability of United States for Damages.—**

(1) ***In General.*** All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of

the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

(2) ***Limitation on Liability of United States.*** Except as may be expressly agreed to in an Emergency Preparedness Agreement, or 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 activation of commercial transportation resources under an Emergency Preparedness Agreement.

(3) ***Limitation on Application of Other Requirements.*** Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

SEC. 654. DEFINITIONS (46 App. U.S.C. 1187c (2004)). In this subtitle:

(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 of Transportation under section 652.

(3) ***Ocean Common Carrier.*** The term "ocean common carrier" means a person holding itself out to the general public to operate vessels to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation, that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(4) ***Fleet.*** The term "Fleet" means the Maritime Security Fleet established pursuant to section 651(a).

(5) ***LASH Vessel.*** The term "LASH vessel" means a lighter aboard ship vessel.

(6) ***United States-Documented Vessel.*** The term "United States-documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

SEC. 655. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1187d (2004)).

There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, $100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed $100,000,000, for each fiscal year thereafter through fiscal year 2005.

SEC. 656. NONCONTIGUOUS DOMESTIC TRADES (46 App. U.S.C. 1187e (2004)).

(a) (1) Except as otherwise provided in this section, no contractor or related party shall receive payments pursuant to this subtitle during a period when it participates in a noncontiguous domestic trade, except upon written permission of the Secretary of Transportation. Such written permission shall also be required for any material change in the number or frequency of sailings, the capacity offered, or the domestic ports called by a contractor or related party in a noncontiguous domestic trade. The Secretary may grant such written permission pursuant to written application of such contractor or related party unless the Secretary finds that—

(A) existing service in that trade is adequate; or

(B) the service sought to be provided by the contractor or related party—

(i) would result in unfair competition to any other person operating vessels in such noncontiguous domestic trade, or

(ii) would be contrary to the objects and policy of this Act.

(2) For purposes of this subsection, written permission of the Secretary means permission which states the capacity offered, the number and frequency of sailings, and the domestic ports called, and which is granted following—

(A) written application containing the information required by paragraph (e)(1) by a person seeking such written permission, notice of which application shall be published in the Federal Register within 15 days of filing of such application with the Secretary;

(B) holding of a hearing on the application under section 554 of title

5, United States Code, in which every person, firm or corporation having any interest in the application shall be permitted to intervene and be heard; and

(C) final decision on the application by the Secretary within 120 days following conclusion of such hearing.

(b)(1) Subsection (a) shall not apply in any way to provision by a contractor of service within the level of service provided by that contractor as of the date established by subsection (c) or to provision of service permitted by subsection (d).

(2) Subsection (a) shall not apply to operation by a contractor of a self-propelled tank vessel in a noncontiguous domestic trade, or to ownership by a contractor of an interest in a self-propelled tank vessel that operates in a noncontiguous domestic trade.

(c) The date referred to in subsection (b) shall be August 9, 1995: Provided however, That with respect to tug and barge service to Alaska the date referred to in subsection (b) shall be July 1, 1992.

(d) A contractor may provide service in a trade in addition to the level of service provided as of the applicable date established by subsection (c) in proportion to the annual increase in real gross product of the noncontiguous State or Commonwealth served since the applicable date established by subsection (c).

(e)(1) A person applying for award of an agreement under this subtitle shall include with the application a description of the level of service provided by that person in each noncontiguous domestic trade served as of the date applicable under subsection (c). The application also shall include, for each such noncontiguous domestic trade: a list of vessels operated by that person in such trade, their container carrying capacity expressed in twenty-foot equivalent units (TEUs) or other carrying capacity, the itinerary for each such vessel, and such other information as the Secretary may require by regulation. Such description and information shall be made available to the public. Within 15 days of the date of an application for an agreement by a person seeking to provide service pursuant to subsections (b) and (c) of this section, the Secretary shall cause to be published in the Federal Register notice of such description, along with a request for public comment thereon. Comments on such description shall be submitted to the Secretary within 30 days of publication in the Federal Register. Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting use of the applicant's description to establish the level of service provided as of the date applicable under subsection (c): Provided, That notwithstanding the provisions of this subsection, processing of the application for an award of an agreement shall not be suspended or delayed during the time in

which comments may be submitted with respect to the determination or during the time prior to issuance by the Secretary of the required determination: Provided further, That if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the description of the level of service provided by the applicant shall be deemed to be the level of service provided as of the applicable date until such time as the Secretary makes the determination.

(2) No contractor shall implement the authority granted in subsection (d) of this section except as follows:

(A) An application shall be filed with the Secretary which shall state the increase in capacity sought to be offered, a description of the means by which such additional capacity would be provided, the basis for applicant's position that such increase in capacity would be in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c), and such information as the Secretary may require so that the Secretary may accurately determine such increase in real gross product of the relevant noncontiguous State or Commonwealth.

(B) Such increase in capacity sought by applicant and such information shall be made available to the public.

(C) Within 15 days of the date of an application pursuant to this paragraph the Secretary shall cause to be published in the Federal Register notice of such application, along with a request for public comment thereon.

(D) Comments on such application shall be submitted to the Secretary within 30 days of publication in the Federal Register.

(E) Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting, the increase in capacity sought by the applicant as being in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c): Provided, That, notwithstanding the provisions of this section, if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the increase in capacity sought by applicant shall be permitted as being in proportion to or less than such increase in real gross product until such time as the Secretary makes the determination.

(f) With respect to provision by a contractor of service in a noncontiguous domestic trade not authorized by this section, the Secretary shall deny payments under the operating agreement with respect to the period

of provision of such service but shall deny payments only in part if the extent of provision of such unauthorized service was de minimis or not material.

(g) Notwithstanding any other provision of this subtitle, the Secretary may issue temporary permission for any United States citizen, as that term is defined in section 2 of the Shipping Act, 1916, to provide service to a noncontiguous State or Commonwealth upon the request of the Governor of such noncontiguous State or Commonwealth, in circumstances where an Act of God, a declaration of war or national emergency, or any other condition occurs that prevents ocean transportation service to such noncontiguous State or Commonwealth from being provided by persons currently providing such service. Such temporary permission shall expire 90 days from date of grant, unless extended by the Secretary upon written request of the Governor of such State or Commonwealth.

(h) As used in this section:

(1) The term "level of service provided by a contractor" in a trade as of a date means—

(A) with respect to service other than service described in (B), the total annual capacity provided by the contractor in that trade for the 12 calendar months preceding that date: Provided, That, with respect to unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle and points in the contiguous 48 States, the level of service provided by a contractor shall include 100 percent of the capacity of the equipment dedicated to such service on the date specified in subsection (c) and actually utilized in that service in the two-year period preceding that date, excluding service to points between Anchorage, Alaska and Whittier, Alaska, served by common carrier service unless such unscheduled service is only for carriage of oil or pursuant to a contract with the United States military: Provided further, That, with respect to scheduled barge service between the contiguous 48 States and Puerto Rico, such total annual capacity shall be deemed as such total annual capacity plus the annual capacity of two additional barges, each capable of carrying 185 trailers and 100 automobiles; and

(B) with respect to service provided by container vessels, the overall capacity equal to the sum of—

(i) 100 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and frequency of sailing in effect on that date, and which participate solely in that noncontiguous domestic trade; and

(ii) 75 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels' configuration and fre-

quency of sailing in effect on that date, and which participate in that noncontiguous domestic trade and in another trade, provided that the term does not include any restriction on frequency, or number of sailings, or on ports called within such overall capacity.

(2) The level of service set forth in paragraph (1) shall be described with the specificity required by subsection (e)(1) and shall be the level of service in a trade with respect to the applicable date established by subsection (c) only if the service is not abandoned thereafter, except for interruptions due to military contingency or other events beyond the contractor's control.

(3) The term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(4) The term "related party" means—

(A) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under this subtitle; and

(B) an officer, director, agent, or other executive of a contractor or of a person referred to in subparagraph (A).

MARITIME SECURITY ACT OF 2003

Public Law 108-136, approved November 24, 2003 (117 STAT. 1789, 1803)

***Note**: Subtitle C - The Maritime Security Fleet Program, and Subtitle D - The National Defense Tank Vessels Construction Assistance Program, [pages 113–116] have been placed within a dotted line to indicate that pursuant to Section 3537 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1819), the major operative provisions of Subtitle C do not become effective until October 1, 2005. Subtitle D follows Subtitle C, because Section 3543(e) of Public Law 108-136 (117 STAT. 1821), generally keys that program to the Maritime Security Fleet Program. Section 3537(a) of Public Law 108-136 (117 STAT. 1819), provides that, other than Sections 3533, 3534, and 3535, Subtitle C shall take effect on October 1, 2004. Sections 3533, 3534, and 3535 have been footnoted to indicate the date of enactment.*

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SUBTITLE C - MARITIME SECURITY FLEET[32]

SEC. 3531. ESTABLISHMENT OF MARITIME SECURITY FLEET. (117 STAT. 1803).

(a) **In General.**—Title 46, United States Code, is amended by inserting before subtitle VI the following new subtitle:

Subtitle V—Merchant Marine

Chap. 531. Maritime Security Fleet 53101

CHAPTER 531—MARITIME SECURITY FLEET

46 U.S.C. 53101. Definitions.

46 U.S.C. 53102. Establishment of Maritime Security Fleet.

46 U.S.C. 53103. Award of operating agreements.

46 U.S.C. 53104. Effectiveness of operating agreements.

46 U.S.C. 53105. Obligations and rights under operating agreements.

46 U.S.C. 53106. Payments.

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[32] Title XXXV - MARITIME ADMINISTRATION, Subtitle C - Maritime Security Fleet, Section 3531 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1803).

46 U.S.C. 53107. National security requirements.

46 U.S.C. 53108. Regulatory relief.

46 U.S.C. 53109. Special rule regarding age of participating fleet vessel.

46 U.S.C. 53110. Regulations.

46 U.S.C. 53111. Authorization of appropriations.

46 U.S.C. 53101.(2004) 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"—

(A) subject to subparagraph (B), means—

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

(ii) commerce or trade between foreign countries; and

(B) includes, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to this chapter or subtitle D of the Maritime Security Act of 2003.

(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.).

(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 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.

46 U.S.C 53102. (2004) 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 is—

(A) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units and that is 15 years of age or less on the date the vessel is included in the Fleet;

(B) a tank vessel that is constructed in the United States after the date of the enactment of this chapter;

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

(D) a LASH vessel that is 25 years of age or less on the date the vessel is included in the Fleet; or

(E) 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 is—

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

(B) determined by the Secretary to be commercially viable; 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) ***Vessels Owned and Operated by Section 2 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 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(2) ***Vessels Owned by Section 2 Citizen or United States Citizen Trust, and Chartered to Documentation Citizen.—*** A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be—

(i) owned by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) or that is a United States citizen trust; and

(ii) demise chartered to a person—

(I) that is eligible to document the vessel under chapter 121 of this title;

(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), and are appointed and subjected to removal only upon approval by the Secretary; and

(III) that certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter;

(B) in the case of a vessel that will be demise chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), the other person enters into an agreement with the Secretary not to influence the operation of the vessel in a manner that will adversely affect the interests of the United States; and

(C) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of

the House of Representatives that they concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(3) ***Vessel Owned and Operated by Defense Contractor.***—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by a person that—

(i) is eligible to document a vessel under chapter121 of this title;

(ii) operates or manages other United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for purposes of this paragraph with the Secretary of Defense;

(iv) makes the certification described in paragraph (2)(A)(ii)(III); and

(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

(B) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they concur with the certification required under subparagraph (A)(iv), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(4) ***Vessel Owned by Documentation Citizen and Chartered to Section 2 Citizen.***—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—

(A) owned by a person that is eligible to document a vessel under chapter 121 of this title; and

(B) demise chartered to a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(d) **Request by Secretary of Defense.** —The Secretary of Defense shall request the Secretary of Homeland Security to issue any waiver under the first section of Public Law 81–891 (64 Stat. 1120; 46 U.S.C. App. note prec. 3) that is necessary for purposes of this chapter.

(e) **Vessel Standards.**—

(1) ***Certificate of Inspection.***—A vessel used to provide oceangoing

transportation which the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Maritime Security Act of 2003, is not a documented vessel (as that term is defined in section 12101 of this title) shall be eligible for a certificate of inspection if the Secretary determines that—

(A) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping, or another classification society accepted by the Secretary;

(B) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(C) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(2) ***Continued Eligibility for Certificate.***—Paragraph (1) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in paragraph (1)(B).

(3) ***Reliance on Classification Society.***—

(A) *In General.*—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

(B) *Foreign Classification Society.*—The Secretary may accept certification from a foreign classification society under subparagraph (A) only—

(i) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(ii) if the foreign classification society has offices and maintains records in the United States.

(f) **Waiver of Age Restriction.**—The Secretary of Defense, in conjunction with the Secretary of Transportation, may waive the application of an age restriction under subsection (b)(3) if the Secretaries jointly determine that the waiver—

(1) is in the national interest;

(2) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

46 U.S.C 53103. (2004) Award of operating agreements

(a) **In General.**—The Secretary shall require, as a condition of including any vessel in the Fleet, that the person that is the owner or operator of the vessel for purposes of section 53102(c) enter into an operating agreement with the Secretary under this section.

(b) **Procedure for Applications.**—

(1) ***Acceptance of Applications.***—Beginning no later than 30 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Fleet.

(2) ***Action on Applications.***—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall approve the application in conjunction with the Secretary of Defense, and shall enter into an operating agreement with the applicant, or provide in writing the reason for denial of that application.

(3) ***Participating Fleet Vessels.***—

(A) *In General.*—The Secretary shall accept an application for an operating agreement for a participating fleet vessel under the priority under subsection (c)(1)(B) only from a person that has authority to enter into an operating agreement for the vessel with respect to the full term of the operating agreement.

(B) *Vessel under Demise Charter.*—For purposes of subparagraph (A), in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel shall be treated as having the authority referred to in paragraph (1).

(C) *Vessel Owned by United States Citizen Trust.*— For purposes of subparagraph (B), in the case of a vessel owned by a United States citizen trust, the term "owner of the vessel" includes a beneficial owner of the vessel with respect to such trust.

(c) **Priority for Awarding Agreements.**—

(1) ***In General.***—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(A) *New Tank Vessels.*—First, for any tank vessel that—

(i) is constructed in the United States after the effective date of this chapter;

(ii) is eligible to be included in the Fleet under section 53102(b); and

(iii) during the period of an operating agreement under this chapter that applies to the vessel, will be owned and operated by one or more persons that are citizens of the United States under section 2

of the Shipping Act, 1916 (46 U.S.C. App. 802), except that the Secretary shall not enter into operating agreements under this subparagraph for more than 5 such vessels.

(B) *Participating Fleet Vessels.*—Second, to the extent amounts are available after applying subparagraphs (A), for any participating fleet vessel, except that the Secretary shall not enter into operating agreements under this subparagraph for more than 47 vessels.

(C) *Certain Vessels Operated by Section 2 Citizens*—Third, to the extent amounts are available after applying subparagraphs (A) and (B), for any other vessel that is eligible to be included in the Fleet under section 53102(b), and that, during the period of an operating agreement under this chapter that applies to the vessel, will be—

(i) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(ii) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(D) *Other Eligible Vessels.*—Fourth, to the extent amounts are available after applying subparagraphs (A), (B), and (C), for any other vessel that is eligible to be included in the Fleet under section 53102(b).

(2) ***Reduction in Number of Slots for Participating Fleet Vessels.***—The number in paragraph (1)(B) shall be reduced by 1—

(A) for each participating fleet vessel for which an application for enrollment in the Fleet is not received by the Secretary within the 90-day period beginning on the effective date of this chapter; and

(B) for each participating fleet vessel for which an application for enrollment in the Fleet received by the Secretary is not approved by the Secretary and the Secretary of Defense within the 90-day period beginning on the date of such receipt.

(3) ***Discretion within Priority.***—The Secretary—

(A) subject to subparagraph (B), may award operating agreements within each priority under paragraph (1) as the Secretary considers appropriate; and

(B) shall award operating agreement within a priority—

(i) in accordance with operational requirements specified by the Secretary of Defense;

(ii) in the case of operating agreements awarded under subparagraph (C) or (D) of paragraph (1), according to applicants' records of owning and operating vessels; and

(iii) subject to the approval of the Secretary of Defense.

(4) ***Treatment of Tank Vessel to be Replaced.***—(A) For purposes of the application of paragraph (1)(A) with respect to the award of an operating agreement, the Secretary may treat an existing tank vessel that is eligible to be included in the Fleet under section 53102(b) as a vessel that is constructed in the United States after the effective date of this chapter, if—

(i) a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed by not later than 9 months after the first date amounts are available to carry out this chapter; and

(ii) the replacement vessel is eligible to be included in the Fleet under section 53102(b).

(B) No payment under this chapter may be made for an existing tank vessel for which an operating agreement is awarded under this paragraph after the earlier of—

(i) 4 years after the first date amounts are available to carry out this chapter; or

(ii) the date of delivery of the replacement tank vessel.

(d) **Limitation.**—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

46 U.S.C. 53104. (2004) Effectiveness of operating agreements

(a) **Effectiveness, Generally.**—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2015.

(b) **Vessels Under Charter to United States.**—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel that is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107, shall be the expiration or termination date of the Government charter covering the vessel, or any earlier date the vessel is withdrawn from that charter.

(c) **Termination.**—

(1) ***Termination by Secretary.***—If the contractor with respect to an operating agreement materially fails to comply with the terms of the agreement—

(A) the Secretary shall notify the contractor and provide a reasonable opportunity to comply with the operating agreement;

(B) the Secretary shall terminate the operating agreement if the contractor fails to achieve such compliance; and

(C) upon such termination, any funds obligated by the agreement shall be available to the Secretary to carry out this chapter.

(2) ***Early Termination by Contractor, Generally.***— An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement.

(3) Early Termination by Contractor, with Available Replacement. — An operating agreement under this chapter shall terminate upon the expiration of the 3-year period beginning on the date a vessel begins operating under the agreement, if—

(A) the contractor notifies the Secretary, by not later than 2 years after the date the vessel begins operating under the agreement, that the contractor intends to terminate the agreement under this paragraph; and

(B) the Secretary, in conjunction with the Secretary of Defense, determines that—

(i) an application for an operating agreement under this chapter has been received for a replacement vessel that is acceptable to the Secretaries; and

(ii) during the period of an operating agreement under this chapter that applies to the replacement vessel, the replacement vessel will be—

(I) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(II) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(d) **Nonrenewal for Lack of Funds.**—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by this chapter for that fiscal year, then the Secretary shall notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that operating agreements authorized under this chapter for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year.

(e) **Release of Vessels from Obligations.**—If an operating agreement

under this chapter is terminated under subsection (c)(3), or if funds are not appropriated for payments under an operating agreement under this chapter for any fiscal year by the 60th day of that fiscal year, then—

(1) each vessel covered by the operating agreement is thereby released from any further obligation under the operating agreement;

(2) the owner or operator of the vessel may transfer and register such vessel under a foreign registry that is acceptable to the Secretary of Transportation and the Secretary of Defense, notwithstanding section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808); and

(3) if section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242) is applicable to such vessel after registration of the vessel under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902 of such Act.

46 U.S.C. 53105. (2004) Obligations and rights under operating agreements

(a) **Operation of Vessel.**—An operating agreement under this chapter shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12105 of this title; and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of this title.

(b) **Annual Payments by Secretary.**—

(1) ***In General.***—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment each fiscal year to the contractor in accordance with section 53106.

(2) ***Operating Agreement is Obligation of United States Government.***—An operating agreement under this chapter constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(c) **Documentation Requirement.**—Each vessel covered by an operating agreement (including an agreement terminated under section 53104(c)(2)) shall remain documented under chapter 121 of this title, until the date the operating agreement would terminate according to its terms.

(d) **National Security Requirements.**—

(1) ***In General.***—A contractor with respect to an operating agree-

ment (including an agreement terminated under section 53104(c)(2)) shall continue to be bound by the provisions of section 53107 until the date the operating agreement would terminate according to its terms.

(2) ***Emergency Preparedness Agreement.***—All terms and conditions of an Emergency Preparedness Agreement entered into under section 53107 shall remain in effect until the date the operating agreement would terminate according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor, the Secretary of Transportation, and the Secretary of Defense.

(e) **Transfer of Operating Agreements.**—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person that is eligible to enter into that operating agreement under this chapter, if the transfer is approved by the Secretary and the Secretary of Defense.

(f) **Replacement Vessel.**—A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approve replacement of the vessel.

46 U.S.C. 53106. (2004) Payments

(a) **Annual Payment.**—

(1) ***In General.***—The Secretary, subject to the availability of appropriations and the other provisions of this section, shall pay to the contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to—

(A) $2,600,000 for each of fiscal years 2006, 2007, and 2008;

(B) $2,900,000, for each of fiscal years 2009, 2010, and 2011; and

(C) $3,100,000 for each fiscal years 2012, 2013, 2014, and 2015.

(2) ***Timing.***—The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(b) **Certification Required for Payment.**—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with section 53105(a)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(c) **General Limitations.**—The Secretary of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B) or (C);

(B) 20 years of age, in the case of a tank vessel; or

(C) 30 years of age, in the case of a LASH vessel.

(d) **Reductions in Payments.**—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), or any other cargo preference law of the United States;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated in accordance with section 53105(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(e) **Limitation Regarding Noncontiguous Domestic Trade.**—

(1) ***In General.***—No contractor shall receive payments pursuant to this chapter during a period in which it participates in noncontiguous domestic trade.

(2) ***Limitation on Application.***—Paragraph (1) shall not apply to any person that is a citizen of the United States within the meaning of section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c)).

(3) ***Participates in a Noncontiguous Domestic Trade Defined.***—In this subsection the term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

46 U.S.C. 53107. (2004) National security requirements.

(a) **Emergency preparedness Agreement Required.**—The Secretary

shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary, in conjunction with the Secretary of Defense, shall include in each operating agreement under this chapter a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this chapter.

(b) **Terms of Agreement.**—

(1) ***In General.***—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation (as that term is defined in section 101 of title 10, United States Code), a contractor for a vessel covered by an operating agreement under this chapter shall make available commercial transportation resources (including services).

(2) ***Basic Terms.***—(A) The basic terms of the Emergency Preparedness Agreement shall be established (subject to subparagraph (B)) by the Secretary and the Secretary of Defense.

(B) In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

(c) **Participation after Expiration of Operating Agreement.**—Except as provided by section 53105(d), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement after the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

(d) **Resources made Available.**—The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such non-vessel resources for activation as the Secretary of Defense may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(e) **Compensation.**—

(1) ***In General.***—The Secretary shall include in each Emergency Preparedness Agreement provisions approved by the Secretary of Defense under which the Secretary of Defense shall pay fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) ***Specific Requirements.***—Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources;

(B) shall be fair and reasonable considering all circumstances;

(C) shall be provided from the time that a vessel or resource is required by the Secretary of Defense until the time that it is redelivered to the contractor and is available to reenter commercial service; and

(D) shall be in addition to and shall not in any way reflect amounts payable under section 53106.

(f) **Temporary Replacement Vessels.**—Notwithstanding section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), or any other cargo preference law of the United States—

(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the Secretary of Defense under an Emergency Preparedness Agreement or under a primary Department of Defense-approved sealift readiness program; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), and sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), and 1241b) to the same extent as the eligibility of the vessel or vessel capacity replaced.

(g) **Redelivery and liability of United States for Damages.**—

(1) ***In General.***—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Secretary of Defense shall fully compensate the contractor for any necessary repair or replacement.

(2) ***Limitation on Liability of U.S.***—Except as may be expressly

agreed to in an Emergency Preparedness Agreement, or 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 activation of commercial transportation resources under an Emergency Preparedness Agreement.

46 U.S.C. 53108. (2004) Regulatory relief

(a) **Operation in Foreign Commerce.**—A contractor for a vessel included in an operating agreement under this chapter may operate the vessel in the foreign commerce of the United States without restriction.

(b) **Other Restrictions..**—The restrictions of section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)) concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments for operation of that vessel under an operating agreement under this chapter.

(c) **Telecommunications Equipment.**—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 Communications 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 as inadequately enforcing international regulations as to that vessel; and

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

46 U.S.C 53109. (2004) Special rule regarding age of participating fleet vessel

Any age restriction under section 53102(b)(3) or 53106(c)(3) shall not apply to a participating fleet vessel during the 30-month period beginning on the date the vessel begins operating under an operating agreement under this title, if the Secretary determines that the contractor for the vessel has entered into an arrangement to obtain and operate under the operating agreement for the participating fleet vessel a replacement vessel that, upon commencement of such operation, will be eligible to be included in the Fleet under section 53102(b).

46 U.S.C. 53110. (2004) Regulations

The Secretary and the Secretary of Defense may each prescribe rules as necessary to carry out their respective responsibilities under this chapter.

46 U.S.C.53111. (2004) Authorization of appropriations

There are authorized to be appropriated for payments under section 53106, to remain available until expended—

(1) $156,000,000 for each of fiscal years 2006, 2007, and 2008;

(2) $174,000,000 for each of fiscal years 2009, 2010, and 2011; and

(3) $186,000,000 for each fiscal year thereafter through fiscal year 2015.

SEC. 3532. RELATED AMENDMENTS TO EXISTING LAW.

[Section 3532 of Subtitle C - Maritime Security Fleet, amended Section 9 of the Shipping Act, 1916, and Section 512 of the Merchant Marine Act, 1936. As so amended, Section 9 of the Shipping Act, 1916, is set forth at page 237, and Section 512 of the Merchant Marine Act, 1936, is set forth at page 48.]

[Section 3537(a) of Public Law 108-136 (117 STAT. 1819), generally provides that other than Sections 3533, 3534, and 3535, Subtitle C shall take effect October 1, 2004. Therefore, the above amendments to Section 9 of the Shipping Act, 1916, and Section 512 of the Merchant Marine Act, 1936, take effect October 1, 2004.]

SEC. 3533. INTERIM RULES.[33]

The Secretary of Transportation and the Secretary of Defense may each prescribe interim rules necessary to carry out their respective responsibilities under this subtitle and the amendments made by this subtitle. For this purpose, the Secretaries are excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this section that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subtitle.

SEC. 3534. REPEALS AND CONFORMING AMENDMENTS.[34]

(a) **Repeals.**—The following provisions are repealed:

(1) Subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.).

(2) Section 804 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1222).

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[33] Section 3537(c) of Public Law 108-136 (117 STAT. 1820), provides that Section 3533 shall take effect on the date of enactment, (November 24, 2003). Note that the interim rules expire 270 days after the "effective date of this subtitle," or 270 days after October 1, 2004.

[34] Section 3537(b) of Public Law 108-136 (117 STAT. 1820), provides that Section 3534 shall take effect on October 1, 2005.

(b) **Conforming Amendments.**—

(1) Section 12102(d)(4) of title 46, United States Code, is amended by inserting "or chapter 531 of title 46, United States Code" after "Merchant Marine Act, 1936".

(2) Section 1137 of Public Law 104–324 (46 U.S.C. App. 1187 note) is amended by striking "section 651(b) of the Merchant Marine Act, 1936" and inserting "section 53102(b) of title 46, United States Code".

SEC. 3535. GAO STUDY OF ADJUSTMENT OF OPERATING AGREEMENT PAYMENT CRITERIA.[35]

(a) **In General.**—The Comptroller General of the United States shall conduct a study of the potential impact of amending section 53106 of title 46, United States Code, as amended by this Act—

(1) to increase or decrease the 7,500 ton limitation;

(2) to apply the limitation to bagged cargo as well as bulk cargo; and

(3) to so modify the tonnage limitation and apply it to bagged cargo as well as bulk cargo.

(b) **Matters to be Addressed.**—

(1) Specific Impacts.—As part of the study required by subsection (a), the Comptroller General shall address, in particular, the impact of such amendments on—

(A) the Maritime Security Fleet established under chapter 531 of title 46, United States Code, as amended by this Act;

(B) the civilian bulk cargo preference program under section 901(a), 901(b), or 901b of such Act (46 U.S.C. App. 1241(a), 1241(b), and 1241f); and

(C) operations of vessels under sections 901a through 901k of such Act (46 U.S.C. App. 1241e through 1241o, the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(8)), or any other statute in pari materia.

(2) ***Certain Aspects.***—In carrying out paragraph (1), the Comptroller General shall consider, among other matters—

(A) increased or decreased costs to the overall cargo preference program, including transportation costs (for both land and water transportation);

(B) effects on ports;

(C) the number of shipments that would be affected;

(D) increased or decreased administrative and compliance burdens for carriers and Federal agencies; and

(E) increases or decreases in the number of United States-flag oper-

[35] Section 3537(c) of Public Law 108-136 (117 STAT. 1820), provides that Section 3535 shall take effect on the date of enactment, (November 24, 2003).

ators participating in the cargo preference program.

(3) ***Balancing Benefits.***—In the study, the Comptroller General shall also address whether and how such amendments could result in achieving an appropriate balance of benefits between participants in the Maritime Security Fleet program and participants in the cargo preference program.

(c) **Report.**—The Comptroller General shall transmit a report of the study, including findings, conclusions, and recommendations (including legislative recommendations, if any), to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate within 9 months after the date of the enactment of this Act.

(d) **Authority.**—In order to conduct the study required by subsection (a), the Comptroller General, or any of the Comptroller General's duly authorized representatives, shall have access to any books, accounts, documents, papers, and records that relate to the information required to complete the study of owners or operators of vessels—

(1) under operating agreements under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 651 et seq.) or chapter 531 of title 46, United States Code, as amended by this Act; and

(2) that accept bulk cargo subject to the cargo preference laws of the United States.

SEC. 3536. 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. 3537. EFFECTIVE DATES.

(a) **In General.**—Except as provided in subsections (b) and (c), this subtitle shall take effect October 1, 2004.

(b) **Repeals and Conforming Amendments.**—Section 3534 shall take effect October 1, 2005.

(c) **Other Provisions.**—Sections 3533, 3535, and this section shall take effect on the date of the enactment of this Act.

SUBTITLE D - NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.[36]

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, 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;

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[36] Title XXXV - MARITIME ADMINISTRATION, Subtitle D - National Defense Tank Vessel Construction Assistance, Sections 3541 - 3544 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1820).

(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 (46 U.S.C. App. 802); 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, up to 75 percent of 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) of the Shipping Act, 1916, (46 U.S.C. App. 808(g)) shall not apply to a vessel constructed with assistance under this subtitle.[37]

(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.

Section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273) is amended by adding at the end the following:

> '(i) Priority.—In guaranteeing and entering commitments to guarantee under this section, the Secretary shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle D of the Maritime Security Act of 2003.''

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.

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[37] The Shipping Act, 1916, as amended, does not contain a Section 9(g).

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.

MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM

Section 3517 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1796), provides:

SEC. 3517. MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM.

(a) **Authority to Enter Agreements.**—

(1) ***In General.***—The Secretary of Transportation may carry out a pilot program under which the Secretary may enter into an agreement with a contractor under chapter 531 of title 46, United States Code, as amended by this Act, regarding maintenance and repair of a vessel that is subject to an operating agreement under that chapter.

(2) ***Limitation.***—The Secretary may not require a person to enter into an agreement under this section, including as a condition of awarding an operating agreement to the person under chapter 531 of title 46, United States Code, as amended by this Act.

(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 maintenance and 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 the Secretary determines that—

(1) there is no facility in the United States available to perform the work; or

(2) there is not available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to the work.

(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 80 percent of 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 geographic region in which the vessel generally operates.

(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 180 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) an estimate of the cost of obtaining such qualified maintenance or repair in the United States; and

(iii) an estimate of the cost of obtaining such qualified maintenance or repair outside the United States, in the geographic region in which the vessel generally operates.

(2) ***Certification by Secretary.***—Not later than 60 days after the date of receipt of notification under paragraph (1), the Secretary shall certify to the contractor—

(A) whether there is a facility in the United States available to perform the qualified maintenance or repair described in the notification by the contractor under paragraph (1); and

(B) whether there is available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to such work.

(f) **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; and

(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 to comply with the laws of the United States; and

(2) does not include—

(A) routine maintenance or repair; or

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

(g) **Analysis.**—

(1) ***In General.***—Not later than October 1, 2004, the Secretary of Transportation shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, an analysis of the need for agreements authorized by this section.

(2) ***Conduct and Considerations.***—In conducting the analysis, the Secretary shall consider the overall costs and benefits of the pilot program, including the following:

(A) The impact on operations of vessels in the program.

(B) The availability of repair shipyards and drydocks in the various regions of the United States (as that term is defined in such chapter) that are capable of handling such vessels that are ocean-going vessels.

(C) The experience of such shipyards in repairing the types of such vessels.

(D) A comparison of drydock and repair costs between available United States and foreign shipyards located within the geographic range of the trading area of such vessels.

(E) A comparison of the time period required for the drydocking and repair of such vessels between available United States shipyards and foreign shipyards.

(F) The impact of the voyage deviation of such vessels to United States shipyards.

(G) The benefits to the Department of Defense of having a vessel repair base in the United States to accelerate the activation of the Ready Reserve Fleet.

(H) The benefits of extending the program to all vessels that are subject to operating agreements under chapter 531 of title 46, United States Code, as amended by this Act.

(3) ***Recommendations.***—The Secretary shall include in the analysis recommendations of any additional incentives that are necessary to encourage participation in the program.

(h) **Authorization of Appropriations.**—In addition to the other amounts authorized by this subtitle, 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.

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CONTINUATION OF THE MERCHANT MARINE ACT, 1936

TITLE VII[38]—PRIVATE CHARTER OPERATION

SEC. 701. ADDITIONAL POWERS OF SECRETARY FOR COMPLETION OF PROGRAM (46 App. U.S.C. 1191 (2004)). Whenever the Secretary of Transportation shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 101 of this Act, and the objectives set forth in section 210 of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of Titles V and VI, the Secretary of Transportation is hereby authorized and directed to complete its long-range program previously adopted as hereinafter provided in this title.

SEC. 702. CONSTRUCTION OR RECONDITIONING OF VESSELS BY SECRETARY (46 App. U.S.C. 1192 (2004)). The Secretary of Transportation is authorized to have constructed in shipyards in the continental United States, such new vessels as he shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: Provided, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this Act, cannot be obtained from private shipbuilders, the Secretary of Transportation is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards. For the purposes of this section, the term "continental United States" includes the States of Alaska and Hawaii.

SEC. 703. COMPETITIVE BIDDING (46 App. U.S.C. 1193 (2004)). (a) **Construction, reconstruction, or reconditioning of vessels.** No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Secretary of Transportation with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) **Requirements.** All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this title shall be subject to all the provisions and requirements prescribed in title V of this Act with respect to contracts with a private shipbuilder for the construction of vessels under authority of that title.

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[38] Throughout Title VII of the Merchant Marine Act, 1936, the term "citizen of the United States" is defined as provided in footnote 1, page 1. With respect to the charter of war-built vessels, see Section 5(e) and (f) of the Merchant Ship Sales Act, 1946, as amended (50 U.S.C. App. 1738 (e) & (f)), page 339. For provisions restricting the obligation of the Maritime Administration to pay for consumable stores, bunkers and slop chest items on chartered vessels, see Public Law 84-121 (69 STAT. 231) and Public Law 84-604 (70 STAT. 318).

(c) **Opening of bids.** All bids required by the Secretary of Transportation for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the Secretary's vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

SEC. 704.[39] CHARTER OR SALE OF VESSELS ACQUIRED BY DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1194 (2004)). All vessels transferred to or otherwise acquired by the Depart-ment of Transportation in any manner may be chartered or sold by the Secretary of Transportation pursuant to the further provisions of this Act.

SEC. 705. EMPLOYMENT OF VESSELS ON FOREIGN TRADE ROUTES; SELECTION OF ROUTES; ENCOURAGING PRIVATE OPERATION BY SALE OR CHARTER; SELLING PRICE (46 App. U.S.C. 1195 (2004)). As soon as practicable after the passage of this Act, and continuing thereafter, the Secretary of Transpor-tation shall arrange for the employment of the Department of Transportation's vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary of Transportation shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: Provided, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States. It shall be the policy of the Secretary of Transportation to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920, and in strict accordance with the provisions of section 5 of said Act, or by demising his vessels on bare-boat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided. No vessel constructed under the provisions of this Act, as amended, shall be sold by the Secretary of Transportation for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national defense features (determined as of the date the construction contract therefor is executed) less depreciation based on a twenty-five-year life, nor shall any such vessel be sold by the Secretary of Transportation

[39] Section 1 of the Act of June 29, 1949 (63 STAT. 349), as amended (46 App. U.S.C. 864b) provides: "On or after June 29, 1949, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price."

for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national defense features less depreciation based on a twenty-five-year life.[40]

SEC. 706. ADVERTISING FOR BIDS FOR CHARTERS; REJECTION OF BIDS (46 App. U.S.C. 1196 (2004)).

(a) The Secretary of Transportation shall not charter the Department of Transportation's vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the Department of Transportation's vessels shall state the number, type, and tonnage of the vessels the Secretary of Transportation is offering for bare-boat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Secretary of Transportation shall deem necessary for the information of prospective bidders.

(b) The Secretary of Transportation shall have authority to, and shall announce in his advertisements for bids that the Secretary of Transportation reserves the right to, reject any and all bids submitted. The Secretary of Transportation shall reject any bid for the charter (under sections 701 to 713, both inclusive, of this title, as amended) of any vessel constructed under the provisions of this Act, as amended, if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 714, as amended, of this title.

SEC. 707. AWARDING CHARTER ON BIDS (46 App. U.S.C. 1197 (2004)).

(a) **Highest bid.** The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Secretary of Transportation shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) **Rejection of highest bid.** The Secretary of Transportation may reject the highest or most advantageous or any other bid, if, in the Secretary's discretion, the charter hire offered is deemed too low, or the Secretary of Transportation determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid upon request of the bidder, shall be stated to such bidder in writing.

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[40] See footnote 8, page 22.

(c) **Next highest bid; rejection of all bids and readvertisement.** If the highest bid is rejected, the Secretary of Transportation may award the charter to the next highest bidder, or may reject all bids and readvertise the line: Provided, however, That the Secretary of Transportation may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

SEC. 708. PAYMENT OF SUBSIDIES TO CHARTERERS (46 App. U.S.C. 1198 (2004)). The Secretary of Transportation may, if in his discretion financial aid is deemed necessary, enter into a contract with any charterer of its vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions, where applicable, as are elsewhere provided in this Act with respect to payments of such subsidies to operators of privately owned vessels.

SEC. 709. EXCESS PROFIT; PAYMENT TO SECRETARY; FORMULA FOR DETERMINING PROFIT (46 App. U.S.C. 1199 (2004)).

(a) Every charter made by the Secretary of Transportation pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charter's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Secretary of Transportation as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: Provided, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Secretary of Transportation and published in the advertisement for bids for such charter.

SEC. 710. UNDERTAKING REQUIRED OF CHARTERER (46 App. U.S.C. 1200 (2004)). Every charterer of the Secretary of Transportation's vessels shall be required to deposit with the Secretary of Transportation an undertaking with approved sureties as security for

the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Secretary of Transportation shall require.

SEC. 711. TERMS AND CONDITIONS OF CHARTERS (46 App. U.S.C. 1201 (2004)). The charters to be made by the Secretary of Transportation pursuant to the provisions of this title shall demise the vessels to the charterer subject to all usual conditions contained in bareboat charters, and until January 1, 1940, shall be for terms of three years or less as the Secretary of Transportation may decide: Provided, That after January 1, 1940, charters may be executed by the Secretary of Transportation for such terms as the experience gained by the Secretary of Transportation shall indicate are to the best interests of the United States and the merchant marine.

SEC. 712. INSURANCE REQUIREMENTS; REPAIRS; INSPECTION BY SECRETARY; TERMINATION OF CHARTER IN NATIONAL EMERGENCY (46 App. U.S.C. 1202 (2004)). Every charter shall provide—

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Secretary of Transportation shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: Provided, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Secretary of Transportation himself as in his discretion he may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Secretary of Transportation.

(c) That the Secretary of Transportation shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary of Transportation may terminate the charter without cost to the United States upon such notice to the charterers as the President shall determine.

SEC. 713. FINANCIAL RESOURCES AND OTHER FACTORS CONSIDERED IN AWARDING CHARTERS (46 App. U.S.C. 1203 (2004)). In the awarding of charters, the Secretary of Transportation shall take in consideration the charter's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Secretary of Transportation is directed to refrain from chartering the Department of Transportation's vessels to any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

SEC. 714.[41] CONSTRUCTION AND CHARTERING OF VESSELS FOR UNSUCCESSFUL ROUTES; PURCHASE OF VESSEL BY CHARTERER; PURCHASE PRICE; OPERATION OF VESSEL IN FOREIGN TRADE (46 App. U.S.C. 1204 (2004)). If the Secretary of Transportation shall find that any trade route (determined by the Secretary of Transportation to be an essential trade route as provided in section 211 of this Act) cannot be successfully developed and maintained and the Secretary of Transportation's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under titles V and VI of this Act, the Secretary of Transportation is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 4 per centum of the price (herein referred to as the "foreign cost") at which such vessel or vessels would be sold if constructed under Title V, plus an amount equal to (i) the sum of a percentage of the depreciated foreign cost computed annually upon the basis of a twenty-five year life of the vessel 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 term of the charter, 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. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Secretary of Transportation within five years after delivery thereof under the charter,

[41] See footnote 8, page 22.

upon the same terms and conditions as are provided in title V for the purchase of new vessels from the Secretary of Transportation, except that (a) the purchase price shall be the foreign cost less depreciation to the date of purchase based upon a twenty-five-year life; (b) the required cash payment payable at the time of such purchase shall be 25 per centum of the purchase price as so determined; (c) the charter may provide that all or any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of such purchase; (d) the balance of the purchase price shall be paid within the years remaining of the twenty-five years after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first of said installments which shall be payable upon the next ensuing anniversary date of such delivery under the charter, shall be a proportionate part of the annual installment, interest to be payable upon the unpaid balances from the date of purchase, 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.

Such charter shall provide for operation of the vessel 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 if the vessel is operated in the domestic trade of any of the above-enumerated services the charterer will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the difference between the domestic and foreign cost of 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.

SEC. 715. EXPERIMENTAL OPERATION AND TESTING OF UNITED STATES VESSELS; NUMBER; BAREBOAT CHARTERS; REVIEW OF CHARTERS AND AGENCY AGREEMENTS; PROVISIONS APPLICABLE TO CHARTERS AND AGREEMENTS (46 App. U.S.C. 1205 (2004)).

The Secretary of Transportation, for the purpose of practical development, trial, and testing, is authorized without regard to other provisions

of this title or other laws relating to chartering and general agency operations, to operate, under general agency agreements or bareboat charter, vessels owned by the United States (including any national defense reserve vessel) which have been constructed, reconditioned, or remodeled for experimental or testing purposes, in the foreign or domestic trade of the United States or for use for the account of any agency or department of the United States, under such reasonable terms or conditions as the Secretary of Transportation determines to be necessary to carry out the objects of this Act: Provided, however, That not in excess of ten such vessels shall be operated and tested under the authority of this section in any one year. Bareboat charters entered into under this section shall be made at reasonable rates of charter and shall include such restrictions and conditions as the Secretary of Transportation determines to be necessary or appropriate to protect the public interest, including provisions for recapture of profits as provided for in section 709 of this Act, as amended. Charters and general agency agreements entered into under this section shall be reviewed annually for the purpose of determining whether conditions exist which would justify continuance of the charter or agreement. Those provisions of law prescribed or incorporated under the heading "vessel operations revolving fund"[42] in chapter VIII of the Third Supplemental Appropriation Act, 1951 (Public Law 45, Eighty-second Congress; 65 Stat. 52, 59); which relate to vessel operating activities of the Secretary of Transportation and to employment of seamen through general agents, shall be applicable in connection with charters and agreements entered into under this section.

[42] The Vessel Operations Revolving Fund is set out at page 349.

TITLE VIII[43]—CONTRACT PROVISIONS

SEC. 801. PROVISION FOR BOOKS AND RECORDS; FILING BALANCE SHEETS; INSPECTION AND AUDITING BY SECRETARY; RESCISSION OF CONTRACT ON FAILURE TO COMPLY WITH PROVISIONS (46 App. U.S.C. 1211 (2004)). Every contract executed by the Secretary of Transportation under the provisions of title VI or VII of this Act; 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.

SEC. 802. PURCHASE OR REQUISITION OF VESSELS BY UNITED STATES; AMOUNT OF PAYMENT (46 App. U.S.C. 1212 (2004)). Every contract executed by the Secretary of Transportation under authority of title V of this Act 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

[43] Throughout Title VIII of the Merchant Marine Act, 1936, the term "citizen of the United States" is defined as provided in footnote 1, page 1.

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 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.

SEC. 804.[44] OPERATING COMPETING FOREIGN-FLAG VESSEL FORBIDDEN (46 App. U.S.C. 1222 (2004)).

(a) **Operating-Differential Subsidy; Competition With Essential American-Flag Service.** Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as an agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act.

(b) **Waiver; Special Circumstances.** Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

(c) **Exceptions.** Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under title VI, or those in the foregoing specified relationship to him, who was not such a contractor on April 15, 1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

(1) Until April 15, 1990—

(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

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[44] Section 3534(a)(2) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1818), repeals Section 804 of the Merchant Marine Act, 1936. Section 3537(b) of Public Law 108-136 (117 STAT. 1820) provides that this repeal shall take effect on October 1, 2005.

(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in foregoing special relationship to him, were acting as agent or broker on April 15, 1970:

(d) **Statement to be Filed with Secretary.** No contractor under title VI, whether he shall have become such a contractor before or after the date of enactment of this section, shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after the enactment of this section there shall have been filed with the Secretary of Transportation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

(e) **Report to Congress.** During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 208 of this Act, a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

(f) **Use of Foreign-Flag Vessels.**[45] The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

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[45] Subsection (f) was added by Section 5(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3131), the Maritime Security Act of 1966. Section 5(b) provides: "(b) **Effective Date.**—The amendment made by subsection (a) shall apply to a contractor under subtitle B of title VI of the Merchant Marine Act, 1936, as amended by this Act, upon enactment of this Act, and shall apply to a contractor under subtitle A of title VI of that Act, upon the earlier of—(1) the date that a payment is made, under the Maritime Security Program under subtitle B of that title to a contractor under subtitle B of that title who is not party to an operating-differential subsidy contract under subtitle A of that title, with the Secretary of Transportation to cause notice of the date of such payment to be published 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 under subtitle A of that title, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B of that title."

On December 20, 1996, the Maritime Security Program was entered into by Farrell Lines Incorporated, Waterman Steamship Corporation, Lykes Bros. Steamship Co. Inc., Central Gulf Lines, Inc., Crowley Maritime Corp., Maersk Line, Ltd., OSG Car Carriers, Inc., Sea-Land Service, Inc. and First American Bulk Carrier Corporation. On January 21, 1997, American President Lines, Ltd. entered into the Maritime Security Program.

(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

(A) the foreign-flag vessel was owned, chartered, or operated by, or is a replacement for a foreign-flag vessel owned, chartered, or operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1996;

(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1996, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.

SEC. 805. FORBIDDEN PRACTICES RELATING TO COASTWISE SERVICE, SALARIES, OFFICERS, AND EMPLOYEES (46 App. U.S.C. 1223 (2004)).

(a) **Foreign Trade Subsidy Contractor Engaging in Coastwise or Intercoastal Trade.** It shall be unlawful to award or pay any subsidy to any contractor under authority of subtitle A of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise

service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: Provided, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) **Contractor in Default Paying More Than Specified Salary.** Whenever any contractor under subtitle A of title VI or title VII receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Secretary of Transportation, or has not maintained, in a manner satisfactory to the Secretary of Transportation, all of the reserves provided for in this Act, the Secretary of Transportation shall have the right to supervise the number and compensation of all officers and employees of the contractor.

(d) **Employing Other Persons or Concerns as Managing or Operating Agent.** It shall be unlawful, without express written consent of the Secretary of Transportation for any contractor holding a contract authorized under subtitle A of title VI or VII of this Act to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if

such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this Act, including limitations of profits and salaries.

(f) **Penalty.** Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this Act, and upon determining that such a violation has occurred the Secretary of Transportation may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

SEC. 806. FINES AND PENALTIES[46]; CONVICTION AS RENDERING PERSONS INELIGIBLE TO RECEIVE BENEFITS OF LAW (46 APP. U.S.C. 1228 (2004)).

Whenever any natural person is found guilty in any district court of the United States of any act or acts declared in this Act to constitute a misdemeanor, he shall be punished by a fine of not more than $10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this Act to be unlawful, such corporation shall be punished by a fine of not more than $25,000.

In addition to the punishment prescribed in subsection (a) of this section, any person or corporation convicted of a misdemeanor under the provisions of this Act shall be ineligible, at the discretion of the Commission or the Secretary of Transportation, to receive any benefits under titles V and VI of this Act, or to receive a charter under title VII of this Act, for a period of five years after conviction.

Whoever knowingly and wilfully violates any order, rule, or regulation of the Federal Maritime Commission or the Secretary of Transportation made or issued in the exercise of the powers, duties, or functions transferred to it or him or vested in it or him by this Act, as amended, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than $500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

SEC. 808. DISCRIMINATION IN RESPECT TO CARGO (46 APP. U.S.C. 1226 (2004)).

It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer under title VII of this Act unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer

[46] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

SEC. 809. CONTRACTS DESIGNED EQUITABLY FOR ALL PORTS; MINIMUM ALLOCATION OF FUNDS; REPORT TO CONGRESS; PREFERENCE TO CITIZENS OF UNITED STATES; REGIONAL OFFICES FOR MARITIME ADMINISTRATION (46 App. U.S.C. 1213 (2004)).

(a) Contracts under this Act 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 and section 211(a), 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), such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative 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 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) There shall be established and maintained within the Maritime Administration such regional offices as may be necessary, including, but not limited to, one such office for each of the four port ranges specified in subsection (a) of this section. The Secretary of Transportation shall appoint a qualified individual to be the Director of each such regional office and shall carry out appropriate functions, activities, and programs of the Maritime Administration through such regional offices.

SEC. 810. AGREEMENTS WITH OTHER CARRIERS FORBIDDEN; WITHHOLDING SUBSIDIES; ACTIONS BY INJURED PERSONS FOR DAMAGES (46 App. U.S.C. 1227 (2004)). It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901.[47] TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES (46 App. U.S.C. 1241 (2004)).

(a) Requirement that Officers and Employees Travel on American Ships. Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag. The Administrator of General Services shall prescribe regulations under which agencies shall not pay for or reimburse officers or employees for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

(b) **Cargoes Procured, Furnished or Financed by United States; Waiver in Emergencies; Exceptions; Definition.**

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to

[47] Section 901 sets forth certain cargo preference laws. Section 901(b)(1) is commonly referred to as the Cargo Preference Act of 1954 or PL 664. These and other cargo preference laws are set forth under **Cargo Reservation**, page 223.

the date of enactment of this amendment (9/21/61), shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years:[48] Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.[49]

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[48] Note that Section 2 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3118), amended Title VI of the Merchant Marine Act, 1936, to designate the existing Title VI as Subtitle A – Operating-Differential Subsidy Program (Subtitle A), and by adding a new Subtitle B – Maritime Security Fleet Program (Subtitle B) without repealing Subtitle A. Section 3603(b) of Public Law 105-85, approved November 18, 1997 (111 STAT. 2075), amended Section 652(c) of Subtitle B (46 App.U.S.C.1187a(c)), to generally provided that the built-foreign restrictions of section 901(b)(1) do not apply to a vessel for any day the operator of that vessel is receiving payments under an operating agreement under Subtitle B. Section 652(c) is set forth at page 78. Section 3604 of Public Law 105-85, amended Section 653(d)(1) of Subtitle B (46 App. U.S.C. 1187b(d)(1)), to generally authorize a MSP Contractor to utilize a foreign-flag replacement vessel for a U.S.-flag vessel that is activated under an Emergency Preparedness Agreement or other primary sealift readiness program approved by the Secretary of Defense. Section 653(d)(1) is set forth on page 85. Section 3531 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1803), enacted a new Subsection C – Maritime Security Fleet (Subsection C), consisting of 46 U.S.C. 53101 to 53111. On October 1, 2005, Subsection B is repealed and replaced by Subsection C. Note that 46 U.S.C. 53108(b), generally restates the exception currently provided by 46 App. U.S.C. 1187a(c). 46 U.S.C. 53108(b) is set forth on page 109. 46 U.S.C. 53107(f) generally restates the foreign-flag replacement provision currently set forth in 46 App. U.S.C. 1187b(d)(1)), so that such vessels are eligible to carry cargo preference cargoes under 10 U.S.C. 2631, 46 App. U.S.C 1241-1, and 46 App. U.S.C. 1241(a), 1241(b) and 1241b, to the same extent as the vessel replaced. 46 U.S.C. 53107(f) is set forth on page 108.

[49] Paragraph (2) was added to Section 901(b) of the Merchant Marine Act, 1936, by Section 27(c) of Public Law 91-469, approved October 21, 1970 (84 STAT. 1018, 1034), the Merchant Marine Act, 1970.

(c) **Motor Vehicle Owned by Government Personnel.** Notwithstanding any other provision of law, privately owned American shipping services may be utilized for the transportation of motor vehicles owned by Government personnel whenever transportation of such vehicles at Government expense is otherwise authorized by law.[50]

FINDINGS AND DECLARATIONS WITH RESPECT TO EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES (46 App. U.S.C. 1241d (2004)).[51]

(a) The Congress finds and declares—

(1) that a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and national security objectives of our Nation;

(2) that both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) that increased agricultural exports and the utilization of United States merchant vessels contribute positively to the United States balance of trade and generate employment opportunities in the United States.

(b) It is therefore declared to be the purpose and policy of the Congress in this subtitle—

(1) to enable the Department of Agriculture to plan its export programs effectively, by clarifying the ocean transportation requirements applicable to such programs;

(2) to take immediate and positive steps to promote the growth of the cargo carrying capacity of the United States merchant marine;

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[50] See 10 U.S.C. 2634, Motor vehicles: transportation or storage for members on change of permanent station or extended deployment., set forth on page 227.

[51] Enacted as section 1141 of Title XI, subtitle C, of Public Law 99-198, approved December 23, 1985 (99 STAT. 1490), and not as part of the Merchant Marine Act, 1936.

The Conference Report (H. Rpt. 107-23) to accompany H.R. 2590, enacted as Public Law 107-67, approved November 12, 2001 (115 STAT. 514), the Treasury and General Government Appropriations Act, 2002, provides at page 61: "International Food Assistance. The House bill contained a provision based upon concerns of the proper role for the Office of Management and Budget in the administration of international food assistance programs. In lieu of the House bill language, the conferees direct the Office of Management and Budget to work closely with USDA and AID, as well as other appropriate Federal departments and agencies, with the expectations that agencies will work together to standardize eligibility standards and deadlines for aid; define program goals with measurable standards of performance; ensure that performance is appropriately measured and evaluated; and fully utilize all Federal expertise to ensure that the best possible assistance is being provided to the private voluntary organizations operating the programs. The Office of Management and Budget is also expected to keep the Committees on Appropriations fully apprised of on-going action with respect to this multi-agency effort."

(3) to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports;

(4) to improve the efficiency of administration of both the commodity purchasing and selling and the ocean transportation activities associated with export programs sponsored by the Department of Agriculture;

(5) to stimulate and promote both the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

(6) to provide in the Merchant Marine Act, 1936, for the appropriate disposition of these findings and purposes.

SEC. 901a. EXEMPTION OF CERTAIN AGRICULTURAL EXPORTS FROM REQUIREMENTS OF CARGO PREFERENCE LAWS (46 App. U.S.C. 1241e (2004)).

The requirements of section 901(b)(1) of this Act and the Joint Resolution of March 26, 1934 (46 U.S.C. App. 1241-1), shall not apply to any export activities of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) under which agricultural commodities or the products thereof acquired by the Commodity Credit Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or the products thereof at prevailing world market prices;

(2) under which payments are made available to United States exporters, users, or processors or, except as provided in section 901b, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) under which commercial credit guarantees are blended with direct credits from the Commodity Credit Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or the products thereof;

(4) under which credit or credit guarantees for not to exceed 3 years are extended by the Commodity Credit Corporation to finance or guarantee export sales of United States agricultural commodities or the products thereof; or

(5) under which agricultural commodities or the products thereof owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services, but only if such materials, goods, equipment, or services are of a value at least equivalent to the value of the agricultural commodities or products exchanged or bartered therefor (determined on the basis of prevailing world market prices at the time of the exchange or barter), but nothing in this subsection shall be construed to exempt from the

cargo preference provisions referred to in section 901b any requirement otherwise applicable to the materials, goods, equipment, or services imported under any such transaction.

SEC. 901b. SHIPMENT REQUIREMENTS FOR CERTAIN EXPORTS SPONSORED BY DEPARTMENT OF AGRICULTURE (46 App. U.S.C. 1241f (2004)).

(a) **Minimum Requirement Respecting Gross Tonnage Transported in United States-flag Commercial Vessels; Implementation.**

(1) In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 901(b)(1) of this Act, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) shall be transported on United States-flag commercial vessels.

(2) In order to achieve an orderly and efficient implementation of the requirement of paragraph (1)—

(A) an additional quantity equal to 10 percent of the gross tonnage referred to in paragraph (1) shall be transported in United States-flag vessels in calendar year 1986;

(B) an additional quantity equal to 20 percent of the gross tonnage shall be transported in such vessels in calendar year 1987; and

(C) an additional quantity equal to 25 percent of the gross tonnage shall be transported in such vessels in calendar year 1988 and in each calendar year thereafter.

(b) **Covered Export Activity.** This section shall apply to any export activity of the Commodity Credit Corporation or the Secretary of Agriculture—

(1) carried out under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

(2) carried out under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(3) carried out under the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1);

(4) under which agricultural commodities or the products thereof are—

(A) donated through foreign governments or agencies, private or public, including intergovernmental organizations; or

(B) sold for foreign currencies or for dollars on credit terms of more than ten years;

(5) under which agricultural commodities or the products thereof are made available for emergency food relief at less than prevailing world market prices;

(6) under which a cash grant is made directly or through an intermediary to a foreign purchaser for the purpose of enabling the purchaser to

obtain United States agricultural commodities or the products thereof in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at United States port; or

(7) under which agricultural commodities owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, other than export activities described in section 901a(5).

(c) **Terms and Conditions.**

(1) The requirement for United States-flag transportation imposed by subsection (a) shall be subject to the same terms and conditions as provided in section 901(b) of this Act.

(2) In order to provide for effective and equitable administration of the cargo preference laws the calendar year for the purpose of compliance with minimum percentage requirements shall be for 12 month periods commencing April 1, 1986, the 18-month period beginning April 1, 2002, and the 12-month period beginning October 1, 2003, and each year thereafter.

(3)(A) Subject to subparagraph (B), in administering sections 901(b) and 901b (46 U.S.C. App. 1241(b) and 1241f), and, subject to subparagraph (B) of this paragraph, consistent with those sections, the Commodity Credit Corporation shall take such steps as may be necessary and practicable without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of documentation of the vessel, 25 percent of the bagged, processed, or fortified commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.).

(B) In carrying out this paragraph, there shall first be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of documentation of the vessel and there shall be allocated to the Great Lakes port range[52] any cargoes for which it has the lowest landed cost under that calculation. The requirements for United States-flag transportation under section 901(b) and this section shall not apply to commodities allocated

[52] Note that the term "Great Lakes ports" is defined in 7 C.F. R. 1496.5(f), as follows: "(f) Great Lakes ports. (1) Commodities offered for delivery 'free alongside ship' (f.a.s.) Great Lakes port range or intermodal bridge-port Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis. Such offers will not be reevaluated on a lowest landed cost U.S.-flag basis unless CCC determines that 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II of Public Law 480 has been, or will be, transported from the Great Lakes port range during that fiscal year.

"(2) CCC will consider commodity offers as offers for delivery 'intermodal bridge-port Great Lakes port range' only if:

under subparagraph (A) to the Great Lakes port range, and commodities allocated under subparagraph (A) to that port range may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which subparagraph (A) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of such commodities furnished.

(C) In awarding any contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), each agency or instrumentality—

(i) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and

(ii) may not deny award of the contract to a person based on the type of vessel on which the transportation would be provided (including on the basis that the transportation would not be provided on a liner vessel (as that term is used in the Shipping Act of 1984, as in effect on November 14, 1995)), if the person otherwise satisfies reasonable requirements for financial and operational integrity.

(4) Any determination of nonavailability of United States-flag vessels resulting from the application of this subsection shall not reduce the gross tonnage of commodities required by sections 901(b) and 901b to be transported on United States-flag vessels.

(d) **"Export Activity" Defined.** As used in subsection (b), the term "export activity" does not include inspection or weighing activities, other activities carried out for health or safety purposes, or technical assistance provided in the handling of commercial transactions.

(e) **Prevailing World Market Price.**

(1) The prevailing world market price as to agricultural commodities or the products thereof shall be determined under sections 901a through 901d in accordance with procedures established by the Secretary of Agriculture. The Secretary shall prescribe such procedures by regulation, with notice and opportunity for public comment, pursuant to section 553 of title 5, United States Code.

(2) In the event that a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required in order to determine whether a barter or exchange transaction is subject to subsection (b)(6) or (b)(7), such determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate Federal agencies.

"(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

"(ii) The commodities will be moved from one transportation conveyance to another at such a facility."

SEC. 901c. MINIMUM TONNAGE (46 App. U.S.C. 1241g (2004)).

(a)(1) For fiscal year 1986 and each fiscal year thereafter, the minimum quantity of agricultural commodities to be exported under programs subject to section 901b shall be the average of the tonnage exported under such programs during the base period defined in subsection (b), discarding the high and low years.

(2) The President may waive the minimum quantity for any fiscal year required under paragraph (1) if he determines and reports to the Congress, together with his reasons, that such quantity cannot be effectively used for the purposes of such programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons which include the unavailability of funds.

(b) The base period utilized for computing the minimum tonnage quantity referred to in subsection (a) for any fiscal year shall be the five fiscal years beginning with the sixth fiscal year preceding such fiscal year and ending with the second fiscal year preceding such fiscal year.

SEC. 901d. FINANCING OF SHIPMENT OF AGRICULTURAL COMMODITIES IN UNITED STATES-FLAG VESSELS (46 APP. U.S.C. 1241h (2004)).

(a) **Financing by Secretary of Transportation of Increased Ocean Freight Charges.** The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year which result from the application of section 901b.

(b) **Reimbursement of Secretary of Agriculture and Commodity Credit Corporation; Computations.** If in any fiscal year the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Department of Agriculture and the Commodity Credit Corporation on exports of agricultural commodities and products thereof under the agricultural export programs specified in section 901b(b) exceeds 20 percent of the value of such commodities and products and the cost of such ocean freight and ocean freight differential on which obligations are incurred by such Department and Corporation during such year, the Secretary of Transportation shall reimburse the Department of Agriculture and the Commodity Credit Corporation for the amount of such excess. For the purpose of this subsection, commodities shipped from the inventory of the Commodity Credit Corporation shall be valued as provided in section 403(b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1733(b)).[53]

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[53] Note that Section 1(a) of Public Law 106-387, approved October 28, 2000 (114 STAT. 1549), the Agriculture Appropriations Act for fiscal year 2001, amended 7 U.S.C. 1736f(d) to read as follows:

(c) **Issuance, etc., of Obligations for Financing.** For the purpose of meeting those expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue to the Secretary of the Treasury such obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of Transportation with the approval of the Secretary of the Treasury. Such obligations shall be at a rate of interest as determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such obligations during the month preceding the issuance of such obligations of the Secretary of Transportation. The Secretary of the Treasury shall purchase any obligations of the Secretary of Transportation issued under this subsection and, for the purpose of purchasing such obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, after the date of the enactment of this Act and the purposes for which securities may be issued under such chapter are extended to include any purchase of the obligations of the Secretary of Transportation under this subsection. All redemptions and purchases by the Secretary of the Treasury of the obligations of the Secretary of Transportation shall be treated as public-debt transactions of the United States.

(d) **Authorization of Appropriations.** There is authorized to be appropriated annually for each fiscal year, commencing with the fiscal year beginning October 1, 1986, an amount sufficient to reimburse the Secretary of Transportation for the costs, including administrative expenses and the principal and interest due on the obligations to the Secretary of the Treasury incurred under this section. Reimbursement of any such costs shall be made with appropriated funds, as provided in this section, rather than through cancellation of notes.

(e) **Notification of Congress Respecting Failure to Obtain Funds Necessary for Financing.** Notwithstanding the provisions of this section, in the event that the Secretary of Transportation is unable to obtain the funds necessary to finance the increased ocean freight charges resulting from the requirements of subsections (a) and (b) and section 901b(a), the Secretary of Transportation shall so notify the Congress within 10 working days of the discovery of such insufficiency.

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(d) Value of commodities. Notwithstanding any other provision of law, in determining the reimbursement due the Commodity Credit Corporation for all expenses incurred under this Act, commodities from the inventory of the Commodity Credit Corporation that were acquired under dairy price support operations shall be valued at a price not greater than the export market price for such commodities, as determined by the Secretary, as of the time such commodity is made available under this Act.

Funding of Section 901d (46 App. U.S.C. 1271h).- Ocean Freight Differential

Authorization. Public Law 100-202, approved December 22, 1987 (101 STAT. 1329-27), Making Continuing Appropriations for the fiscal year 1988, and for other purposes, provides: "Such sums as may be necessary for fiscal year 1988 and thereafter are hereby appropriated to liquidate debt and pay interest due to the Secretary of the Treasury, as required by section 901d, Merchant Marine Act, 1936."

Appropriations. Funds for ocean freight differential are appropriated in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act.

Public Law 108-199. Public Law 108-199, approved January 23, 2004 (118 STAT. 3, 28), the Consolidated Appropriations Act, 2004, appropriated $28 million for ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985.

Public Law 108-447. Public Law 108-447, approved December 8, 2004, (118 STAT. 2835), appropriated $22,723,000 for ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985.

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SEC. 901e. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1241i (2004)). There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 901a through 901k.

SEC. 901f. TERMINATION OF SECTIONS 901a THROUGH 901k (46 App. U.S.C. 1241j (2004)). The operation of sections 901a through 901k shall terminate 90 days after the date on which a notification is made pursuant to section 901d(e), except with respect to shipments of agricultural commodities and products subject to contracts entered into before the expiration of such 90-day period, unless within such 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 901b(a) and 901d(a) and (b). In the event of termination under this section, nothing in sections 901a through 901d shall be construed as exempting export activities from or subjecting export activities to the cargo preference laws except to the extent those activities are exempt under section 4(b) of Public Law 95-501 (7 U.S.C. 1707a(b)). In the event of termination under this section, the 50 percent requirement in section 901(b) of the Merchant Marine Act, 1936 shall be in full effect.

SEC. 901g. NATIONAL ADVISORY COMMISSION ON AGRICULTURAL EXPORT TRANSPORTATION POLICY (46 App. U.S.C. 1241k (2004)).

(a) **Establishment.** There is hereby established an advisory commission to be known as the National Advisory Commission on Agricultural Export Transportation Policy (hereafter in this section through section 901j referred to as the "Commission").

(b) **Membership; Composition, Appointment, etc.**

(1) The Commission shall be composed of 16 members.

(2) Eight members of the Commission shall be appointed by the President.

(3) The chairman and ranking minority members of the Senate Committee on Agriculture, Nutrition, and Forestry, of the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science, and Transportation, of the House Committee on Agriculture, and of the House Committee on Transportation and Infrastructure shall serve as members of the Commission.

(4)(A) Four of the members appointed by the President shall be representatives of agricultural producers, cooperatives, merchandisers, and processors of agricultural commodities.

(B) The remaining four members appointed by the President shall be representatives of the United States-flag maritime industry, two of whom shall represent labor and two of whom shall represent management.

(c) **Chairman; Vacancy.**

(1) The members of the Commission shall elect a Chairman from among its members.

(2) Any vacancy in the Commission does not affect its powers but shall be filled in the same manner in which the original appointment was made.

SEC. 901h. DUTIES OF COMMISSION (46 App. U.S.C. 1241l (2004)).

(a) **Study and Review of Ocean Transportation of Agricultural Exports Subject to Cargo Preference Laws; Recommendations, Scope, etc.** It shall be the duty of the Commission to conduct a comprehensive study and review of the ocean transportation of agricultural exports subject to the cargo preference laws referred to in section 901b and to make recommendations to the President and the Congress for improving the efficiency of such transportation on United States-flag vessels in order to reduce the costs incurred by the United States in connection with such transportation. In carrying out such study and review, the Commission shall consider the extent to which any unfair or discriminatory practices of foreign governments increase the cost to the

United States of transporting agricultural commodities subject to such cargo preference laws.

(b) **Reporting Requirements; Termination of Commission.**

(1) The Commission shall submit an interim report to the President and the Congress not later than one year after the date of the enactment of this subtitle and such other interim reports as the Commission considers advisable.

(2) The Commission shall submit a final report containing its findings and recommendations to the President and the Congress not later than two years after the date of the enactment of this subtitle. The report shall include recommendations for any changes in the provisions of paragraph (1) that would help assure that the cost of ocean freight and ocean freight differential incurred by the Department of Agriculture and the Commodity Credit Corporation on the agricultural export programs specified in section 901b, is not increased above historical levels as a result of the extra demand for United States-flag vessels caused by section 901b. (3) Sixty days after the submission of the final report, the Commission shall cease to exist.

(c) **Contents of Reports.** The Commission shall include in its reports submitted pursuant to subsection (b) recommendations concerning the feasibility and desirability of achieving the following goals with respect to the ocean transportation of agricultural commodities subject to the cargo preference laws referred to in section 901b:

(1) Ensuring that the timing of commodity purchase agreements entered into by the United States in connection with the export of such commodities, and the methods of implementing such agreements, will minimize cost to the United States.

(2) Ensuring that shipments of such commodities are made on the most modern and efficient United States-flag vessels available.

(3) Ensuring that shipments of such commodities are made under the most advantageous terms available, including—

(A) charters for full shiploads;

(B) charters for intermediate or long term;

(C) charters for consecutive voyages and contracts of affreightment; and

(D) adjustment of rates in the event that vessels used for shipments of such commodities also carry cargoes on return voyages.

(4) Reduction and elimination of impediments, including delays in port, to the efficient loading and operating of the vessels employed for shipment of such commodities.

(5) Utilization of open and competitive bidding for the ocean transportation of such commodities.

SEC. 901i. INFORMATION AND ASSISTANCE TO BE FURNISHED TO COMMISSION (46 App. U.S.C. 1241m (2004)).

(a) Each department, agency, and instrumentality of the United States, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission considers necessary to carry out its functions.

(b) The Secretary of Agriculture and the Secretary of Transportation shall make available to the Commission such staff, personnel, and administrative services as may reasonably be required to carry out the Commission's duties.

SEC. 901j. COMPENSATION AND TRAVEL AND SUBSISTENCE EXPENSES OF COMMISSION MEMBERS (46 App. U.S.C. 1241n (2004)). Members of the Commission shall serve without compensation in addition to compensation they may otherwise be entitled to receive as employees of the United States or as Members of Congress, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

SEC. 901k. DEFINITION OF UNITED STATES FLAG VESSEL ELIGIBLE TO CARRY CARGOES UNDER CERTAIN SECTIONS (46 App. U.S.C. 1241o (2004)). A United States flag vessel eligible to carry cargoes under sections 901b through 901d means a vessel, as defined in section 3 of title 1, United States Code, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

EFFECT ON OTHER LAWS.[54] (46 App. U.S.C. 1241p (2004)). This subtitle shall not be construed as modifying in any manner the provisions of section 4(b)(8) of the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(8)) or chapter 5 of title 5, United States Code.

[54] Enacted as section 1143 of Public Law 99-198, approved December 23, 1985 (99 STAT. 1496), and not as part of the Merchant Marine Act, 1936. Applies to 46 App. U.S.C. 1241d, et seq.

SEC. 902.[55] REQUISITION OR PURCHASE OF VESSELS IN TIME OF EMERGENCY (46 App. U.S.C. 1242 (2004)).

(a) **Compensation; Restoration; Consequential Damages.** Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Transportation to requisition or purchase any vessel or other watercraft owned by citizens of the United States,[56] a documented vessel, or a vessel under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, such property shall be restored to the owner in a condition at least as good as when taken, less ordinary wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the property in such condition. The owner shall not be paid for any consequential damages arising from a taking or use of property under authority of this section.

(b) **Determination of Value of Vessel.** When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 802 of this Act, and in determining the value of any vessel taken or used, on which a construction-differential subsidy has not been paid, the value of any national defense features previously paid for by the United States shall be excluded.

(c) **Charter of Vessels; Compensation; Reimbursement for Loss or Damage.** If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States,

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[55] For the purposes of section 902(a), World War II and the national emergencies of September 8, 1939 and May 27, 1941 were terminated by Public Law 80-239, approved July 25, 1947 (61 STAT. 449). The President, on December 16, 1950, issued a Proclamation of National Emergency (15 F.R. 9029). Note the effect of Public Law 94-412, approved September 14, 1976 (90 STAT. 1255), the National Emergencies Act, at page 539, on existing and future declarations of a national emergency.

[56] "Citizens of the United States" is defined in Section 905(c) of the Merchant Marine Act, 1936. Section 905(c) makes reference to Section 2 of the Shipping Act, 1916. Section 2 is located at page 236.

the Secretary of Transportation, at the time of the taking or as soon thereafter as the exigencies of the situation may permit, shall transmit to the person entitled to the possession of such property a charter setting forth the terms which, in the Secretary's judgment, should govern the relationships between the United States and such person and a statement of the rate of hire which, in the Secretary's judgment, will be just compensation for the use of such property and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rate of hire, the Secretary of Transportation shall pay to such person as a tentative advance only, on account of such just compensation a sum equal to 75 per centum of such rate of hire as the same may from time to time be due under the terms of the charter so tendered, and such person shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: Provided, however, That in the event of an election by such person to reject the rate of hire fixed by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of loss or damage to such property, due to operation of a risk assumed by the United States under the terms of a charter prescribed in this subsection, but no valuation of such vessel or other property or mode of compensation has been agreed to, the United States shall pay just compensation for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage.

(d) **Determination of Amount of Compensation.** In all cases, the just compensation authorized by this section shall be determined and paid by the Secretary of Transportation as soon as practicable, but if the amount of just compensation determined by the Secretary of Transportation is unsatisfactory to the person entitled thereto, such person shall be paid, as a tentative advance only, 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such amount as would equal just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code (U. S. C., 1946 edition, title 28, secs. 41 (20) and 250): Provided, however, That in the event of an election to reject the amount determined by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.

The existence of any valid claim by way of mortgage or maritime claim or attachment lien upon such vessel shall not prevent the taking thereof pursuant to this section: Provided, however, That in the event any such claim exists the Secretary of Transportation may in his discre-

tion deposit such portion of the compensation hereunder, or advances on account thereof, as may equal but not exceed the amount of such claims in respect of the vessel, with the Treasurer of the United States, and the fund so deposited shall be available for the payment of such compensation, and shall be subject to be applied to the payment of the amount of any valid claim by way of mortgage or maritime lien or attachment lien upon such vessel, or of any stipulation therefor in a court of the United States, or of any State, subsisting at the time of such requisition or taking of title or possession; the holder of any such claim may commence prior to June 30, 1943, or within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, whichever date is later, and maintain in the United States district court from whose custody such vessel has been or may be taken or in whose territorial jurisdiction the vessel was lying at the time of requisitioning or taking of title or possession, a suit in admiralty according to the principles of libels in rem against the fund, which shall proceed and be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties, and any decree in said suit shall be paid out of the first and all subsequent deposits of compensation; and such suit shall be commenced in the manner provided by section 2 of the Suits in Admiralty Act and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary of Transportation and due notice shall under order of the court be given to all interested persons, and any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction.

(e) **Use of Vessel by Secretary; Transfer to Other Departments or Agencies; Reimbursement of Secretary.** The Secretary of Transportation is authorized to repair, recondition, reconstruct, and operate, or charter for operation, any property acquired under authority of this section. The Secretary of Transportation is further authorized to transfer the possession or control of any such property to any department or agency of the Government of the United States upon such terms and conditions as may be approved by the President. In case of any such transfer the department or agency to which the transfer is made shall promptly reimburse the Secretary of Transportation for the Department of Transportation's expenditures on account of just compensation, purchase price, repairs, reconditioning, reconstruction, or charter hire for the property transferred. Such reimbursements shall be deposited in the construction fund established by section 206 of this Act.

SEC. 905. DEFINITIONS (46 App. U.S.C. 1244 (2004)).

When used in this Act—

(a) The words "foreign commerce" or "foreign trade" mean com-

merce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 607 of this Act concerning capital construction funds and except that in the context of title V of this Act, concerning construction-differential subsidy, the said words "foreign commerce" or "foreign trade" shall also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 204(b) of this Act.

(b) 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.

(c) The words "citizen of the United States" include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended[57] (U.S.C., title 46, sec. 802), and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

(d) The word "construction" includes outfitting and equipping.

(f) The terms "Representative" and "Member of the Congress" include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from the Commonwealth of Puerto Rico.

(g) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979.

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[57] Section 2 of the Shipping Act, 1916 is located at page 236.

SEC. 906. SEPARABILITY OF PROVISIONS; SHORT TITLE (46 App. U.S.C. 1245 (2004)). If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. This Act may be cited as the Merchant Marine Act, 1936.

SEC. 908. APPOINTMENT OF SECRETARY AS TRUSTEE OR RECEIVER; OPERATION OF VESSELS UNDER COURT ORDERS; PAYMENT OF OPERATING COSTS; CLAIMS AGAINST CORPORATION (46 App. U.S.C. 1247 (2004)).

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this Act, may constitute and appoint the Secretary of Transportation as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary's express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this Act, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of

such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

SEC. 909. ENROLLMENT IN SEALIFT READINESS PROGRAM (46 App. U.S.C. 1248 (2004)). 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.

TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM[58]

SEC. 1101. DEFINITIONS[59] (46 App. U.S.C. 1271 (2004)). As used in this title—

(a) The term "mortgage" includes—

(1) a preferred mortgage as defined in section 31301 of title 46, United States Code; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code.

(b) The term "vessel" includes all types, whether in existence or under construction, of passenger cargo and combination passenger cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;

(c) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations

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[58] In addition to the requirements set forth in Title XI of the Merchant Marine Act, 1936, the Federal Ship Financing Guarantee Program is subject to certain restrictions set forth in 46 App. U.S.C. 1273a, and Section 661c(b)(1) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a, et. seq.). These provisions are set forth at the end of Title XI, page 188.

Also see section 213 of Public Law 101-710, approved December 12, 1989 (103 STAT. 1914) providing: "Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary or the Secretary of Commerce as a result of as a default under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279c), to determine whether any of those vessels are suitable for use by the Coast Guard."

[59] Note that Title IX of Public Law 107-248, approved October 23, 2002 (116 STAT. 1519, 1573), the Department of Defense Appropriations Act, 2003, provides for the Commercial Reusable In-Space Transportation Act of 2002. The Conference Report (H. Rpt. 107-732), provides at page 330: "The conferees included a new title IX which provides the Secretary of Defense the authority to make loan guarantees to eligible U.S. commercial providers for the purpose of producing commercial reusable in-space transportation services or systems."

issued by the Secretary pursuant to subsection (d) of section 1105 of this title and obligations eligible for investment of funds under section 1102 and subsection (d) of section 1108 of this title, issued for one of the purposes specified in subsection (a) of section 1104 of this title;

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) Actual Cost Defined.—The term "actual cost" means the sum of—

(1) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 1108(g)(1); and

(2) all amounts that the Secretary reasonably estimates that the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 1104A(e) in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(g) The term "depreciated actual cost" of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis on the basis of a useful life of the vessel determined by the Secretary;

(h) The terms "construction", "reconstruction", or "reconditioning" shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term "ocean thermal energy conversion facility or plantship" means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term "citizen of the Northern Mariana Islands" means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802);

(k) The term "fishery facility" means—

(1) for operations on land—

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802),[60] and for purposes of applying such section 2 with respect to this section—

(i) the term "State" as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana

[60] Section 2 of the Shipping Act, 1916 is located at page 236.

Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term "fishing vessel" has the meaning given such term by section 3(11) of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)); and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term "United States" when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i).

(n) The term "Secretary" means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this title, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1112(d)(3)).

(o) The term "eligible export vessel" means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

SEC. 1102. FEDERAL SHIP FINANCING FUND (46 App. U.S.C. 1272 (2004)). There is hereby created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this title, and there shall be allocated to such Fund the sum of $1,000,000 out of funds made available to the Secretary under the appropriation authorized by Section 1107 (46 U.S.C.). Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

SEC. 1103.[61] AUTHORIZATION OF SECRETARY TO GUARANTEE OBLIGATIONS (46 App. U.S.C. 1273 (2004)).

[61] Section 431 of Public Law 105–383, approved November 13, 1998 (112 STAT. 3411, 3444), the Coast Guard Authorization Act of 1998 provides: "The Secretary of Transportation may guarantee obligations under section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), for the vessels planned for construction to be purchased by the American West Steamboat Company and to be named QUEEN OF THE YUKON, which will operate on the Yukon and Tanana Rivers, . . . Notwithstanding sections 509, 1103(c)), and 1104A(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1159, 1273(c), and 1274(b)), the Secretary of Transportation may guarantee obligations of 87-1/2 percent of the purchase price of such vessels. Each obligation guaranteed under this section may have a maturity date of 25 years from the date of delivery of the vessel concerned."

(a) **Principal and Interest**. The Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this title. A guarantee, or commitment to guarantee, made by the Secretary under this title shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) **Security Interest.** No obligation shall be guaranteed under this title unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require to protect the interests of the United States.

(c) **Amount of Guarantee; Percentage Limitation; Determination of Actual Cost of Vessel.** The Secretary shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or $87^1/_2$ per centum, whichever is applicable under section 1104 of this title, of the amount, as determined by the Secretary which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary, unless the obligor creates an escrow fund as authorized by section 1108 of this title, in which case the Secretary may guarantee 75 per centum or $87^1/_2$ per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels.

(d) **Pledge of United States.** The full faith and credit of the United States is pledged to the payment of all guarantees made under this title with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(e) **Proof of Obligations.** Any guarantee, or commitment to guarantee, made by the Secretary under this title shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary under section 1105(a) or (b) of this Act, the validity of the guarantee of an obligation made by the Secretary under this title is unaffected and the guarantee remains in full force and effect.

(f) **Limitation on Outstanding Amount.** The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $12,000,000,000, of which (1) $850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this title, and (2) $3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any

fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this title shall be denied eligibility because of its type.

(g) **Loan Guarantees for Export Vessels; Finding Required; Termination of Authority.**

(1) The Secretary may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available, the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after the date of the enactment of the National Shipbuilding and Shipyard Conversion Act of 1993 that prohibits guarantee of those obligations.

(h) **Risk Factor Determinations.**[62]

(1) The Secretary shall—

(A) establish in accordance with this subsection, and update annually, a system of risk categories for obligations guaranteed under this title, that categorizes the relative risk of guarantees made under this title with respect to the risk factors set forth in paragraph (3);

[62] Subsection (h) was added by Section 13(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3135), the Maritime Security Act of 1996. Subsection (h) was amended by Section 3528(b) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1802), the National Defense Authorization Act for FY 2004, to update the risk categories and associated subsidy rates on an annual basis, and require the Secretary to further consider certain risk elements before making an obligation or commitment.

(B) annually determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this title for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that expected to be associated with the loans in the category.

(2)(A) Before making a guarantee under this section for an obligation, and annually for projects subject to a guarantee, the Secretary shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A)[63]

(B) The Secretary shall consider the aggregate amount available to the Secretary for making guarantees under this title to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this title for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the Secretary under this title for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary may not guarantee obligations under this title after the aggregate amount available to the Secretary under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

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[63] Section 13(b) of the Public Law 104–239, approved October 8, 1996 (110 STAT. 3135), the Maritime Security Act of 1996, provides: "**(b) Application.**— Subsection (h)(2) of section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), as amended by subsection (a) of this section, shall apply to guarantees that the Secretary of Transportation makes or commits to make with any amounts that are unobligated on or after the date of enactment of this Act."

(E) If applicable, any guarantee related to the project, other than the guarantee under this title for which the risk factor is applied.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this title is or will be in effect during the construction period of the project.

(K) A risk factor for concentration risk reflecting the risk presented by an unduly large percentage of loans outstanding by any 1 borrower or group of affiliated borrowers.

(4) In this subsection, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(i) **Priority For National Defense Tank Vessels.**—In guaranteeing and entering commitments to guarantee under this section, the Secretary shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle D of the Maritime Security Act of 2003.

(j) **Priority for Other Vessels Suitable for Service as a Naval Auxiliary.** In guaranteeing and entering commitments to guarantee under this section, the Secretary shall, after applying subsection (i), give priority to a guarantee or commitment for a vessel that is otherwise eligible for a guarantee under this section and that the Secretary of Defense determines—

(1) is suitable for service as a naval auxiliary in time of war or national emergency; and

(2) meets a shortfall in sealift capacity or capability.[64]

SEC. 1104A. ELIGIBILITY FOR GUARANTEE (46 App. U.S.C. 1274 (2004)).

(a) **Purpose of Obligations.** Pursuant to the authority granted under section 1103(a) , the Secretary upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, har-

[64] As added by Section 3544 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1822), and amended by Section 1014(a) of Public Law 108-136 (117 STAT. 1591).

bors, or inland lakes of the United States; (C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title that, under the provisions of section 1105:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4)

of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4))[65]

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.

(b) **Contents of Obligations.** Obligations guaranteed under this title—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: Provided, however, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act (or would have been eligible for mortgage aid under section 509 of this Act, except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been $12^1/_2$ per centum of the cost of such vessel, such obligations may be in an amount which does not exceed $87^1/_2$ per centum of such actual cost or depreciated actual cost: Provided,

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[65] Paragraph (7) was added by Section 302(a) of Public Law 104–297, approved October 11, 1996 (110 STAT. 3559, 3615). Section 302(b) of Public Law 104-297, approved October 11, 1996 (110 STAT. 3615), the Fisheries Financing Act , was amended by Section 212 of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-635), to read as follows: "(b)(1) Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone. (2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty."

further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed $87^1/_2$ per centum of the actual cost or depreciated actual cost thereof: Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed $87^1/_2$ percent of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed $87^1/_2$ percent of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, stanch, strong and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act, as amended, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this title, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, 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 Secretary of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

(c) **Security.**

(1) The security for the guarantee of an obligation by the Secretary under this title may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this title may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this title relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) **Restrictions.**

(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this title is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Secretary of

Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(4) The Secretary shall promulgate regulations concerning circumstances under which waivers of or exceptions to otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(A) the economic soundness requirements set forth in paragraph (1)(A) of this subsection are met after the waiver of the financial condition requirement; and

(B) the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

(e)(1) **Guarantee Fees.** Except as otherwise provided in this subsection, the Secretary shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this title.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D).

(D) The Secretary shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this title for the obligation; and

(iii) uses—

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C) (i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C) (i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1108.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation is refinanced and guaranteed under this title after such refinancing.

(5) A fee paid under subsection (e) shall be included in the amount of the actual cost of the obligation guaranteed under this title and is eligible to be financed under this title.

(f) (1) **Investigation of applications.** The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed

(2) The Secretary may make a determination that aspects of an application under this title require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted pursuant to this provision shall be performed by a party chosen by the Secretary.

(3) Notwithstanding any other provision of this title, the Secretary may make a determination that an application under this title requires

additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

(4) The Secretary may charge and collect fees to cover the costs of independent analysis under paragraph (2). Notwithstanding section 3302 of title 31, United States Code, any fee collected under this paragraph shall—

(A) be credit as an offsetting collection to the account that finances the administration of the loan guarantee program;

(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(C) shall remain available until expended.[66]

(g) **Disposition of Moneys.** All moneys received by the Secretary under the provisions of sections 1101—1107 of this title shall be deposited in the Fund.

(h) **Additional Requirements.** Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) **Limitation on Establishment of Percentage.** The Secretary may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87 1/2 percent or less limitation in the 1st, 2nd, 4th, or 5th provision to subsection (b)(2) or section 1112(b); or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection; establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) **Procedure upon Receiving Loan Guarantee Application.**

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such

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[66] Section 3526 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1801), the National Defense Authorization Act for Fiscal Year 2004, amended Section 1104a(f) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1274a(f)). Recognition has not been given to Section 2536(1) of Public Law 108-136, that attempted to repeal Section 1104A(d)(5) of the Merchant Marine Act, 1936, as such clause does not exist.

notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

(k) **Monitoring.** The Secretary shall monitor the financial conditions and operations of the obligor on a regular basis during the term of the guarantee. The Secretary shall document the results of the monitoring on an annual or quarterly basis depending upon the condition of the obligor. If the Secretary determines that the financial condition of the obligor warrants additional protections to the Secretary, then the Secretary shall take appropriate action under subsection (m) of this section. If the Secretary determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of obligations by the Secretary, the Secretary shall make an immediate determination whether default should take place and whether further measures described in subsection (m) should be taken to protect the interests of the Secretary while insuring that program objectives are met.

(l) **Review of Applications.** No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary unless the Secretary certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to obligors and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application has been made.

(m) **Agreement with Obligor.** The Secretary shall include provisions in loan agreements with obligors that provide additional authority to the Secretary to take action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors. Provisions that the Secretary shall include in loan agreements include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligors financial condition or the status of the vessel or shipyard project.

(n) **Decision Period.**

(1) ***In General.*** The Secretary of Transportation shall approve or deny an application for a loan guarantee under this title within 270 days after the date on which the signed application is received by the Secretary.

(2) ***Extension.*** Upon request by an applicant, the Secretary may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application for the loan guarantee was received by the Secretary.

SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND (46 App. U.S.C. 1274a (2004)).

(a) Notwithstanding the provisions of this title, except as provided in subsection (d) of this section, the Secretary, upon the terms the Secretary may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 905 of this Act if—

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this title will not increase the cargo carrying capacity of the vessels being replaced;

(4) the Secretary has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiduciarily imprudent; and

(5) the Secretary has considered the provisions of section 1104A(d)(1)(A)(iii), (iv), and (v) of this title.

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87 1/2 percent of the actual cost or depreciated actual cost to the applicant for the construction or

reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary may not by rule, regulation, or procedure establish any percentage within the 87 1/2 percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.

(c)(1) The Secretary shall by rule require that the applicant provide adequate security against default. The Secretary may, in addition to any fees assessed under section 1104A(e), establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—

(A) annual fees which may be an additional amount on the loan guarantee fee in section 1104A(e) not to exceed an additional 1 percent; or

(B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall—

(A) be the depository for all moneys received by the Secretary under sections 1101 through 1107 of this title with respect to guarantee or commitments to guarantee made under this section;

(B) not include investigation fees payable under section 1104A(f) which shall be paid to the Federal Ship Financing Fund; and

(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary under section 1105(d) with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary under sections 1101 through 1107 from applicants under this section.

(d) The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1101 through 1103; 1104A(b)(1), (4), (5), (6); 1104A(e); 1104A(f); 1104A(h); and 1105 through 1107; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

SEC. 1105. DEFAULTS (46 App. U.S.C. 1275 (2004)).

(a) **Rights of Obligee.** In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand (unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the

obligation and agreements and shall have made any payments in default) at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: Provided, That the Secretary shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) **Notice of Default.** In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the assumption by the Secretary; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) **Secretary to Complete, Sell or Operate Property.** In the event of any payment or assumption by the Secretary under subsection (a) or (b) of this section, the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary.

(d) **Cash Payments; Issuance of Notes of Obligations.** Any amount required to be paid by the Secretary pursuant to subsection (a) or (b) of this

section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1102 of this Act are not sufficient to pay any amount the Secretary is required to pay by subsection (a) or (b) of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at 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 of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act[67], as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the Secretary from such Fund.

(e) **Actions Against Obligor.** In the event of a default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event that the Secretary shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary shall pay the excess to the obligor.

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[67] The Second Liberty Bond Act was enacted as Chapter 56, Public Law 65–43, approved September 24, 1917 (40 STAT. 288-295), and repealed by section 5(b) of Public Law 97-258, approved September 13, 1982 (96 STAT. 1072).

(f) **Default Response.** In the event of default on an obligation, the Secretary shall conduct operations under this title in a manner which—

(1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;

(2) minimizes the amount of any loss realized in the resolution of the guarantee;

(3) ensures adequate competition and fair and consistent treatment of offerors; and

(4) requires appraisal of assets by an independent appraiser.

SEC. 1108. ESCROW FUND (46 App. U.S.C. 1279a (2004)).

(a) **Creation.** If the proceeds of an obligation guaranteed under this title are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the Secretary, the Secretary is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this title whose proceeds are to be so used which is equal to: (i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or $87^1/_2$ per centum, whichever is applicable under section 1104 of this title, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels; (ii) with such interest thereon, if any, as the Secretary may require: Provided, That in the event the security for the guarantee of an obligation by the Secretary relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the Secretary.

(b) **Disbursement Prior to Termination of Escrow Agreement.** The Secretary shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the Secretary under this title, to redeem such obligations in connection with a refinancing under paragraph (4) of subsection (a) of section 1104 or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i) be credited against any amounts due or to become due to the Secretary from the obligor with respect to

the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

(c) **Disbursement upon Termination of Escrow Agreement.** If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or $87^1/_2$ per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

(d) **Investment of Fund.** The Secretary may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

(e) **Payment of Income.** Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

(f) **Terms of Escrow Agreement.** The escrow agreement shall contain such other terms as the Secretary may consider necessary to protect fully the interests of the United States.

(g) **Payments Required Before Disbursement.—**

(1) ***In General.***—No disbursement shall be made under subsection (b) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12 1/2 percent, whichever is applicable under section 1104A, of the aggregate actual cost of the vessel, as previously approved by the Secretary. If the aggregate actual cost of the vessel has increased since the Secretary's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (b) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12 1/2 percent, as applicable, of the increase, as determined by the Secretary, in the aggregate actual cost of the vessel. Nothing in this paragraph shall require the Secretary to consent to finance any increase in actual cost unless the Secretary determines that such an increase in the obligation meets all the terms and conditions of this title or other applicable law.

(2) ***Documented Proof of Progress Requirement.***—The Secretary shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum,

the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

SEC. 1109. DEPOSIT FUND. (46 App. U.S.C. 1279b (2004))

(a) **Establishment of Deposit Fund.** There is established in the Treasury a deposit fund for purposes of this section. The Secretary may, in accordance with an agreement under subsection (b), deposit into and hold in the deposit fund cash belonging to an obligor to serve as collateral for a guarantee under this title made with respect to the obligor.

(b) **Agreement—**

(1) ***In General.***—The Secretary and an obligor shall enter into a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the deposit fund established by subsection (a).

(2) ***Terms.*** The agreement shall contain such terms and conditions as are required under this section and such additional terms as are considered by the Secretary to be necessary to protect fully the interests of the United States.

(3) ***Security Interest of United States.*** The agreement shall include terms that grant to the United States a security interest in all amounts deposited into the deposit fund.

(c) **Investment.** The Secretary may invest and reinvest any part of the amounts in the deposit fund established by subsection (a) in obligations of the United States with such maturities as ensure that amounts in the deposit fund will be available as required for purposes of agreements under subsection (b). Cash balances of the deposit fund in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) **Withdrawals.—**

(1) ***In General.*** The cash deposited into the deposit fund established by subsection (a) may not be withdrawn without the consent of the Secretary.

(2) ***Use of Income.*** Subject to paragraph (3), the Secretary may pay any income earned on cash of an obligor deposited into the deposit fund in accordance with the terms of the agreement with the obligor under subsection (b).

(3) ***Retention against default.*** The Secretary may retain and offset any or all of the cash of an obligor in the deposit fund, and any income realized thereon, as part of the Secretary's recovery against the obligor in case of a default by the obligor on an obligation.

SEC. 1110. OCEAN THERMAL ENERGY CONVERSION DEMONSTRATION FACILITIES AND PLANTSHIPS (46 App. U.S.C. 1279c (2004)).

(a) **Financing of Construction, Reconstruction, or Reconditioning.** Pursuant to the authority granted under section 1103(a) of this title, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1) of this title, except that—

(1) no guarantees or commitments to guarantee may be made by the Secretary under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1104 of this title shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed $87^1/_2$ percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: Provided, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed $87^1/_2$ percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) **Certification of Reasonableness of Risk.** A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of

technical and economic viability in the proposed market; and (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

(c) **OTEC Demonstration Fund.** A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1104(g), (1) all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund, all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title with respect to ocean thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed $1,650,000,000.

(d) **Notes and Obligations.** The provisions of section 1105(d) of this title shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: Provided, however, That any notes or obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) **Taxability of Interest.** The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

SEC. 1111. AUTHORITY FOR SECRETARY OF TRANSPORTATION TO MAKE LOAN GUARANTEES (46 App. U.S.C. 1279d (2004)).

(a) **Authority to Guarantee Obligations for Eligible Export Vessels.** The Secretary may guarantee obligations for eligible export vessels—

(1) in accordance with the terms and conditions of this title applicable to loan guarantees in the case of vessels documented under the laws of the United States; or

(2) in accordance with such other terms as the Secretary determines to be more favorable than the terms otherwise provided in this title and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) **Interagency Council.**

(1) ***Establishment; Composition.*** There is hereby established an interagency council for the purposes of this section. The council shall be composed of the Secretary of Transportation, who shall be chairman of the Council, the Secretary of the Treasury, the Secretary of State, the Assistant to the President for Economic Policy, the United States Trade Representative, and the President and Chairman of the United States Export-Import Bank, or their designees.

(2) ***Purpose of the Council.*** The council shall—

(A) obtain information on shipbuilding loan guarantees, on direct and indirect subsidies, and on other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards; and

(B) provide guidance to the Secretary in establishing terms for loan guarantees for eligible export vessels under subsection (a)(2).

(3) ***Consultation with U.S. Shipbuilders.*** The council shall consult regularly with United States shipbuilders to obtain the essential information concerning international shipbuilding competition on which to set terms and conditions for loan guarantees under subsection (a)(2).

(4) ***Annual Report.*** Not later than January 31 of each year (beginning in 1995), the Secretary of Transportation shall submit to Congress a report on the activities of the Secretary under this section during the preceding year. Each report shall include documentation of sources of information on assistance provided by the governments of other nations to shipyards in those nations and a summary of recommendations made to the Secretary during the preceding year regarding applications submitted to the Secretary during that year for loan guarantees under this title for construction of eligible export vessels.

SEC. 1112. LOAN GUARANTEES FOR SHIPYARD MODERNIZATION AND IMPROVEMENT (46 App. U.S.C. 1279e (2004)).

(a) The Secretary, under section 1103(a) and subject to the terms the Secretary shall prescribe, may guarantee or make a commitment to

guarantee the payment of the principal of, and the interest on, an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States.

(b) Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this title, except that guarantees or commitments to guarantee made under this section may be in the aggregate principal amount that does not exceed $87^1/_2$ percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(c) The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) of making guarantees or commitments to guarantee loans entered into under this section.

(d) For purposes of this section:

(1) The term "advanced shipbuilding technology" includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) The term "modern shipbuilding technology" means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(3) The term "general shipyard facility" means—

(A) for operations on land—

(i) any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment or rebuilding of any vessel (as defined in title 1, United States Code) and including graving docks, building ways, ship lifts, wharves, and pier cranes;

(ii) the land necessary for any structure or appurtenance described in clause (i); and

(iii) equipment that is for the use in connection with any structure or appurtenance and that is necessary for the performance of any function referred to in subparagraph (A);

(B) for operations other than on land, any vessel, floating drydock or barge built in the United States and used for, equipped to be used for, or of a type that is normally used for activities referred to in subparagraph (A)(i) of this paragraph.

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46 App. U.S.C. 1280 (2004). Advances to fund

The Secretary is authorized to advance to this account from the "Vessel operations revolving fund" (46 U.S.C. 1241a), such amounts as may be required for the payment, pursuant to section 1105 of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1275), of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: Provided, That such advances shall be repaid to the "Vessel operations revolving fund" as soon as practicable consistent with the status of this account: Provided further, That the total advances outstanding at any one time shall not exceed $10,000,000.[68]

46 App. U.S.C. 1280a (2004). Eligible shipyards

To be eligible to receive loan guarantee assistance under title XI of the Merchant Marine Act, 1936, a shipyard must be a private shipyard located in the United States.[69]

46 App. U.S.C. 1280b (2004). Annual report on program

The Secretary of Transportation shall report to Congress annually on the loan guarantee program under title XI of the Merchant Marine Act, 1936. The reports shall include--

(1) the size, in dollars, of the portfolio of loans guaranteed;

(2) the size, in dollars, of projects in the portfolio facing financial difficulties;

(3) the number and type of projects covered;

(4) a profile of pending loan applications;

(5) the amount of appropriations available for new guarantees;

(6) a profile of each project approved since the last report; and

(7) a profile of any defaults since the last report.[70]

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REVIEW AND REPORTS ON THE TITLE XI PROGRAM

Section 3528 of Public Law 108-136, approved November 24,

[68] Enacted as section 101 of Public Law 85-469, approved June 25, 1958 (72 STAT. 231), as amended.

[69] Enacted as section 1358 of Public Law 103-160, approved November 30, 1993 (107 STAT. 1816).

[70] Enacted as section 3527 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1802).

2004 (117 STAT. 1802), provides in part:

SEC. 3528. REVIEW OF PROGRAM.

(a) **In General.**—The Secretary of Transportation shall conduct a comprehensive assessment of the human capital and other resource needs in connection with the title XI loan guarantee program under the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.). In connection with this assessment, the Secretary shall develop an organizational framework for the program offices that insures that a clear separation of duties is established among the loan application, project monitoring, and default management functions.

(b) **Program Enhancements. . . . "**. [Various amendments to Section 1103(h) of the Merchant Marine Act, 1936, to generally require annual updating of risk categories and associated subsidy rates. See Section 1103(h), as so amended, set forth at page 132 supra.]

(c) **Report..**—The Secretary shall report to the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives on the results of the development of an organizational framework under subsection (a) by January 2, 2004."

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CERTAIN FISHERIES PROVISIONS

Section 303(a) of Public Law 104–297, approved October 11, 1996, (110 STAT. 3559, 3616), the Sustainable Fisheries Act, added the following Sections 1111 and 1112 to the Merchant Marine Act, 1936:[71]

SEC. 1111. DEBT OBLIGATIONS GUARANTEED BY SECRETARY, FISHING CAPACITY REDUCTION FUND (46 App. U.S.C. 1279f (2004)).

(a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Any debt obligation guaranteed under this section shall—

[71] Subsection 303(b) provides: "(b) Notwithstanding any other provision of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans."

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed $100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the provision in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(c) (1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the "fund"). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: Provided, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

(e) For the purposes of this section, the term "program" means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act.

SEC. 1112. DIRECT LOAN OBLIGATIONS, ANNUAL RATE OF INTEREST (46 App. U.S.C. 1279g (2004)).

(a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under

this title after the date of enactment of the Sustainable Fisheries Act [enacted Oct. 11, 1996] shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.

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RESTRICTIONS ON TITLE XI GUARANTEES AND COMMITMENTS.

The following restrictions also limit the Title XI Guarantee Program.

1. **46 App. U.S.C. 1273a (2004) CERTAIN LOAN GUARANTEES AND COMMITMENTS.**

(a) The Secretary of Transportation may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after the date of enactment of this Act unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel—

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1701a), within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been—

(1) held liable or liable in rem for a civil penalty pursuant to section

308 of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and not paid the penalty;

(2) found guilty of an offense pursuant to section 309 of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46, United States Code, and not paid the assessed fine.

2. **Federal Credit Reform Act of 1990.** Section 661c(b) of the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661c(b)) provides:

(b) Appropriations required.

Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for fiscal year 1992 and thereafter only to the extent that--

(1) new budget authority to cover their costs is provided in advance in an appropriations Act;

(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program has been provided in advance in an appropriations Act; or

(3) authority is otherwise provided in appropriation Acts."

TITLE XII–WAR RISK INSURANCE

SEC. 1201. DEFINITIONS (46 App. U.S.C. 1281 (2004)). As used in this title—

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

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

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

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

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

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

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

SEC. 1202. AUTHORITY TO PROVIDE INSURANCE; CONSIDERATION OF RISK (46 App. U.S.C. 1282 (2004)).

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

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

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

SEC. 1203. PERSONS, PROPERTY, AND INTERESTS INSURABLE (46 App. U.S.C. 1283 (2004)). The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest:

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

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

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

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

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

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

SEC. 1204. RISKS OTHER THAN WAR RISKS (46 App. U.S.C. 1284 (2004)).

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

SEC. 1205. INSURANCE ON PROPERTY OF GOVERNMENT DEPARTMENTS AND AGENCIES (46 App. U.S.C. 1285 (2004)).

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

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary. The signature of the President (or of an official designated by the President) on the agreement shall be treated as an expression of the approval required under section 1202(a) to provide the insurance.[72]

SEC. 1206. LIABILITY INSURANCE FOR PERSONS PERFORMING SERVICES OR PROVIDING FACILITIES FOR VESSELS (46 App. U.S.C. 1286 (2004)). The Secretary is authorized to provide insurance for any person who performs services or provides facilities for or with respect to any American- or foreign-flag vessels, public or private, against legal liabilities that may be incurred by such person in connection with the performance of such services or the providing of such facilities. Such insurance shall not be issued against liability to employees in respect of employers' liability of workmen's compensation. No such insurance shall be provided unless, in the opinion of the Secretary, such insurance is required in the prosecution of the war effort or in connection with national defense and can not be obtained at reasonable

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[72] See 10 U.S.C. 2645. Indemnification of Department of Transportation for Losses Covered by Vessel War Risk Insurance, set forth on page 199.

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

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

SEC. 1207. REINSURANCE; RATES; ALLOWANCES TO INSURANCE CARRIERS (46 App. U.S.C. 1287 (2004)).

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

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

SEC. 1208. INSURANCE FUND; INVESTMENTS; APPROPRIATIONS (46 App. U.S.C. 1288 (2004)).

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.[73]

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[73] As Section 1208(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1288(a)) was amended by Section 3502(b) of Public Law 108-375, approved October 28, 2004

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

TRANSFER OF FUNDS FROM VESSEL OPERATIONS REVOLVING FUND (46 App. U.S.C. 1288a (2004)).[74] For the war-risk insurance revolving fund, authorized by title XII of the Merchant Marine Act, 1936, as amended (Public Law 763, approved September 7, 1950), the Secretary of Transportation is authorized to transfer to said fund, at such times as it may become necessary in order to place into effect the insurance coverage authorized by said title, and in such amounts as he may determine, not to exceed a total of $10,000,000 from the "Vessel operations revolving fund".

SEC. 1209. ADMINISTRATIVE PROVISIONS (46 App. U.S.C. 1289 (2004)).

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

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

(2) In respect of hull insurance, the valuation in the policy for actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Secretary which shall not exceed the amount that

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(118 STAT. 2195). This would appear to be a drafting error. The intent of the Congress would appear to be for Section 1208(a) of the Merchant Marine Act, 1936, to read as follows: "(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Division of Disbursement, Treasury Department. The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. The interest and benefits accruing from such securities shall be deposited to the credit of the Fund."

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

would be payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That in the event of an election by the insured to reject the stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading "Maritime Activities" in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading "Maritime Activities" in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

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

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

(d) **Underwriting Agents.** The Secretary may, and whenever he finds it practical to do so shall, employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States, to act as his underwriting agent. The Secretary may allow such companies or groups of companies fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agent for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this title, but no claim shall be paid unless and until it has been approved by the Secretary. Such compensation may include an allowance for expenses reasonably incurred by such agent, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

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

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

SEC. 1210. SEAMEN'S RIGHTS UNAFFECTED (46 App. U.S.C. 1290 (2004)). This title shall not affect rights of seamen under existing law.

SEC. 1211. REPORTS TO CONGRESS (46 App. U.S.C. 1291 (2004)). The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this title for the period covered by such report.

SEC. 1212. ACTION ON CLAIMS FOR LOSSES; JURISDICTION OF COURTS; LIMITATION OF ACTIONS (46 App. U.S.C. 1292 (2004)). Upon disagreement as to a loss insured under this title, suit may be maintained against the United States in admi-

ralty in the district in which the claimant or his agent resides, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this title. If the claimant has no residence in the United States, suit may be brought in the district court of the District of Columbia or in such other district court in which the Attorney General of the United States agrees to accept service. Such suits shall be heard and determined under the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdiction, and for other purposes," approved March 9, 1920, as amended (known as the Suits in Admiralty Act). All persons having or claiming or who might have an interest in such insurance, may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the District Court for the District of Columbia, or in the district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in said Suits in Admiralty Act shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary and for sixty days thereafter: Provided, however, That such claim shall be deemed to have been administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

SEC. 1213. ADDITIONAL INSURANCE WITH OTHER UNDERWRITERS (46 App. U.S.C. 1293 (2004)). A person having an insurable interest in a vessel may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary of Transportation, and in that event the Secretary of Transportation shall not be entitled to the benefit of such insurance.

SEC. 1214. EXPIRATION OF AUTHORITY TO PROVIDE INSURANCE (46 App. U.S.C. 1294 (2004)). The authority of the Secretary to provide insurance and reinsurance under this title shall expire December 31, 2010.

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INDEMNIFICATION OF DEPARTMENT OF TRANSPORTATION FOR LOSSES COVERED BY VESSEL WAR RISK INSURANCE (10 U.S.C. 2645 (2004))[75]

(a) **Prompt Indemnification Required.**

(1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification–

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

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

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

(b) **Source of Funds for Payment of Indemnity.** The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and mainte-

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

nance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

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

(d) **Notice to Congress.** In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $1,000,000, the Secretary of Defense shall submit to Congress notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss.

(e) **Implementing Matters.**

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

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

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

(h) **Definitions. In this section:**

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

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

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

TITLE XIII–MARITIME EDUCATION AND TRAINING

SEC. 1301. CONGRESSIONAL DECLARATION OF POLICY (46 App. U.S.C. 1295 (2004)). It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

(2) the Secretary of Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

SEC. 1302. DEFINITIONS (46 App. U.S.C. 1295a (2004)). For purposes of this title—

(1) the term "Secretary" means the Secretary of Transportation;

(2) the term "Academy" means the United States Merchant Marine Academy located at Kings Point, New York which is maintained under section 1303;

(3) the term "State maritime academy" means any maritime academy or college which is assisted under section 1304 and which is sponsored by any State or territory of the United States or, in the case of a regional maritime academy or college, sponsored by any group of States or territories of the United States, or both; and

(4) the term "merchant marine officer" means any person who holds a license issued by the United States Coast Guard which authorizes service—

(A) as a master, mate, or pilot on board any vessel of 1,000 gross tons or more as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that

title which is documented under the laws of the United States and which operates on the oceans or on the Great Lakes; or

(B) as an engineer officer on board any vessel propelled by machinery of 4,000 horsepower or more which is documented under the laws of the United States; and

(5) the term "cost of education provided" means the financial costs incurred by the Federal Government for providing training or financial assistance to students at the United States Merchant Marine Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.

SEC. 1303. MAINTENANCE OF ACADEMY[76] (46 App. U.S.C. 1295b (2004)).

(a) **Duty of Secretary.** The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Nomination and appointment of cadets; designation and licensing of individuals from the Trust Territory of the Pacific Islands, Western Hemisphere nations and nations other than the United States.**

(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate from American Samoa, may nominate for appointment as a cadet at the Academy any individual who is—

(A) a citizen of the United States or a national of the United States; and

(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, or a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands.

(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a

[76] Reference is made to Assignment of Coast Guard and Merchant Marine Personnel as Sea Marshals (33 U.S.C. 1226), set forth at page 637, and Maritime Security Professional Training at Maritime Schools, (Section 109 of Public Law 107-295 (116 STAT. 2090)), set forth at page 638.

system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among residents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 qualified individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before being appointed as a cadet at the Academy.

(G) For purposes of this paragraph, the term "State" means the several States.

(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy.

(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States, subject to such exceptions

as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(6)(A)[77] In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(7)(A) The Secretary may permit, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6) of this subsection.

(B) The Secretary shall be reimbursed for the cost of that instruction

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[77] Section 341 of Public Law 108-188, approved December 17, 2003 (117 STAT. 2784), the Compact of Free Association Amendments Act of 2003, provides in part: "The Government of the United States shall have enrolled, at any one time, at least one qualified student from the Federated States of Micronesia, as may be nominated by the Government of the Federated States of Micronesia, in each of: . . . (b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to section 342(b) of this Compact, as amended.

(including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(C) An individual receiving instructions at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7) of this subsection is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.

(c)(1) **Appointment of cadet as midshipman in the United States Naval Reserve.** Any citizen of the United States who is appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be issued an identification card (referred to as a "military ID card") and to be entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the Armed Forces.

(3) The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary.

(d) **Uniforms, textbooks, and transportation allowances.** The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

(e) **Commitment agreements.**

(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

(A) to complete the course of instruction at the Academy;[78]

(B) to fulfill the requirements for a license as an officer in the mer-

[78] Note that Section 3515(b)(1) of Public Law 108-136 (117 STAT. 1792), repealed "from" rather than the correct word "by" in 46 App. U.S.C. 1295b(e)(1)(A).

chant marine of the United States on or before the date of graduation from the Academy of such individual;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(2)(A) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement required by paragraph (1)(A), such individual may be ordered by the Secretary of Defense to active duty in one of the armed forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided by the Federal Government.

(3)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (1)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (1)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided and may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such a reduction.

(4) To aid in the recovery of the cost of education provided by the Federal Government pursuant to a commitment agreement under this section, the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, or other applicable administrative remedies.

(5) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(f) **Places of training.**[79] The Secretary may provide for the training of cadets at the Academy—

(1) on vessels owned or subsidized by the United States;

(2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(3) in shipyards or plants and with any industrial or educational organizations.

(g) **Degrees Awarded.—**

(1) ***Bachelor's Degree.***—The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

(2) ***Master's Degree.***—The Superintendent of the Academy may confer a master's degree upon any individual who has met the conditions prescribed by the Secretary. Any master's degree program may be funded through non-appropriated funds. In order to maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may make regulations necessary to administer such a program.

(h) **Board of Visitors.**

(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

(2) The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives;

(C) 1 Senator appointed by the Vice President;

(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

[79] Section 412 of Public Law 108-293, approved August 9, 2004 (118 STAT. 1028, 1046), the Coast Guard and Maritime Transportation Act of 2004, amended 46 U.S.C. 8103(b)(1)(A), to authorize a foreign national who is enrolled in the U.S. Merchant Marine Academy, to serve as an unlicensed seamen on an U.S. documented vessel. 46 U.S.C. 8103(b)(1)(A) is set forth at page 265.

(E) the chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.

(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code

(i) **Advisory Board.**

(1) An Advisory Board to the Academy shall be established to visit the Academy at least once during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed.

(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

(4) While away from their homes or regular places of business in the performance of service for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

(j) Limitation on Charges and Fees for Attendance.—

(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994.

The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.[80]

SEC. 1304. STATE MARITIME ACADEMIES[81] (46 App. U.S.C. 1295c (2004)).

(a) **Cooperation and assistance.** The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Regional maritime academies.** The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States.

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[80] Subsection (j) was enacted by Section 545(e) of Public Law 108-375 (118 STAT. 1909). Section 545(f) repealed Section 553 of Public Law 103-337, approved October 5, 1994 (108 STAT. 2772), providing: "Sec. **553. Prohibition on Imposition of Additional Charges or Fees for Attendance at Certain Academies.** (a) Prohibition.--Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or fee is specifically authorized by a law enacted after the date of the enactment of this Act. (b) Exception.--The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of the date of the enactment of this Act. The Secretary of Defense or the Secretary of Transportation, as the case shall be, shall notify Congress of any change made by an academy in the amount of a charge or fee authorized under this subsection. (c) Covered Academies.--This section applies to the following: (1) The United States Military Academy. (2) The United States Naval Academy. (3) The United States Air Force Academy. (4) The United States Coast Guard Academy. (5) The United States Merchant Marine Academy."

[81] Reference is made to Assignment of Coast Guard and Merchant Marine Personnel as Sea Marshals, page 637, and Maritime Security Professional Training at Maritime Schools, on page 638.

(c) **Training vessels.**

(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1). Any such vessel—

(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship;

(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b);

(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

(iv) shall be maintained in good repair by the Secretary; and

(v) shall remain the property of the United States.

(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

(2) The Secretary may pay to any State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy.

(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

(i) on vessels owned or subsidized by the United States;

(ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(iii) in shipyards or plants and with any industrial or educational organizations.

(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

(d) **Annual payments.**

(1)(A) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1), and with each regional maritime academy which meets the requirements of subsection (f)(1), to make annual payments to each such academy for the maintenance and support of such academy.

(B) Subject to subparagraph (C), the annual payment to such State maritime academy shall be at least equal to the amount given to the academy for its maintenance and support by the State in which it is located, and to such regional maritime academy shall be at least equal to the amount given the academy by all States and territories cooperating to sponsor the academy.

(C) The amount under subparagraph (B) may not be more than $25,000, except that the amount shall be—

(i) $100,000 to such State maritime academy if the academy meets the condition set forth in subsection (f)(2); or

(ii) $200,000 to such regional maritime academy if the academy meets the condition set forth in subsection (f)(2).

(2) The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

(e) **Detailing of personnel.** Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.

(f) **Conditions to receiving payments or use of vessels.**

(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—

(A) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies; and

(C)[82] agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program shall pass the examination administered by the Coast Guard required for issuance of a license under section 7101 of title 46, United States Code.

(2) As a condition to receiving an annual payment of any amount in excess of $25,000 under subsection (d), a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.

(g) **Student incentive payment agreements.**[83]

(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State maritime academy which entered into an agreement with the Secretary under subsection (d)(1), to make student incentive payments to such individual, which payments shall be in amounts equaling $4,000 for each academic year and which payments shall be—

(A) allocated among the various State maritime academies in a fair and equitable manner;

(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

(C) paid by the Secretary as the Secretary shall prescribe while the individual is attending the academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to accept midshipman and enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before receiving any student incentive payments under this subsection.

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[82] Section 3(a) of Public Law 101-115, approved October 13, 1989 added section 1304(f)(1)(C). Section 3(b) provides: "(b) The requirements set forth in subsection (f)(1)(C) of section 1304 of the Merchant Marine Act, 1936, as added by subsection (a) of this section, shall be a condition to any payment or use of any vessel received by a State maritime academy under section 1304 after December 31, 1989." Section 706 of Public Law 101-595, approved November 16, 1990, provides that section 3 of Public Law 101-115, shall not be effective prior to October 1, 1994.

[83] Section 3515(c)(1) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1794), increased the annual student incentive payment from $3,000 to $4,000.

(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

(A) to complete the course of instruction at the State maritime academy which the individual is attending;

(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;

(D) to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(4)(A) If the Secretary determines that an individual who has accepted the payment described in paragraph (1) for a minimum of 2 academic

years has failed to fulfill the part of the agreement required by paragraph (1) and described in paragraph (3)(A), such individual may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve for a period of time not to exceed 2 years. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(5)(A) If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraph (3)(B), (C), (D), (E), or (F), such individual may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion, as determined by the Secretary, of the service required by paragraph (3)(E). The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Secretary, the Secretary may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(6) To aid in the recovery of student incentive payments plus interest and attorneys fees the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

(7) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(8) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980.

(h) **Appointment of cadet as midshipman in United States Naval Reserve.** Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

SEC. 1305. ADDITIONAL TRAINING (46 App. U.S.C. 1295d (2004)).

(a) The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.

(b) The Secretary may prepare or purchase any equipment or supplies required for any training provided under subsection (a) and may contract with any person, partnership, firm, association, or corporation (without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)) for the performance of any services deemed necessary by the Secretary in the preparation of any such equipment or supplies and in the supervision and administration of any such training.

(c)(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

(2) Under the program established under paragraph (1)—

(A) the Secretary may provide, to maritime training institutions approved by the Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

(B) in return for receipt of such vessels, such institutions shall—

(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a maritime oil spill.

(3) The requirements referred to in paragraph (2)(A) are as follows:

(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

(iv) any approved maritime training institution in possession of such a vessel which can no longer utilize the vessel for training purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

(v) such other requirements or conditions as the Secretary determines appropriate.

(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under title XI of this Act.

SEC. 1306. UNITED STATES MARITIME SERVICE (46 App. U.S.C. 1295e (2004)).

(a) **Establishment and maintenance.** The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States to be known as the United States Maritime Service.

(b) **Enrollment; compensation; course of study and periods of training; uniforms.** The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service,

to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

(c) **Ranks, grades, and ratings same as for United States Coast Guard.** The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the same as are then prescribed for the personnel of the United States Coast Guard.

(d) **Awards and Medals.**—The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the United States Maritime Service.

SEC. 1307. CIVILIAN NAUTICAL SCHOOL (46 App. U.S.C. 1295f (2004)).

(a) **Definition.** As used in this section, the term "civilian nautical school" means any school operated and conducted in the United States (except the Academy maintained under section 1303, any State maritime academy assisted under section 1304, and any other school operated by the United States or any agency of the United States) which offers instruction to individuals quartered on board any vessel for the primary purpose of training them for service in the merchant marine.

(b) **Examination and inspection of school; rating and certification.** Each civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may (under such rules and regulations as the Secretary may prescribe) provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of the equipment used by, or in connection with, such school.

(d) **Fines and penalties. Whoever—**

(1) violates this section or any regulations promulgated to implement this section; shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each offense.

SEC. 1308. POWERS AND DUTIES OF SECRETARY (46 App. U.S.C. 1295g (2004)).

(a) **Rules and regulations.** The Secretary shall establish such rules and regulations as may be necessary to carry out this title.

(b) **Excess vessels and equipment.** The Secretary may cooperate with and assist the Academy, any State maritime academy, and any nonprofit

training institution which has been jointly approved by the Secretary and the Secretary of the department in which the United States Coast Guard is operating as offering training courses which meet Federal regulations for maritime training, by making vessels, shipboard equipment, and other marine equipment, owned by the United States which have been determined to be excess or surplus, available by gift, loan, sale, lease, or charter to such institution for instructional purposes on such terms as the Secretary deems appropriate.

(c) **Securing of information, facilities, or equipment; detailing of personnel.**

(1) The Secretary may secure directly from any department or agency of the United States any information, facilities, or equipment, on a reimbursable basis, necessary to carry out this title.

(2) Upon the request of the Secretary, the head of any department or agency of the United States (including any military department of the United States) may detail, on a reimbursable basis, any of the personnel of such department or agency to the Secretary to assist in carrying out this title.

(d) **Employment of personnel.** To carry out this title, the Secretary may employ at the Academy any individual as a professor, lecturer, or instructor, without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may pay such individual without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

TRAINING OF FUTURE NAVAL OFFICERS UNDER NAVAL RESERVE OFFICER TRAINING CORPS PROGRAMS AT MERCHANT MARINE ACADEMIES FOR PROMOTION OF MAXIMUM INTEGRATION OF NAVAL AND MERCHANT MARINE SEAPOWER OF THE NATION (46 App. U.S.C. 1126-1 (2004)).[84]

(a) It is the policy of the United States that the United States Navy and the Merchant Marine of the United States work closely together to promote the maximum integration of the total seapower forces of the Nation. In furtherance of this policy, it is necessary and desirable that special steps be taken to assure that Naval Reserve Officer Training Corps programs (for training future naval officers) be maintained at Federal and State merchant marine academies.

[84] Enacted as section 603 of Public Law 94-361, approved July 14, 1976 (90 STAT. 929), as amended.

(b) It is the sense of the Congress that the Secretary of the Navy should work with the Maritime Administrator and the administrators of the several merchant marine academies to assure that the training available at these academies is consistent with Navy standards and needs.

AUTHORITY TO REDESIGNATE THE NAVAL RESERVE AS THE NAVY RESERVE.[85]

(a) Authority of Secretary of the Navy. —The Secretary of the Navy may, with the approval of the President, redesignate the reserve component known as the Naval Reserve as the ''Navy Reserve''. Any such redesignation shall be effective on a date specified by the Secretary, which date may not be earlier than the date that is 180 days after the date on which the Secretary submits recommended legislation under subsection (c).

(b) Publication of Redesignation—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall promptly publish in the Federal Register and submit to the Congress notice of the redesignation, including the effective date of the redesignation.

(c) Conforming Legislation.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall submit to the Congress recommended legislation that identifies each specific provision of law that refers to the Naval Reserve and sets forth an amendment to that specific provision of law to conform the reference to the new designation.

(d) References.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), then on and after the effective date of the redesignation, any reference in any law, map, regulation, document, paper, or other record of the United States to the Naval Reserve shall be deemed to be a reference to the Navy Reserve.

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[85] Enacted as Section 517 of Public Law 108-375, approved October 28, 2004 (118 STAT. 1884).

CARGO RESERVATION[1]

MILITARY CARGO PREFERENCE ACT OF 1904. (10 U.S.C. 2631 (2004)).

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

(2) In paragraph (1), the term "reflagging or repair work" means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

PUBLIC RESOLUTION 17.[2] SHIPMENT OF EXPORTS FINANCED BY GOVERNMENT IN UNITED STATES VESSELS (46 App. U.S.C. 1241-1) (2004)). It is the sense of Congress that in any loans made by the Reconstruction Finance Corporation or any other instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the Reconstruction Finance Corporation or any other instrumentality of the Government

[1] The Cargo Preference Penalties for Substandard Vessel Operations are set forth in 46 U.S.C. 2302(e), page 233.

[2] Public Resolution 17–73rd Congress, approved March 26, 1934, (48 STAT. 500), as amended by Public Law 97-31, approved August 6, 1981 (92 STAT. 165).

that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

CARGO PREFERENCE ACT OF 1954-PUBLIC LAW 664. SECTION 901(b) OF THE MERCHANT MARINE ACT, 1936 (46 App. U.S.C. 1241(b) (2004)).

(b) **Cargoes Procured, Furnished or Financed by United States; Waiver in Emergencies; Exceptions; Definition.**

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term "privately owned United States-flag commercial vessels" shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry,

and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.

FOOD SECURITY ACT OF 1985. PUBLIC LAW 99 -198, as amended (46 App. U.S.C. 1241e - 1241o (2004)).

See sections 901a through 901k of the Merchant Marine Act, 1936, commencing at page 140.

EXPORT OF ALASKAN NORTH SLOPE OIL.[3]

30 U.S.C. 185. (2004) Rights-of-way for pipelines through Federal Lands

* * * * *

(s) Exports of Alaskan North Slope Oil.

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including

[3] 30 U.S.C. 185(s) was amended by Section 201 of Public Law 104-58, approved November 28, 1995 (109 STAT. 557, 560), the Alaska Power Administration Asset Sale and Termination Act. Section 202 provides for a GAO report.

consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).[4]

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may

[4] Section 2 of the Shipping Act, 1916 is located at page 236.

take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

SEC. 202. GAO REPORT.

(a) **Review.**—The Comptroller General of the United States shall conduct a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii. The Comptroller General shall commence this review three years after the date of enactment of this Act and, within twelve months after commencing the review, shall provide a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources and the Committee on Commerce of the House of Representatives.

(b) **Contents of Report.**—The report shall contain a statement of the principal findings of the review and recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that the Comptroller General attributes to Alaska North Slope oil exports.

DEPARTMENT OF DEFENSE MOTOR VEHICLE TRANSPORTATION

10 U.S.C. 2634 (2004). Motor vehicles: transportation or storage for members on change of permanent station or extended deployment.

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle that is owned or leased by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned or leased by him (or a dependent of his) was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to his new station or such other place as the Secretary concerned may authorize--

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services;

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available;

(4) by other surface transportation if such means of transport does not exceed the cost to the United States of other authorized means.

When the Secretary concerned determines that a replacement for that

motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member (or a dependent of the member) may be so transported.

(b) (1) When a member receives a vehicle storage qualifying order, the member may elect to have a motor vehicle described in subsection (a) stored at the expense of the United States at a location approved by the Secretary concerned. In the case of a vehicle storage qualifying order that is to make a change of permanent station, such storage is in lieu of transportation authorized by subsection (a).

(2) In this subsection, the term "vehicle storage qualifying order" means any of the following:

(A) An order to make a change of permanent station to a foreign country in a case in which the laws, regulations, or other restrictions imposed by the foreign country or by the United States either--

(i) preclude entry of a motor vehicle described in subsection (a) into that country; or

(ii) would require extensive modification of the vehicle as a condition to entry.

(B) An order to make a change of permanent station to a nonforeign area outside the continental United States in a case in which the laws, regulations, or other restrictions imposed by that area or by the United States either--

(i) preclude entry of a motor vehicle described in subsection (a) into that area; or

(ii) would require extensive modification of the vehicle as a condition to entry.

(C) An order under which a member is transferred or assigned in connection with a contingency operation to duty at a location other than the permanent station of the member for a period of more than 30 consecutive days but which is not considered a change of permanent station.

(3) Authorized expenses under this subsection include costs associated with the delivery of the motor vehicle for storage and removal of the vehicle for delivery to a destination approved by the Secretary concerned.

(4) Storage costs payable under this subsection may be paid in advance.

(c) When there has been a shipping error, or when orders directing a change of permanent station have been canceled, revoked, or modified after receipt by the member, a motor vehicle transported pursuant to this section may also be reshipped or transshipped in accordance with this section.

(d) When the Secretary concerned makes a determination under section 406(j) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or tranship such motor vehicle in accordance with this section.

(e) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

(f) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of a motor vehicle being transported under this section.

(g) If a motor vehicle of a member (or a dependent of the member) that is transported at the expense of the United States under this section does not arrive at the authorized destination of the vehicle by the designated delivery date, the Secretary concerned shall reimburse the member for expenses incurred after that date to rent a motor vehicle for the member's use, or for the use of the dependent for whom the delayed vehicle was transported. The amount reimbursed may not exceed $30 per day, and the rental period for which reimbursement may be provided expires after 7 days or on the date on which the delayed vehicle arrives at the authorized destination (whichever occurs first).

(h) In the case of a member's change of permanent station described in subparagraph (A) or (B) of subsection (i)(1), the Secretary concerned may authorize the member to arrange for the shipment of the motor vehicle in lieu of transportation at the expense of the United States under this section. The Secretary concerned may pay the member a monetary allowance in lieu of transportation, as established under section 404(d)(1) of title 37, and the member shall be responsible for any transportation costs in excess of such allowance.

(i) In this section:

(1) The term "change of permanent station" means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station. It also includes the following:

(A) An authorized change in home port of a vessel.

(B) A transfer or assignment between two permanent stations in the continental United States when--

(i) the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations; or

(ii) the Secretary concerned determines that it is advantageous and cost-effective to the United States for one motor vehicle of the member to be transported between the permanent duty stations.

(2) The term "continental United States" does not include Alaska.

(3) The term "nonforeign area outside the continental United States" means any of the following: the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any possession of the United States.

DEPARTMENT OF DEFENSE TRANSPORTATION OF RELIEF SUPPLIES

10 U.S.C. 402 (2004). Transportation of humanitarian relief supplies to foreign countries

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that--

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people or entity for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution or use of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the entity requesting the transport of supplies under this section to ensure that the supplies are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign government, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d) (1) The Secretary of Defense may use the authority provided by subsection (a) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available.

(2) Notwithstanding subsection (a), the Secretary of Defense may require reimbursement for costs incurred by the Department of Defense to transport supplies under this subsection.

(e) Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

10 U.S.C. 404 (2004). Foreign disaster assistance

(a) **In general.** The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives or serious harm to the environment.

(b) **Forms of assistance.** Assistance provided under this section may include transportation, supplies, services, and equipment.

(c) **Notification required.** Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) The manmade or natural disaster for which disaster assistance is necessary.

(2) The threat to human lives or the environment presented by the disaster.

(3) The United States military personnel and material resources that are involved or expected to be involved.

(4) The disaster assistance that is being provided or is expected to be provided by other nations or public or private relief organizations.

(5) The anticipated duration of the disaster assistance activities.

(d) **Organizing policies and programs.** Amounts appropriated to the Department of Defense for any fiscal year for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department shall be available for organizing general policies and programs for disaster relief programs for disasters occurring outside the United States.

(e) **Limitation on transportation assistance.** Transportation services authorized under subsection (b) may be provided in response to a man-made or natural disaster to prevent serious harm to the environment, when human lives are not at risk, only if other sources to provide such transportation are not readily available.

10 U.S.C. 2561 (2004). Humanitarian assistance

(a) **Authorized assistance.** (1) To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(2) The Secretary of Defense may use the authority provided by paragraph (1) to transport supplies intended for use to respond to, or mitigate the effects of, an event or condition, such as an oil spill, that threatens serious harm to the environment, but only if other sources to provide such transportation are not readily available. The Secretary may require reimbursement for costs incurred by the Department of Defense to transport supplies under this paragraph.

* * *

Medical Services to American Samoa & Oceania. Section 8009 of Public Law 108-287, provides at 118 STAT. 971:

"SEC. 8009. Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported as required by section 401(d) of title 10, United States Code: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for grad-

uate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam."

See also Section 8059 of Public Law 108-287, at 118 STAT. 984 providing.

"SEC. 8060. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable

basis, to the Indian Health Service when it is in conjunction with a civil-military project."

46 U.S.C. 2302 (2004). PENALTIES FOR SUBSTANDARD OPERATIONS.

* * * * * *

(e)(1) A vessel may not transport Government-impelled cargoes if—

(A) the vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or

(B) the operator of the vessel has on more than one occasion had a vessel detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel.

(2) The prohibition in paragraph (1) expires for a vessel on the earlier of—

(A) 1 year after the date of the publication in electronic form on which the prohibition is based; or

(B) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the detention is based.

(3) As used in this subsection, the term "Government-impelled cargo" means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

SHIPPING ACT, 1916

SEC. 1. DEFINITIONS (46 App. U.S.C. 801 (2004)).

When used in this Act:

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "other person subject to this Act" means any person not included in the term "common carrier by water in interstate commerce" carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water in interstate commerce.

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.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means "registered, enrolled, or licensed under the laws of the United States."

The term "carrying on the business of forwarding" means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

The term "maritime labor agreement" means any collective bargaining agreement between an employer subject to this Act, or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or any agreement preparatory to such a collective bargaining agreement among members of a multiemployer bargaining group, or any agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group.

SEC. 2 (a)–(c). CORPORATION, PARTNERSHIP, OR ASSOCIATION AS CITIZEN[1] (46 App. U.S.C. 802 (2004)).

(a) **Ownership of Controlling Interest.** Within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) **Determination of Controlling Interest.** The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) **Determination of Seventy-five Per Centum of Interest.** Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust

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[1] Note how the Section 2 Citizenship definition in the Shipping Act, 1916, differs from that set forth in the Deepwater Port Act (33 U.S.C. 1502(4)), providing that a "'citizen of the United States' means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;" 33 U.S.C. 1502(4) is set forth at page 572.

Note also 46 U.S.C. 12106(e)(4), providing that a vessel meeting the criteria of subsection (e) is deemed to be owned exclusively by citizens of the United States. 46 U.S.C. 12106(e)(4) is set forth at page 253.

or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

SEC. 2 (d). APPLICABILITY TO RECEIVERS AND TRUSTEES (46 App. U.S.C. 803 (2004)).

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

SEC. 9. REGISTRATION, ENROLLMENT, AND LICENSING OF VESSELS PURCHASED, CHARTERED, OR LEASED; REGULATIONS; COASTWISE TRADE. (46 App. U.S.C. 808 (2004)).[2]

(b) Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

(c)[3] Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and in section 12106(e) of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

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[2] Note the exception to Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), provided by 46 U.S.C. 53104(e), set forth on page 103.

[3] Note that Section 144(d)(1)(C) of Public Law 106-554-Appendix D, approved December 21, 2000 (114 STAT. 2763, 2763A-240, 243), requires the Secretary of Commerce to inform the Secretary of Transportation for each fishing vessel for which a reduction permit is surrendered and revoked under the fishing capacity reduction program for crab fisheries included in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands. The Secretary of Commerce is required to request the Secretary of Transportation to permanently revoke the fishery endorsement of each such vessel and refuse permission to transfer any such vessel to a foreign flag under paragraph (5). Section 144(d)(5) provides: "(5)(A) The Secretary of Transportation shall, upon notification and request by the Secretary, for each vessel identified in such notification and request- (i) permanently revoke any

(1) sell, lease, charter, deliver, or in any manner transfer, or agree to sell, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d)(1) Any charter, sale, or transfer of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, or transfers a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

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fishery endorsement issued to such vessel under section 12108 of title 46, United States Code; and (ii) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 802(c)(2)) for the placement of such vessel under foreign registry or the operation of such vessel under the authority of a foreign country. (B) The Secretary shall, after notice and opportunity for public comment, adopt final regulations not later than May 1, 2001, to prohibit any vessel for which a reduction permit is surrendered and revoked under the fishing capacity reduction programs required by this section from engaging in fishing activities on the high seas of under the jurisdiction of any foreign country while operating under the United States flag."

Note also that Section 219(f) of Public Law 108-447, approved December 8, 2005 (118 STAT. 2889), provides: " (f) ACTION BY OTHER ENTITIES.—Upon the request of the Secretary, the Secretary of the Department in which the National Vessel Documentation Center operates or the Secretary of the Department in which the Maritime Administration operates, as appropriate, shall, with respect to any vessel or any vessel named on an LLP license purchased through the fishing capacity reduction program authorized by subsection (b)— (1)(A) permanently revoke any fishery endorsement issued to the vessel under section 12108 of title 46, United States Code; (B) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for the placement of the vessel under foreign registry or the operation of the vessel under the authority of a foreign country; and (C) require that the vessel operate under United States flag and remain under Federal documentation; or (2) require that the vessel be scrapped as a reduction vessel under section 600.1011(c) of title 50, Code of Federal Regulations."

(B) a person knowingly charters, sells, or transfers a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $ 10,000[4] for each violation.

(e)[5] Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary, in conjunction with the Secretary of Defense, determines that at least one replacement vessel of equal or greater military capability and of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation; or

(2) an operating agreement covering the vessel under chapter 531 of title 46, United States Code, has expired.

(f) To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code, the Secretary may grant approval under subsection (c) before the date the vessel is documented.

SEC. 12. INVESTIGATIONS AS TO COST OF MERCHANT VESSELS (46 App. U.S.C. 811 (2004)). The Secretary of Transportation shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. The Secretary shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and the Secretary shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant

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[4] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

[5] Subsection (e) and (f) were amended by Section 3532(a) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1817), effective October 1, 2004.

marine. The Secretary shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as the Secretary deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

The Secretary shall, on or before the first day of December in each year, make a report to the Congress, which shall include his recommendations and the results of his investigations, a summary of his transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the Secretary of Transportation.

SEC. 34. PARTIAL INVALIDITY NOT AFFECTING REMAINDER. (46 App. U.S.C. 833 (2004)). If any provisions of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

SEC. 36. REFUSAL OF CLEARANCE TO VESSEL REFUSING TO ACCEPT FREIGHT (46 App. U.S.C. 834 (2004)). The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.

SEC. 37. RESTRICTIONS ON TRANSFERS OF SHIPPING FACILITIES DURING WAR OR NATIONAL EMERGENCY. (46 App. U.S.C. 835 (2004)).[6] When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without

[6] See 50 U.S.C 1621, for the effect of a Presidential declaration of national emergency, page 539.

first obtaining the approval of the Secretary of Transportation:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock, or ship-building or ship-repairing plant or facilities, to a person not a citizen of the United States, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary of Transportation: Provided, however, That the Secretary of Transportation shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000; or for the trustee or substitute trustee approved by the Secretary of Transportation to operate said vessel under the mortgage or assignment: Provided further, That if such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary of Transportation shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary of Transportation, shall be unlawful; or

(d) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(e) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the

United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(f) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than $5,000 or by imprisonment for not more than five years, or both.

If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship-building or ship-repairing plant or facilities, is issued, transferred, or assigned to a person not a citizen of the United States in violation of subsection (c) of this section, the issuance, transfer or assignment shall be void.

Any vessel, shipyard, dry dock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subdivision (e) [f], shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successors or assigns, after the tender of such vessel, shipyard, dry dock, shipbuilding or ship-repairing plant or facilities, or interest therein, or of such stocks, bonds, or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States.

SEC. 38. FORFEITURE (46 App. U.S.C. 836 (2004)). All forfeitures incurred under the provisions of this Act may be prosecuted in the same court, and may be disposed of in the same manner, as for-

feitures incurred for offenses against the law relating to the collection of duties, except that forfeitures may be remitted without seizure of the vessel.

SEC. 39. PRIMA FACIE EVIDENCE (46 App. U.S.C. 837 (2004)). In any action or proceeding under the provisions of this Act to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted.

SEC. 41. APPROVALS BY SECRETARY (46 App. U.S.C. 839 (2004)). Whenever by said section nine or thirty-seven the approval of the Secretary of Transportation is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Secretary of Transportation prescribes. Whenever the approval of the Secretary of Transportation is accorded upon any condition a statement of such condition shall be entered upon his records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the Secretary of Transportation, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this Act the approval of the Secretary of Transportation is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the Secretary of Transportation, [or to any member thereof,] or to any officer, attorney, or agent [of the Department of Transportation] [thereof], for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than $ 5,000 or to imprisonment for not more than five years, or both.

SEC. 46. SHORT TITLE (46 App. U.S.C. 842 (2004)). This Act may be cited as "Shipping Act, 1916."

DOCUMENTATION OF VESSELS

46 U.S.C. 12101 (2004). DEFINITION AND RELATED TERMS IN OTHER LAWS.

(a) In this chapter—

(1) "fisheries" includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

(2) "rebuilt" has the same meaning as in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1) "certificate of registry", "register", and "registry" mean a registry endorsement as provided in section 12105 of this title.

(2) "license", "enrollment and license", "license for the coastwise (or coasting) trade", and "enrollment and license for the coastwise (or coasting) trade" mean a coastwise endorsement as provided in section 12106 of this title.

(4) "yacht" means a recreational vessel even if not documented.

46 U.S.C. 12102 (2004). VESSELS ELIGIBLE FOR DOCUMENTATION.[1]

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by—

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[1] Note that effective October 1, 2005, Section 3534(b)(2) of Public Law 108-136 (117 STAT. 1818), amended Section 1137 of Public Law 104-324, set forth below, by striking "section 651(b) of the Merchant Marine Act, 1936" and inserting "section 53102(b) of title 46, United States Code".

SEC. 1137. VESSEL STANDARDS.

(a) **Certificate of Inspection.**—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 651(b) of the Merchant Marine Act, 1936, but which on the date of enactment of this Act is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

(1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(1) an individual who is a citizen of the United States;[2]

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

(B) that is capable of holding title to a vessel under the laws of the United States or of a State;

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

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(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(b) **Continued Eligibility for Certificate.**—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

(c) **Reliance on Classification Society.**—

(1) ***In General.***—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

(2) ***Foreign Classification Society.***—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(B) if the foreign classification society has offices and maintains records in the United States.

[2] Note that 46 U.S.C. 12106(d)(2) provides: "(2) For purpose of . . . section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States." See also 46 U.S.C. 12106(e)(4) providing: "(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States."

(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms "control" or "controlled"—

(A) shall include—

(i) the right to direct the business of the entity which owns the vessel;

(ii) the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or

(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, provided that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes.

(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

(4) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(5)[3] A vessel greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46 or 1,900 gross registered tons as measured under chapter 143 of that title), or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless—

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; (October 21, 1998) and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.

(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

(2)(A) Subject to subparagraph (B) of this paragraph, 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 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

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[3] Section 3027(c) of Public Law 106-31, approved May 21, 1999 (113 STAT. 57, 102), the 1999 Emergency Supplemental Appropriations Act, provides: "(c) The limitation on registered length contained in section 12102(c)(6) of title 46, United States Code, shall not apply to a vessel used solely in any menhaden fishery which is located in the Gulf of Mexico or along the Atlantic coast south of the area under the authority of the New England Fishery Management Council for so long as such vessel is used in such fishery."

Section 2202(a)(2) of Public Law 107-20, approved July 24, 2001 (115 STAT. 155, 168) struck paragraph (4) and renumbered the remaining paragraphs so that 46 U.S.C. 12102(6) became 46 U.S.C. 12102(5).

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.

(B) 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.

(3) Paragraph (2) of this subsection 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.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.[4]

46 U.S.C. 12103 (2004). CERTIFICATES OF DOCUMENTATION.

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation or a temporary certificate of documentation, endorsed with one or more of the endorsements specified in sections 12105-12109 of this title.

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[4] Section 1136(c) of Public Law 104-326, approved October 19, 1996 (110 STAT. 3987) provides: "(c) **Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) If—(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802): and (2)(A) the vessel—(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31,1996; or (ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such vessel; or (B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at lease 1 year."

Section 3534(b)(1) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1818), amended 46 U.S.C. 12102(d)(4) by inserting "or chapter 531 of title 46, United States Code" after "Merchant Marine Act, 1936." Section 3537(b) of Public Law 108-136 (117 STAT. 1820), provides that Section 3534 of Public Law 108-136 shall take effect October 1, 2005.

(b)(1) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(2) The Secretary shall require each person applying to document a vessel to provide—

(A) the person's social security number; or

(B) for a person other than an individual—

(i) the person's taxpayer identification number; or

(ii) if the person does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the person and who signs the application for documentation for the vessels.

(c) Each certificate of documentation shall—

(1) identify and describe the vessel;

(2) identify the owner of the vessel; and

(3) contain additional information prescribed by the Secretary.

(d) The Secretary shall prescribe procedures to ensure, the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of documentation available for examination as the law or Secretary may require.

46 U.S.C. 12103a (2004). ISSUANCE OF TEMPORARY CERTIFICATE OF DOCUMENTATION BY THIRD PARTIES.

(a) The Secretary of the department in which the Coast Guard is operating may delegate, subject to the supervision and control of the Secretary and under terms set out by regulation, to private entities determined and certified by the Secretary to be qualified, the authority to issue a temporary certificate of documentation for a recreational vessel if the applicant for the certificate of documentation meets the requirements set out in sections 12102 and 12103 of this chapter.

(b) A temporary certificate of documentation issued under section 12103(a) and subsection (a) of this section is valid for up to 30 days from issuance.

46 U.S.C. 12104 (2004). EFFECT OF DOCUMENTATION.

A certificate of documentation is—

(1) conclusive evidence of nationality for international purposes, but not in a proceeding conducted under the laws of the United States;

(2) except for a recreational endorsement, conclusive evidence of qualification to be employed in a specified trade; and

(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

46 U.S.C. 12105 (2004). REGISTRY ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a registry endorsement.

(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.[5]

46 U.S.C. 12106 (2004). COASTWISE ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that—

(1) is eligible for documentation;

(2)(A) was built in the United States; or

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

(3) otherwise qualifies under laws of the United States to be employed in the coastwise trade.

(b) Subject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.

(c) A coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built in the United States;

(3) is eligible for documentation; and

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[5] Note that the Act of June 14, 1934 (48 STAT. 963), continues to exclude American Samoa from the coastwise laws, as follows: "48 U.S.C. 1664 (2003). Coastwise shipping laws of United States inapplicable. The provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port of the United States to another port of the United States shall not be applicable to commerce between the islands of American Samoa or between those islands and other ports under the jurisdiction of the United States." See Opinion of Chief, Carrier Rulings Branch, HQ 111581, July 25, 1991.

(4) otherwise qualifies under the laws of the United States to be employed in the coastwise trade.

(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative;

(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

(D) use of the vessel is restricted to—

(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

(ii) for training exercises to prepare to respond to such a discharge.

(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if-

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) meets the requirements of subsection (f);

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of

the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

(f) Ownership certification requirement.

(1) In general. A person meets the requirements of this subsection if that person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

(2) Investment certification. To meet the certification requirement of this paragraph, a person shall certify that it--

(A) is a leasing company, bank, or financial institution;

(B) owns, or holds the beneficial interest in, the vessel solely as a passive investment;

(C) does not operate any vessel for hire and is not an affiliate of any person who operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person who has the right, directly or indirectly, to control or direct the movement or use of the vessel.

(3) Certain tank vessels.

(A) In general. To meet the certification requirement of this paragraph, a person shall certify that--

(i) the aggregate book value of the vessels owned by such person and United States affiliates of such person does not exceed 10 percent of the aggregate book value of all assets owned by such person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of such person and its United States affiliates is derived from the ownership, operation, or management of vessels;

(iii) at least 70 percent of the aggregate tonnage of all cargo carried by all vessels owned by such person and its United States affiliates and documented under this section is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by such person and its United States affiliates and documented under this section consists of oil, petroleum products, petrochemicals, or liquefied natural gas;

(v) no vessel owned by such person or any of its United States affiliates and documented under this section carries molten sulphur; and

(vi) such person owned 1 or more vessels documented under subsection (e) of this section as of the date of enactment of the Coast Guard and Maritime Transportation Act of 2004 [enacted Aug. 9, 2004].

(B) Application only to certain vessels. A person may make a certification under this paragraph only with respect to--

(i) a tank vessel having a tonnage of not less than 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

(ii) a towing vessel associated with a non-self-propelled tank vessel that meets the requirements of clause (i), where the 2 vessels function as a single self-propelled vessel.

(4) Definitions. In this subsection:

(A) Affiliate. The term "affiliate" means, with respect to any person, any other person that is--

(i) directly or indirectly controlled by, under common control with, or controlling such person; or

(ii) named as being part of the same consolidated group in any report or other document submitted to the United States Securities and Exchange Commission or the Internal Revenue Service.

(B) Cargo. The term "cargo" does not include cargo to which title is held for non-commercial reasons and primarily for the purpose of evading the requirements of paragraph (3).

(C) Oil. The term "oil" has the meaning given that term in section 2101(20) of this title.

(D) Passive investment. The term "passive investment" means an investment in which neither the investor nor any affiliate of such investor is involved in, or has the power to be involved in, the formulation, determination, or direction of any activity or function concerning the management, use, or operation of the asset that is the subject of the investment.

(E) Qualified proprietary cargo. The term "qualified proprietary cargo" means--

(i) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who submits to the Secretary an application or annual certification under paragraph (3), or by an affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on a vessel owned by such person;

(ii) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person who submits to the Secretary an application or an annual certification under paragraph (3), or by an affiliate of such person, but that is carried in coastwise trade by a vessel owned by such person and which is part of an arrangement in which vessels owned by such person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of

oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by such person, or an affiliate of such person, is carried in coastwise trade on 1 or more other vessels, not owned by such person, or an affiliate of such person, if such other vessel or vessels are also part of the same arrangement;

(iii) in the case of a towing vessel associated with a non-self-propelled tank vessel where the 2 vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person who owns both such towing vessel and the non-self-propelled tank vessel, or any United States affiliate of such person, immediately before, during, or immediately after such cargo is carried in coastwise trade on either of the 2 vessels; or

(iv) any oil, petroleum products, petrochemicals, or liquefied natural gas cargo carried on any vessel that is either a self-propelled tank vessel having a length of at least 210 meters or a tank vessel that is a liquefied natural gas carrier that--

(I) was delivered by the builder of such vessel to the owner of such vessel after December 31, 1999; and

(II) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on such vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of such vessel, or an affiliate of such owner, from Alaska to the continental United States.

(F) United States affiliate. The term "United States affiliate" means, with respect to any person, an affiliate the principal place of business of which is located in the United States.

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Section 608(a) of Public Law 108-293, approved August 9, 2004 (118 STAT. 1054), amended (46 U.S.C. 12106(e)(1)(B), and added 46 U.S.C. 12106(f), as set forth above. Section 608(b), (c), (d), and (e) of Public Law 108-293, read as follows:

"(b) Treatment of Owner of Certain Vessels.—

"(1) In General. —Notwithstanding any other provision of law, a person shall be treated as a citizen of the United States under section 12102(a) of title 46, United States Code, section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), for purposes of issuance of a coastwise endorsement under section 12106(e) of title 46, United States Code (as that section was in effect on the day before the date of enactment of this Act), for a vessel owned by the person on the date of enactment of this Act, or any replacement vessel of a similar size and function, if the person—

"(A) owned a vessel before January 1, 2001, that had a coastwise endorsement under section 12106(e) of title 46, United States Code; and

"(B) as of the date of the enactment of this Act, derives substantially all of its revenue from leasing vessels engaged in the transportation or distribution of petroleum products and other cargo in Alaska.

"**(2) Limitation on Coastwise Trade.**—A vessel owned by a person described in paragraph (1) for which a coastwise endorsement is issued under section 12106(e) of title 46, United States Code, may be employed in the coastwise trade only within Alaska and in the coastwise trade to and from Alaska.

"**(3) Termination.**—The application of this subsection to a person described in paragraph (1) shall terminate if all of that person's vessels described in paragraph (1) are sold to a person eligible to document vessels under section 12106(a) of title 46, United States Code.

"**(c) Application to Certain Certificates.**—

"**(1) In General.**—The amendments made by this section, and any regulations published after February 4, 2004, with respect to coastwise endorsements, shall not apply to a certificate of documentation, or renewal thereof, endorsed with a coastwise endorsement for a vessel under section 12106(e) of title 46, United States Code, or a replacement vessel of a similar size and function, that was issued prior to the date of enactment of this Act as long as the vessel is owned by the person named therein, or by a subsidiary or affiliate of that person, and the controlling interest in such owner has not been transferred to a person that was not an affiliate of such owner as of the date of enactment of this Act. Notwithstanding the preceding sentence, however, the amendments made by this section shall apply, beginning 3 years after the date of enactment of this Act, with respect to offshore supply vessels (as defined in section 2101(19) of title 46, United States Code, as that section was in effect on the date of enactment of this Act) with a certificate of documentation endorsed with a coastwise endorsement as of the date of enactment of this Act, and the Secretary of the Department in which the Coast Guard is operating shall revoke any such certificate if the vessel does not by then meet the requirements of section 12106(e) of title 46, United States Code, as amended by this section.

"**(2) Replacement Vessel**.—For the purposes of this subsection, 'replacement vessel' means—

"(A) a temporary replacement vessel for a period of not to exceed 180 days if the vessel described in paragraph (1) is unavailable due to an act of God or a marine casualty; or

"(B) a permanent replacement vessel if—

"(i) the vessel described in paragraph (1) is unavailable for more than 180 days due to an act of God or a marine casualty; or

"(ii) a contract to purchase or construct such replacement vessel is executed not later than December 31, 2004.

"**(d) Waiver.**—The Secretary of Transportation shall waive or reduce the qualified proprietary cargo requirement of section 46 USC 12106(f)(3)(A)(iii) of title 46, United States Code, for a vessel if the person that owns the vessel (or, if the vessel is owned by a trust or similar arrangement, the beneficiary of the trust or similar arrangement) notifies the Secretary that circumstances beyond the direct control of such person or its affiliates prevent, or reasonably threaten to prevent, such person from satisfying such requirement, and the Secretary does not, with good cause, determine otherwise. The waiver or reduction shall apply during the period of time that such circumstances exist.

"**(e) Regulations.**—No later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall prescribe final regulations to carry out this section, including amendments made by this section to section 12106 of title 46, United States Code."

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46 U.S.C. 12108 (2004). FISHERIES ENDORSEMENTS.

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that—

(1) is eligible for documentation;

(2) was built in the United States;

(3) if rebuilt, was rebuilt in the United States;

(4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States.[6]

(5) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) A fishery endorsement to engage in fishing in the territorial sea and fishery conservation zone adjacent to Guam, American Samoa, and the Northern Mariana Islands may be issued to a vessel that—

(1) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title;

(2) was not built or rebuilt in the United States;

(3) is eligible for documentation; and

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[6] Section 409 of Public Law 107-295 (116 STAT. 2117), amended 46 U.S.C. 12108(a) to prohibit a vessel which has been forfeited to the United States for a crime from obtaining a fisheries endorsement. This section does not grant the Coast Guard new authority to seize or forfeit vessels.

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson Fishery Conservation Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

46 U.S.C. 12109 (2004). RECREATIONAL ENDORSEMENTS.

(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.

(b) A documented vessel with a recreational endorsement may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service. A recreational vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons on board that recreational vessel shall be subject to all applicable customs regulations.

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure.

46 U.S.C. 12110 (2004). LIMITATIONS ON OPERATIONS AUTHORIZED BY CERTIFICATES.

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, or an unmanned barge operating outside of the territorial waters of the United States may be placed under the command only of a citizen of the United States.

46 U.S.C. 12111 (2004). SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.

(a) A certificate of documentation is invalid if the vessel for which it is issued—

(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States in violation of section 12110(d) of this title.

(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

(c)(1) Notwithstanding subsection (a) of this section, until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

(B) sections 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(D) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

(d)(1) The Secretary shall not refuse to approve the surrender of the certificate of documentation for a vessel solely on the basis that a notice of a claim of a lien on the vessel has been recorded under section 31343(a) of this title.

(2) The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.

46 U.S.C. 12112 (2004). VESSELS PROCURED OUTSIDE THE UNITED STATES.

(a) The Secretary of Transportation and the Secretary of State, acting jointly, may provide for the issuance of a certificate of documentation with an appropriate endorsement for a vessel procured outside the United States meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary of Transportation may prescribe, a vessel for which a document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is sub-

ject to the jurisdiction and laws of the United States. However, the Secretary of Transportation may suspend for a period of not more than 6 months, the application of a vessel inspection law carried out by the Secretary or regulations prescribed under that law if the Secretary considers the suspension to be in the public interest.

46 U.S.C. 12117 (2004). RECORDING OF UNITED STATES BUILT VESSELS. The Secretary of Transportation may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

46 U.S.C. 12119 (2004). LIST OF DOCUMENTED VESSELS. The Secretary of Transportation shall publish periodically a list of all documented vessels and information about those vessels that the Secretary considers pertinent or useful. The list shall contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

46 U.S.C. 12120 (2004). REPORTS. To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require owners, masters, and charterers of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

46 U.S.C. 12122 (2004). PENALTIES.

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.[7] Each day of continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government-

(1) when the owner of a vessel or the representative or agent of the owner knowingly falsifies or conceals a material fact, or knowingly makes a false statement or representation about the documentation or when applying for documentation of the vessel;

(2) when a certificate of documentation is knowingly and fraudulently used for a vessel;

(3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

[7] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(4) when a vessel is employed in a trade without an appropriate trade endorsement;

(5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or

(6) when a documented vessel, other than a vessel with only a recreational endorsement, or an unmanned barge operating outside of the territorial waters of the United States, is placed under the command of a person not a citizen of the United States.

(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to $100,000[8] for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson–Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation, with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.

46 U.S.C. 12123 (2004). DENIAL AND REVOCATION OF ENDORSEMENTS. When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.

46 U.S.C. 12124 (2004). SURRENDER OF TITLE AND NUMBER.

(a) A documented vessel shall not be titled by a State or required to display numbers under chapter 123, and any certificate of title issued by a State for a documented vessel shall be surrendered in accordance with regulations prescribed by the Secretary of Transportation.

(b) The Secretary may approve the surrender under subsection (a) of a certificate of title for a vessel covered by a preferred mortgage under section 31322(d) of this title only if the mortgagee consents.

[8] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

MANNING OF VESSELS

46 U.S.C. 8101 (2004). COMPLEMENT OF INSPECTED VESSELS.

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel;

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit; and

(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be of the same or a higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at its destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of $1,000[1] for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of $10,000[1].

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[1] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than $10,000[2]. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of $1,000[2]. The vessel also is liable in rem for the penalty.

(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 7101(c)(1) or (3) of this title shall—

(1) temporarily relieve the master or individual in charge;

(2) temporarily take command of the vessel;

(3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and

(4) report those details to the Secretary—

(A) by the most expeditious means available; and

(B) in written form transmitted within 12 hours after the vessel arrives at its next port.

46 U.S.C. 8102 (2004). WATCHMEN.

(a) The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger. An owner, charterer, or managing operator failing to provide watchmen required by this section is liable to the United States Government for a civil penalty of $1,000[2].

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a fish processing vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage

[2] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall keep a suitable number of watchmen trained in firefighting on board when hot work is being done to guard against and give alarm in case of a fire.

46 U.S.C. 8103 (2004). CITIZENSHIP AND NAVAL RESERVE REQUIREMENTS.

(a) Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seamen must be--

(i) a citizen of the United States;

(ii) an alien lawfully admitted to the United States for permanent residence; or

(iii) a foreign national who is enrolled in the United States Merchant Marine Academy.

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $500[3] for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Naval Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

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[3] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

46 U.S.C. 8104 (2004). WATCHES.

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work

more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of $10,000[4].

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of $10,000[4]. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

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[4] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, "work" includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

46 U.S.C. 8105 (2004). FISHING VESSEL EXEMPTION

Notwithstanding any other provision of law, neither the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, nor any amendment to such convention, shall apply to a fishing vessel, including a fishing vessel used as a fish tender vessel.

MERCHANT MARINERS' DOCUMENTS

[EXCERPTS]

46 U.S.C. 8701 (2004). MERCHANT MARINERS' DOCUMENTS REQUIRED.

(a) This section applies to a merchant vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title except--

(1) a vessel operating only on rivers and lakes (except the Great Lakes);

(2) a barge (except a seagoing barge or a barge to which chapter 37

of this title applies);

(3) a fishing, or fish tender, or whaling vessel or yacht;

(4) a sailing school vessel with respect to sailing school instructors and sailing school students;

(5) an oceanographic research vessel with respect to scientific personnel;

(6) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products;

(7) a fish processing vessel (except a vessel to which clause (6) of this subsection applied) with respect to individuals on board primarily employed in the preparation of fish or fish products or in a support position not related to navigation;

(8) a mobile offshore drilling unit with respect to individuals, other than crew members required by the certificate of inspection, engaged on board the unit for the sole purpose of carrying out the industrial business or function of the unit;

(9) a passenger vessel not engaged in a foreign voyage with respect to individuals on board employed for a period of not more than 30 service days within a 12 month period as entertainment personnel, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; and

(10) the Secretary may prescribe the individuals required to hold a merchant mariner's document serving onboard an oil spill response vessel.

(b) A person may not engage or employ an individual, and an individual may not serve, on board a vessel to which this section applies if the individual does not have a merchant mariner's document issued to the individual under section 7302 of this title. Except for an individual required to be licensed or registered under this part, the document must authorize service in the capacity for which the holder of the document is engaged or employed.

(c) On a vessel to which section 10306 or 10503 of this title does not apply, an individual required by this section to hold a merchant mariner's document must exhibit it to the master of the vessel before the individual may be employed.

(d) A person (including an individual) violating this section is liable to the United States Government for a civil penalty of $500[5].

[5] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

46 U.S.C. 7302 (2004). ISSUING MERCHANT MARINERS' DOCUMENTS AND CONTINUOUS DISCHARGE BOOKS.

(a) The Secretary shall issue a merchant mariner's document to an individual required to have that document under part F of this subtitle [46 U.S.C. 8101 et seq.] if the individual satisfies the requirements of this part. The document serves as a certificate of identification and as a certificate of service, specifying each rating in which the holder is qualified to serve on board vessels on which that document is required under part F.

(b) The Secretary also may issue a continuous discharge book to an individual issued a merchant mariner's document if the individual requests.

(c) The Secretary may not issue a merchant mariner's document under this chapter unless the individual applying for the document makes available to the Secretary, under 30305(b)(5) of title 49, any information contained in the National Driver Register related to an offense described in 30304(a)(3)(A) or (B) of title 49 committed by the individual.

(d) The Secretary may review the criminal record of an individual who applies for a merchant mariner's document under this section.

(e) The Secretary shall require the testing of an individual applying for issuance or renewal of a merchant mariner's document under this chapter for the use of a dangerous drug in violation of law or Federal regulation.

(f) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.

(g) (1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to--

(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or

(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.

AMERICAN FISHERIES ACT

TITLE II - FISHERIES [1]

Subtitle I - Fishery Endorsements

SEC. 201. Short Title. This title may be cited as the "American Fisheries Act".

SEC. 202. Standard for Fishery Endorsements.

(a) **Standard.** **[[**The standard for fishery endorsements is set forth in 46 U.S.C. 12102(c). 46 U.S.C. 12102, as amended to date, is set forth at page 245.**]]**

(b) **Preferred Mortgage.** **[[**Standards for preferred mortgages are set forth in 46 U.S.C. 31322(a). 46 U.S.C. 31322, as amended to date, is set forth at page 436.**]]**

SEC. 203. ENFORCEMENT OF STANDARD.

(a) **Effective Date.** The amendments made by section 202 shall take effect on October 1, 2001.

(b) **Regulations.** Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval , and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

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[1] Enacted as Title II of Division C - Other Matters, of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681, 2681-616), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

Section 120 of the Treasury and General Government Appropriations Act, 1999, set forth in Public Law 105-277, approved October 21, 1999 (112 STAT. 2681, 2681-545), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provides in part: "For carrying out the provisions of division C, title II of this Act . . . $6,000,000 and $2,000,000 for the Secretary of Commerce and Secretary of Transportation, respectively, to implement division C, title II." Section 624 of Public Law 106-113, Appendix A, approved November 29, 1999 (113 STAT. 1501A-59) the Commerce, State, Justice and Related Agencies Appropriations Act, 2000, provides: "Sec. 624. Funds made available under Public Law 105-277 for costs associated with implementation of the American Fisheries Act of 1998 (division C, title II, of Public Law 105-255) for vessel documentation activities shall remain available until expended."

(c) **Vessels Measuring 100 Feet and Greater.** (1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) **Vessels Measuring Less Than 100 Feet.** The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) **Endorsements Revoked.** The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

(f) **Penalty.** **[[** Section 203(f) of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-620) amended 46 U.S.C. 12122, by adding subsection (c), a penalty provision for fishing vessels. 46 U.S.C. 12122, as amended to date is set forth at page 260.**]]**

(g) **Certain Vessels.** The vessels EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779), NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1) (A) and (B), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, the vessel is used to harvest any fish.

SEC. 204. REPEAL OF OWNERSHIP SAVINGS CLAUSE.

(a) **Repeal.** Section 7(b) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12102 note) is hereby repealed.

(b) **Effective Date.** Subsection (a) shall take effect on October 1, 2001.

Subtitle II—Bering Sea Pollock Fishery

SEC. 205. DEFINITIONS.

As used in this subtitle–

(1) the term "Bering Sea and Aleutian Islands Management Area" has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998.

(2) the term "catcher/processor" means a vessel that is used for harvesting fish and processing that fish;

(3) the term"catcher vessel" means a vessel that is used for harvesting fish and that does not process pollock onboard:

(4) the term "directed pollock fishery" means the fishery for the directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b).

(5) the term "harvest" means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be

expected to result in the catching, taking, or harvesting of fish;

(6) the term "inshore component" means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:

(A) shoreside processors, including those eligible under section 208(f); and

(B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;

(7) the term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(8) the term "mothership" means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term "North Pacific Council" means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term "offshore component" means all vessels not included in the definition of "inshore component" that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area.

(11) the term "Secretary" means the Secretary of Commerce; and

(12) the term "shoreside processor" means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

SEC. 206. ALLOCATIONS.

(a) **Pollock Community Development Quota.** Effective January 1,1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) **Inshore/Offshore.** Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows–

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

SEC. 207. BUYOUT.

(a) **Federal Loan.** Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to $75,000,000 through a direct loan obligation for the payments required under subsection (d).

(b) **Inshore Fee System.** Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and 1861a), the Secretary shall establish a fee for the repayment of such loan obligations which–

(1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and

(2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and

(3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C) and in accordance with such other conditions as the Secretary establishes.

(c) **Federal Appropriation.** Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(c)(1)(B)), there are authorized to be appropriated $20,000,000 for the payments required under subsection (d).

(d) **Payments.** Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998–

(1) up to $90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owner or owners, with the concurrence of the Secretary, agree, except that–

(A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act

(16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and

(B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors submit a written certification acceptable to the Secretary that such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and

(2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), $5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or

(B) if such a contract has not been filed by such date, $5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate, except that any such payments shall be reduced by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) **Penalty.** If the catcher/processor under paragraph (1) of section 209 is used outside the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catcher/processors listed in paragraphs (2) through (9) of section 209 are determined by the Secretary not to have been scrapped by December 31, 2000 or to have been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) **Program Defined; Maturity.** For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term "program" as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f(b)(4)), the debt obligation under subsection (a) of this section may have a maturity not to exceed 30 years.

(g) **Fishery Capacity Reduction Regulations.** The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement subsections (b), (c), (d) and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.

(a)[2] **Catcher Vessels Onshore.** Effective January 1, 2000, only catcher vessels which are–

(1) determined by the Secretary–

(A) to have delivered at least 250 metric tons of pollock; or

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b),

shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 615085);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859); and

(8) any catcher vessel–

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the

[2] Note the exception for two catcher vessels provided by section 501 of Public Law 106-562, approved December 23, 2000 (114 STAT. 2794, 2808), the Pribilof Islands Transition Act.

directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) **Catchers Vessels to Motherships.** Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) ALEUTIAN CHALLENGER (United States official number 603820);

(2) ALYESKA (United States official number 560237);

(3) AMBER DAWN (United States official number 529425);

(4) AMERICAN BEAUTY (United States official number 613847);

(5) CALIFORNIA HORIZON (United States official number 590758);

(6) MAR-GUN (United States official number 525608);

(7) MARGARET LYN (United States official number 615563);

(8) MARK I (United States official number 509552);

(9) MISTY DAWN (United States official number 926647);

(10) NORDIC FURY (United States official number 542651);

(11) OCEAN LEADER (United States official number 561518);

(12) OCEANIC (United States official number 602279);

(13) PACIFIC ALLIANCE (United States official number 612084);

(14) PACIFIC CHALLENGER (United States official number 518937);

(15) PACIFIC FURY (United States official number 561934);

(16) PAPADO II (United States official number 536161);

(17) TRAVELER (United States official number 929356);

(18) VESTERAALEN (United States official number 611642);

(19) WESTERN DAWN (United States official number 524423);

(20) any vessel–

(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(C) not listed in subsection (b).

(d) **Motherships.** Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) EXCELLENCE (United States official number 967502);

(2) GOLDEN ALASKA (United States official number 651041); and

(3) OCEAN PHOENIX (United States official number 296779).

(e) **Catcher/Processors.** Effective January 1, 1999, only the following catcher/processors shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN DYNASTY (United States official number 951307);

(2) KATIE ANN (United States official number 518441);

(3) AMERICAN TRIUMPH (United States official number 646737);

(4) NORTHERN EAGLE (United States official number 506694);

(5) NORTHERN HAWK (United States official number 643771);

(6) NORTHERN JAEGER (United States official number 521069);

(7) OCEAN ROVER (United States official number 552100);

(8) ALASKA OCEAN (United States official number 637856);

(9) ENDURANCE (United States official number 592206);

(10) AMERICAN ENTERPRISE (United States official number 594803);

(11) ISLAND ENTERPRISE (United States official number 610290);

(12) KODIAK ENTERPRISE (United States official number 579450);

(13) SEATTLE ENTERPRISE (United States official number 904767);

(14) US ENTERPRISE (United States official number 921112);

(15) ARCTIC STORM (United States official number 903511);

(16) ARCTIC FJORD (United States official number 940866);

(17) NORTHERN GLACIER (United States official number 663457);

(18) PACIFIC GLACIER (United States official number 933627);

(19) HIGHLAND LIGHT (United States official number 577044);

(20) STARBOUND (United States official number 944658); and

(21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and

approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) **Shoreside Processors.** (1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to–

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 and 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year;

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) **Replacement Vessels.** In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that–

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever

rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

(h) **Eligibility During Implementation.** In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) **Eligibility Not a Right.** Eligibility under this section shall not be construed–

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery, or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

SEC. 209. LIST OF INELIGIBLE VESSELS.

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including

relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

(1) AMERICAN EMPRESS (United States official number 942347);

(2) PACIFIC SCOUT (United States official number 934772);

(3) PACIFIC EXPLORER (United States official number 942592);

(4) PACIFIC NAVIGATOR (United States official number 592204);

(5) VICTORIA ANN (United States official number 592207);

(6) ELIZABETH ANN (United States official number 534721);

(7) CHRISTINA ANN (United States official number 653045);

(8) REBECCA ANN (United States official number 592205);

(9) BROWNS POINT (United States official number 587440).

SEC. 210. FISHERY COOPERATIVE LIMITATIONS.

(a) **Public Notice.** (1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall–

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including by catch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) **Catcher Vessels Onshore**–

(1) *Catcher Vessel Cooperatives*. Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which–

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) *Voluntary Participation*. Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calender year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) *Qualified Catcher Vessel*. For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) *Consideration of Certain Vessels*. Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships

in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) *Open Access*. A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) *Transfer of Cooperative Harvest*. A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(c) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/ processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) **Catcher Vessels to Motherships**–

(1) *Processing*. Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 STAT. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) *Voluntary Participation*. Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) **Excessive Shares.**

(1) *Harvesting*. No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) *Processing*. Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under section 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the Norther Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) *Review by Maritime Administration*. At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) **Landing Tax Jurisdiction.** Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) **Penalties.** The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.

(a) **General.** The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) **Catcher/Processor Restrictions.**

(1) *General*. The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superseded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) *Bering Sea Fishing*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate–

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997.

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery–

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

(3) *Bering Sea Processing*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from–

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) *Gulf of Alaska*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from–

(A) harvesting any fish in the Gulf of Alaska.

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as by catch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) *Fisheries Other than North Pacific*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management

council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) *Observers and Scales*. The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall–

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weight its catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.

This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (20) of section 208(e) that will harvest pollock allocated under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

(c) **Catcher Vessel and Shoreside Processor Restrictions.**

(1) *Required Council Recommendations*. By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to–

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fisheries; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may be regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pur-

suant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) *Bering Sea Crab and Groundfish.*

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, and 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary. The North Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) *Fisheries Other than North Pacific.*

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852 (a)(1)(F)) shall recommended for

approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) **By catch Information.** Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(e) **Community Development Loan Program.** Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under section 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shoreside processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and section 208(c), the LISA MARIE (United States official number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

SEC. 212. RESTRICTION ON FEDERAL LOANS. Section 212 of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-635), amended Section 302(b) the Fisheries Financing Act (46 U.S.C. 1274 Note), to read as follows:

"(b)(1) Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

"(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty." See also footnote 58, page 136 supra.

SEC. 213. DURATION.

(a)[3] **General.** Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. There are authorized to be appropriated $6,700,000 per year to carry out the provisions of this Act through fiscal year 2004.

(b) **Existing Authority.** Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) **Changes to Fishery Cooperative Limitations and Pollock CDQ Allocation.** The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act–

(1) that supersede the provisions of this subtitle, except for section 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitable to the extent practicable among and within the sectors in the directed pollock fishery.

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or

[3] As amended by Section 211 of Public Law 107-77, approved November 28, 2001 (115 STAT. 779), the Departments of Justice, and State, the Judiciary, and related agencies appropriations Act, 2002.

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

(d) **Report to Congress.** Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on by catch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.

(e) **Report on Fillet Production.** Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.

(f) **Severability.** If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g)[4] **International Agreements.** In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to their ownership or mortgage interest in such vessel on that date to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to

[4] Subsection (g) was amended by Section 2202(e) of Public Law 107-20, approved July 24, 2001 (115 STAT. 170), the Supplemental Appropriations Act, 2001, to be effective upon enactment.

the owner on such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after or if the percentage of foreign ownership in the vessel is increased after the effective date of this subsection.

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46 App. U.S.C. 251 (2004). VESSELS EMPLOYED IN COASTING TRADE OR FISHERIES.

(a) Landing of catch of fish by foreign-flag vessels; regulations. Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. The Secretary of Commerce may issue any regulations that the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to points in the United States.

(b) Sale or transfer for immediate consumption. Subsection (a) of this section shall not be deemed to prohibit the landing by a foreign-flag vessel of not more than fifty feet overall length in a port of the Virgin Islands of the United States for immediate consumption in such islands of its catch of fresh fish, whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced. No fish landed under this authorization shall be sold or transferred except for immediate consumption. Sale or transfer to an agent, representative, or employee of a freezer or cannery shall be deemed to be prohibited in the absence of satisfactory evidence that such sale or transfer is for immediate consumption. For the purposes of this subsection, the term "immediate consumption" shall not preclude the freezing, smoking, or other processing of such fresh fish by the ultimate consumer thereof.

(c) Forfeitures and penalties. Any fish landed in the Virgin Islands of the United States which are retained, sold, or transferred other than as authorized in subsection (b) of this section shall be liable to forfeiture and any person or persons retaining, selling, transferring, purchasing, or receiving such fish shall severally be liable to a penalty of $ 1,000[5] for each offense, in addition to any other penalty provided in law.

[5] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

MERCHANT MARINE ACT, 1920[1]

SEC. 1. PURPOSE AND POLICY OF UNITED STATES (46 App. U.S.C. 861 (2004)). It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

PURCHASE ALLOWANCE IN SALE OF VESSELS FOR COST OF PUTTING VESSELS IN CLASS (46 App. U.S.C. 864a (2004)).[2] Hereafter the Secretary of Transportation may make allowances to purchasers of vessels for cost of putting such vessels in class, such allowances to be determined on the basis of competitive bids, without regard to the provisions of the last paragraph of section 3(d) of the Merchant Ship Sales Act of 1946.

ELEMENTS CONSIDERED IN SALE OF VESSELS IN DETERMINATION OF SELLING PRICE (46 App. U.S.C. 864b (2004)).[3] Hereafter, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price.

SEC. 6. SALE TO ALIENS (46 App. U.S.C. 865 (2004)). The Secretary of Transportation is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as he may determine, not inconsistent with the provisions of section 5 (except that completion of the payment of the purchase price and interest shall not be

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[1] The term "citizen of the United States" used throughout the Merchant Marine Act, 1920, is defined in Section 37 to have the meaning assigned to it by Section 2 of the Shipping Act, 1916. Section 2 is located at page 236.

[2] Enacted as section 101 of the Act of June 30, 1948 (62 STAT. 1199).

[3] Enacted as section 1 of the Act of June 29, 1949 (63 STAT. 349).

deferred more than ten years after the making of the contract of sale), such vessels as he shall, after careful investigation, deem unnecessary to the promotion and maintenance of an efficient American merchant marine; but no such sale shall be made unless the Secretary of Transportation, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5, such vessels to persons citizens of the United States, and has determined to make such sale; and he shall make as a part of his records a full statement of its reasons for making such sale. Deferred payments of purchase price of vessels under this section shall bear interest at the rate of not less than 5-1/2 per centum per annum, payable semiannually.

SEC. 7. ESTABLISHMENT AND OPERATION OF STEAMSHIP LINES BETWEEN PORTS OF UNITED STATES; INVESTIGATION AND DETERMINATION; SALE OR CHARTER OF VESSELS; PREFERENCE IN SALES OR CHARTERS; CONTINUED OPERATION OF LINES; ADDITIONAL LINES; RATES AND CHARGES (46 App. U.S.C. 866 (2004)). The Secretary of Transportation is authorized and directed to investigate and determine as promptly as possible after the enactment of this Act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in his judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The Secretary of Transportation is authorized to sell, and if a satisfactory sale cannot be made, to charter such of the vessels referred to in section 4 of this Act or otherwise acquired by the Secretary of Transportation, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the Secretary of Transportation may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the Secretary of Transportation, the Secretary of Transportation shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line cannot be made self-sustaining: Provided, That preference

in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the Secretary of Transportation is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world-market port to which the Secretary of Transportation has determined that such service should be established: Provided further, That where steamship lines and regular service have been established and are being maintained by ships of the board at the time of the enactment of this Act, such lines and service shall be maintained by the board until, in the opinion of the board, the maintenance thereof is unbusinesslike and against the public interests: And provided further, That whenever the Secretary of Transportation shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

SEC. 8. INVESTIGATION OF PORT, TERMINAL, AND WAREHOUSE FACILITIES (46 App. U.S.C. 867 (2004)). It shall be the duty of the Secretary of Transportation, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the

freight which would naturally pass through such ports: Provided, That if after such investigation the Secretary of Transportation shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Surface Transportation Board are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary of Transportation may submit his findings to the Surface Transportation Board for such action as such Board may consider proper under existing law.

SEC. 9. VESSELS SOLD UNDER DEFERRED PAYMENT PLAN; INSURANCE (46 App. U.S.C. 868 (2004)).

If the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the Secretary of Transportation shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the Secretary of Transportation so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the Secretary of Transportation may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the Secretary of Transportation may prescribe or approve. The Insurance required to be carried under this section shall be made payable to the Secretary of Transportation and/or to the parties as interest may appear. The Secretary of Transportation is authorized to enter into any agreement that he deems wise in respect to the payment and/or the guarantee of premiums of insurance.

SEC. 10. CREATION OF FUND FOR INSURANCE OF INTERESTS OF UNITED STATES (46 App. U.S.C. 869 (2004)). The Secretary of Transportation may create out of insurance premiums, and revenue from operations and sales, and maintain and administer separate insurance funds which he may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in process of construction; and (2) in any plants or property in the possession or under the authority of the Secretary of Transportation. The United States shall be held to have such an interest in any vessel toward the construction, reconditioning, remodeling, improving, or equipping of which a loan has been made under the authority of this Act, in any vessel upon which he holds a

mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

SEC. 12. REPAIR AND OPERATION OF VESSELS UNTIL SALE (46 App. U.S.C. 871 (2004)). All vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the Secretary of Transportation or chartered or leased by him on such terms and conditions as the Secretary of Transportation shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act. The term "reconditioned" as used in this section includes the substitution of the most modern, most efficient, and most economical types of internal-combustion engines as the main propulsive power of vessels. Should the Secretary of Transportation have any such engines built in the United States and installed, in private shipyards or navy yards of the United States, in one or more merchant vessels owned by the United States, and the cost to the Secretary of Transportation of such installation exceeds the amount of funds otherwise available to him for that use, the Secretary of Transportation may transfer to his funds from which expenditures under this section may be paid, from his construction loan fund authorized by section 11 of the Merchant Marine Act, 1920, so much as in his judgment may be necessary to meet obligations under contracts for such installation; and the Treasurer of the United States shall, at the request of the Secretary of Transportation, make the transfer accordingly: Provided, That the total amount expended by the Secretary of Transportation for this purpose shall not in the aggregate exceed $ 25,000,000. Any such vessel hereafter so equipped by the Secretary of Transportation under the provisions of this section shall not be sold for a period of five years from the date the installation thereof is completed, unless it is sold for a price not less than the cost of the installation thereof and of any other work of reconditioning done at the same time plus an amount not less than $ 10 for each dead-weight ton of the vessel as computed before such reconditioning thereof is commenced. The date of the completion of such installation and the amount of the dead-weight tonnage of the vessel shall be fixed by the Secretary of Transportation: Provided further, That in fixing the minimum price at which the vessel may thus be sold the Secretary of Transportation may deduct from the aggregate amount above prescribed 5 per centum thereof per annum from the date of the installation to the date of sale as depreciation: And provided further, That no part of such fund shall be expended upon the re-conditioning of any vessel unless the Secretary of Transportation shall have first made a binding contract for a satisfactory sale of such vessel in accordance with the provisions

of this Act, or for the charter or lease of such vessels for a period of not less than five years by a capable, solvent operator; or unless the Secretary of Transportation is prepared and intends to directly put such vessel in operation immediately upon completion. Such vessel, in any of the enumerated instances, shall be documented under the laws of the United States and shall remain documented under such laws for a period of not less than five years from the date of the completion of the installation, and during such period it shall be operated only on voyages which are not exclusively coastwise.

SEC. 13. SALE OF PROPERTY OTHER THAN VESSELS (46 App. U.S.C. 872 (2004)). The Secretary of Transportation is further authorized to sell all property other than vessels transferred to him under section 4 upon such terms and conditions as the Secretary of Transportation may determine and prescribe.

SEC. 17. POSSESSION AND CONTROL OF TERMINAL EQUIPMENT AND FACILITIES (46 App. U.S.C. 875 (2004)). The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the Secretary of Transportation under this section to the War Department or the Navy Department for their needs; and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the Secretary of Transportation. None of such property shall be sold except as may be provided by law.

SEC. 19. POWER OF SECRETARY AND COMMISSION TO MAKE RULES AND REGULATIONS (46 App. U.S.C. 876 (2004)).

(a) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(1) To make all necessary rules and regulations to carry out the provisions of this Act;

And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(2) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transporta-

tion systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods, pricing, practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(3) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service.

(b) No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President.

(c) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in subsection (a)(3) of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in subsection (b) of this section, either the board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

(d) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

(e) The Commission may initiate a rule or regulation under subsection (a)(2) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under subsection (a)(2) of this section.

(f) In furtherance of the purposes of subsection (a)(2) of this section—

(1) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file

with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(2) the Commission may require a report or answers to questions to be made under oath;

(3) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(4) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than $5,000[4] for each day that the information is not provided.

(g) In proceedings under subsection (a)(2) of this section—

(1) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(2) the Commission may by subpoena compel the attendance of witnesses and production of books, papers, documents, and other evidence;

(3) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(4) for failure to supply information ordered to be produced or compelled by subpoena under paragraph (2), the Commission may— (A) after notice and an opportunity for hearing, suspend tariffs and service contracts of a common carrier or that common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member, or (B) assess a civil penalty of not more than $5,000[4] for each day that the information is not provided; and

(5) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(h) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

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[4] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(i) If the Commission finds that conditions that are unfavorable to shipping under subsection (a)(2) of this section exist, the Commission may—

(1) limit sailings to and from United States ports or the amount or type of cargo carried;

(2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

(3) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(4) impose a fee, not to exceed $1,000,000 per voyage; or

(5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(j) Upon request by the Commission—

(1) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, and shall collect any fees imposed by the Commission under subsection (i)(4) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(k) A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under subsection (g)(4) or (i)(2) of this section, or after its right to use another tariff or service contract has been suspended under those paragraphs, is subject to a civil penalty of not more than $50,000[5] for each day that it is found to be operating under a suspended tariff or service contract.

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[5] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(l) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

SEC. 21. COASTWISE LAWS EXTENDED TO ISLAND TERRITORIES AND POSSESSIONS (46 App. U.S.C. 877 (2004)).[6] From and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of the United States not now covered thereby, and the Secretary of Transportation is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: Provided, That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: Provided further, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago: And provided further, That the foregoing provisions of this section shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been established as herein provided and fix a date for the going into effect of the same: And provided further, That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same.

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[6] Note that the Act of June 14, 1934 (48 STAT. 963), continues to exclude America Samoa from the coastwise laws, as follows: "48 U.S.C. 1664 (2003). Coastwise shipping laws of United States inapplicable The provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port of the United States to another port of the United States shall not be applicable to commerce between [between] the islands of American Samoa or between those islands and other ports under the jurisdiction of the United States." Notwithstanding the Act of June 14, 1934, section 1 of Public Law 98-89, approved August 26, 1983 (97 STAT. 500, 586), enacted 46 U.S.C. 12105(b) to read as follows: "(b) 46 U.S.C. 12105(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef." See, however, the Opinion of the Chief, Carrier Rulings Branch, HQ 111581, July 25, 1991.

SEC. 27. JONES ACT - TRANSPORTATION OF MERCHANDISE BETWEEN POINTS IN UNITED STATES IN OTHER THAN DOMESTIC BUILT OR REBUILT AND DOCUMENTED VESSELS; INCINERATION OF HAZARDOUS WASTE AT SEA (46 App. U.S.C. 883 (2004)).[7]

No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of title 46, United States Code), or a subdivision of a State, shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States,[8] or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: Provided, That no vessel of more than 200 gross tons (as measured under chapter 143 of title 46, United States Code) having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: Provided further, That no vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: Provided further, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or here-

[7] The Jones Act is one of the U.S. cabotage laws that are set forth under **Cabotage**, page 319.

Note that the term "merchandise," has been held by the U.S. Customs Service to mean "merchandise" as defined under 19 U.S.C. 1401, as "goods, wares, and chattels of every description."

[8] See page 251 for the effect of 46 U.S.C. 12106, Coastwise Endorsements, on this requirement.

after recognized by the Surface Transportation Board for which routes rate tariffs have been or shall hereafter be filed with the Board when such routes are in part over Canadian rail lines and their own or other connecting water facilities: Provided further, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Transportation shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: Provided further, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is with the approval of the Board, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322)(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that

vessel, and is transported without charge for use in the handling of cargo in foreign trade; Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: Provided further, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to the date of the enactment of this proviso [enacted Nov. 16, 1979], and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: Provided, however, That the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982, for a corporation wholly owned by a citizen of the United

States; the term "citizen of the United States", as used in this provision, means a corporation as defined in sections 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(a) and (b)). The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States. Provided further, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise: Provided further, That for purposes of this section, the term "merchandise" includes valueless material: Provided further, That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone: *Provided further*, That the transportation of any platform jacket in or on a non-coastwise qualified launch barge, that was built before December 31, 2000, and has a launch capacity of 12,000 long tons or more, between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), shall not be deemed transportation subject to this section if the Secretary of Transportation makes a determination, in accordance with procedures established pursuant to this proviso that a suitable coastwise-qualified vessel is not available for use in the transportation and, if needed, launch or

installation of a platform jacket and; that the Secretary of Transportation shall adopt procedures implementing this proviso that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified vessels, which procedures shall, among other things, establish that for purposes of this proviso, a coastwise-qualified vessel shall be deemed to be not available only (1) if upon application by an owner or operator for the use of a non-coastwise qualified launch barge for transportation of a platform jacket under this section, which application shall include all relevant information, including engineering details and timing requirements, the Secretary promptly publishes a notice in the Federal Register describing the project and the platform jacket involved, advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties upon request, and requesting that information on the availability of coastwise-qualified vessels be submitted within 30 days after publication of that notice; and (2) if either (A) no information is submitted to the Secretary within that 30 day period, or (B) although the owner or operator of a coastwise-qualified vessel submits information to the Secretary asserting that the owner or operator has a suitable coastwise-qualified vessel available for this transportation, the Secretary, within 90 days of the date on which the notice is first published determines that the coastwise qualified vessel is not suitable or reasonably available for the transportation; and that, for the purposes of this proviso, the term "coastwise-qualified vessel" means a vessel that has been issued a certificate of documentation with a coastwise endorsement under section 12106 of title 46, United States Code, and the term "platform jacket" refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure), hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as "topsides").[9]

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[9] Section 417 of Public Law 108-293, approved August 9, 2004 (118 STAT. 1048), the Coast Guard and Maritime Transportation Act of 2004, substituted this proviso language for the previous thirteenth proviso enacted by Section 1(a) of Public Law 100-329, approved June 7, 1988 (102 STAT. 588), as amended. Section 1(b) of Public Law 100-329 provides: "(b)(1) For purposes of interpreting the proviso pertaining to transportation of any platform jacket by launch barge, as added by subsection (a) of this section to section 27 of the Merchant Marine Act, 1920, the Secretary of Transportation shall develop, maintain, and periodically update an inventory of launch barges with less than a launch capacity of 12,000 long tons that are qualified to engage in the coastwise trade. Each launch barge listed on such inventory shall be identified by its name, launch capacity, length, beam, depth, and other distinguishing characteristics. For each such launch barge,

REPORTS REQUIRED OF UNITED STATES VESSELS REBUILT ABROAD, PENALTY FOR FAILURE TO REPORT; MITIGATION OF PENALTY (46 App. U.S.C. 883a (2004))[10] If any vessel of more than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title documented under the laws of the United States, or last documented under such laws, is rebuilt, and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories) or its pos-

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the name and address of the person to whom inquiries may be made shall also be included on the inventory. A launch barge not listed on such inventory shall be deemed not to be 'a launch barge of lesser launch capacity identified by the Secretary of Transportation' within the meaning of such proviso to section 27 of the Merchant Marine Act, 1920. (2) Not later than 15 days after the date of enactment of this Act, the Secretary of Transportation shall publish in the Federal Register an initial inventory of launch barges developed and maintained in accordance with paragraph (1) of this subsection. (3) Not later than 60 days after the date of enactment of this Act, and periodically thereafter, the Secretary shall publish in the Federal Register a current inventory of launch barges developed, maintained, and updated in accordance with paragraph (1) of this subsection."

Section 213 of Public Law 107-295, approved November 25, 2002 (116 STAT. 2099), the Maritime Transportation Security Act of 2002, provides: "Sec. 213. Coastwise Trade Authorization.

"(a) In General.- Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other provision of law restricting the operation of a foreign-built vessel in the coastwise trade of the United States, the following vessels may, subject to subsection (b), engage in the coastwise trade of the United States to transport platform jackets from ports in the Gulf of Mexico to sites on the Outer Continental Shelf for completion of certain offshore projects as follows: (1) The H-114, H-627, I-650, and H-851 for the projects known as Atlantis, Thunderhorse, Holstein, and Mad Dog. (2) The I-600 for the projects known as Murphy Medusa, Dominion Devil's Tower, and Murphy Front Runner.

"(b) Priority for U.S.-Built Vessels.- Subsection (a) shall not apply in instances where a United States-built, United States documented vessel with the capacity to transport and launch the platform jacket involved or its components is available to transport that jacket or its components. In this section, the term ''platform jacket'' has the meaning given that term under the thirteenth proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended by subsection (c) of this section.

"(c) Definition.- The thirteenth proviso (pertaining to transportation by launch barge) of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), is amended by striking the period at the end and inserting the following: ''; and for the purposes of this proviso, the term 'platform jacket' includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as 'topsides') of a hydrocarbon development and production platform'."

[10] Enacted as section 2 of the Act of July 14, 1956 (70 STAT. 544), as amended.

sessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury, upon the first arrival of the vessel thereafter at a port within the customs territory of the United States, if rebuilt outside the United States, its Territories (not including trust territories), or its possessions, or, in any other case, upon completion of the rebuilding, in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $ 200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7)

REGULATIONS (46 App. U.S.C. 883b (2004)).[11] The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

SEC. 27A. BOWATERS AMENDMENT - CORPORATION AS CITIZEN; FISHERIES AND TRANSPORTATION OF MERCHANDISE OR PASSENGERS BETWEEN POINTS IN UNITED STATES; PARENT AND SUBSIDIARY CORPORATIONS; DOMESTIC BUILT VESSELS; CERTIFICATE; SURRENDER OF DOCUMENTS ON CHANGE IN STATUS (46 App. U.S.C. 883-1 (2004)). Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 9 and 37 of the Shipping Act, 1916, as amended (46 U. S. C. 808, 835), section 27 of the Merchant Marine Act of 1920, as amended (46 U. S. C. 883), Revised Statutes, section 4370 (46 U. S. C. 316), and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) a majority of the officers and directors of such corporation are citizens of the United States;

(b) not less than 90 per centum of the employees of such corporation are residents of the United States;

(c) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

[11] Enacted as section 3 of the Act of July 14, 1956 (70 STAT. 544).

(e) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations.

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic noncontiguous trades from any such corporation to a carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, United States Code, which otherwise qualifies as a citizen under section 2 of the Shipping Act, 1916, as amended (46 U. S. C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term "parent" means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and (2), the term "subsidiary" means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a "parent" or "subsidiary" hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A "parent" or "sub-

sidiary" of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such "parent" or "subsidiary" complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of $200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 7 of title 46, United States Code.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury.

SEC. 28. CHARGES FOR TRANSPORTATION SUBJECT TO INTERSTATE COMMERCE PROVISIONS (46 App. U.S.C. 884 (2004)). No carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary of Transportation is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, he shall certify this fact to the Surface Transportation Board, and the Board may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges

for the transportation by rail of persons and property transported from, or to be transported to such ports, for such length of time and under such terms and conditions as he may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the Board whenever the Secretary of Transportation is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the Board.

SEC. 29. ASSOCIATION OF MARINE INSURANCE COMPANIES; APPLICATION OF ANTITRUST LAWS (46 App. U.S.C. 885 (2004)).

(a) Whenever used in this section—

(1) The term "association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term "marine insurance companies" means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the "anti-trust laws" as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

SEC. 33. JONES ACT - RECOVERY FOR INJURY TO OR DEATH OF SEAMAN (46 App. U.S.C. 688 (2004)).

(a) **Application of Railway Employee Statutes; Jurisdiction.** Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) **Limitation for Certain Aliens; Applicability in Lieu of Other Remedy.**

(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

SEC. 36. PARTIAL INVALIDITY (46 App. U.S.C. 887 (2004)). If any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 37. DEFINITIONS (46 App. U.S.C. 888 (2004)). When used in this Act, unless the context otherwise requires, the terms "person," "vessel," "documented under the laws of the United States," and "citizen of the United States" shall have the meaning assigned to them by sections 1 and 2 of the "Shipping Act, 1916," as amended; the term "board" means the United States Shipping Board; and the term "alien" means any person not a citizen of the United States.

SEC. 39. SHORT TITLE (46 App. U.S.C. 889 (2004)). This Act may be cited as the Merchant Marine Act, 1920.

CABOTAGE[1]

JONES ACT - TRANSPORTATION OF MERCHANDISE. See Section 27 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883), page 307.

TRANSPORTATION OF PASSENGERS. THE ACT OF JUNE 19, 1886, AS AMENDED. (46 App. U.S.C. 289 (2004)). No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of two hundred dollars[2] for each passenger so transported and landed.

COASTWISE TRADE VESSEL REQUIREMENT. 46 U.S.C. 3704 (2004). Coastwise trade vessels.

A segregated ballast tank, a crude oil washing system, or an inert gas system, required by this chapter or a regulation prescribed under this chapter, on a vessel entitled to engage in the coastwise trade under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), shall be installed in the United States (except the trust territories). A vessel failing to comply with this section may not engage in the coastwise trade.

BOWATERS AMENDMENT - TRANSPORTATION OF MERCHANDISE. See Section 27A of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883-1), page 313.

PUERTO RICO PASSENGER SHIP ACT. PUBLIC LAW 98-563 (46 App. U.S.C. 289c (2004)).

(a) **Authorization of Transportation.** Notwithstanding any other provision of law, passengers may be transported on passenger vessels not qualified to engage in the coastwise trade between ports in Puerto Rico and other ports in the United States, directly or by way of a foreign port, except as otherwise provided in this Act.

(b) **Notification by Secretary; Termination of Services.**

(1) Upon a showing to the Secretary of Transportation, by the vessel owner or charterer, that service aboard a United States passenger vessel qualified to engage in the coastwise trade is being offered or advertised

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[1] Note the applicable Cabotage regulations set forth in 19 CFR 4.80, that appear on page 328.

Note, also, that American Samoa is excluded from the application of the coastwise laws by 48 U.S.C. 1664, set forth as a footnote on page 306.

[2] Note that pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483 this amount is now $300. See 19 CFR 4.80(b)(2) set forth on page 328.

pursuant to a certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator under this Act shall expire on the 270th day following the Secretary's notification.

(2) Upon a showing to the Secretary, by the vessel owner or charterer, that service aboard a United States passenger vessel not qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each foreign-flag vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator of a foreign-flag vessel transporting passengers under authority of this Act shall expire on the 270th day following the Secretary's notification.

(c) **Extension of Termination Period.** If, at the expiration of the 270-day period specified in subsections (b)(1) and (b)(2) of this Act, the vessel that has been offering or advertising service pursuant to a certificate described in either of those subsections has not entered the coastwise passenger trade between ports in Puerto Rico and other ports in the United States, then the termination of service required by either of those subsections shall not be required until 90 days following the entry into that trade by the United States vessel.

(d) **Reinstatement of Coastwise Privileges.** Any coastwise privileges granted in this Act that expire under subsection (b)(1) or (b)(2) shall be reinstated upon a determination by the Secretary that the service on which the expiration of the privileges was based is no longer available.

(e) **"Passenger Vessel" Defined.** For the purposes of subsections (b)(1) and (b)(2), the term "passenger vessel" means any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this Act.

VESSELS THAT MAY ENGAGE IN DREDGING [3] (46 App. U.S.C. 292 (2004)).

[3] As amended by Section 5501(a)(1) of Public Law 102-587, approved November 4, 1992 (106 STAT. 5084), the Oceans Act of 1992. Section 5501(a)(2) provides:

(a) **In General.** Except as provided in subsection (b), a vessel may engage in dredging in the navigable waters of the United States only if—

(1) the vessel meets the requirements of section 27 of the Merchant Marine Act, 1920 and section 2 of the Shipping Act, 1916 for engaging in the coastwise trade;

(2) when chartered, the charterer of the vessel is a citizen of the United States under section 2 of the Shipping Act, 1916[4] for engaging in the coastwise trade; and

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"(2) The amendment made by paragraph (1) does not apply to --

"(A)(i) the vessel STUYVESANT, official number 648540; (ii) any other hopper dredging vessel documented under chapter 121 of title 46, United States Code before the effective date of this Act and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest; however, this exception expires on December 3, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs; and (iii) any other non-hopper dredging vessel documented under chapter 121 and chartered to Stuyvesant Dredging Company or to an entity in which it has an ownership interest, as is necessary (a) to fulfill dredging obligations under a specific contract, including any extension periods; or (b) as temporary replacement capacity for a vessel which has become disabled but only for so long as the disability shall last and until the vessel is in a position to fully resume dredging operations; however, this exception expires on December 8, 2022 or when the vessel STUYVESANT ceases to be documented under chapter 121, whichever first occurs;

"(B) the vessel COLUMBUS, official number 590658, except that the vessel's certificate of documentation shall be endorsed to prohibit the vessel from engaging in the transportation of merchandise (except valueless material), including dredge material of value, between places within the navigable waters of the United States;

"(C) a vessel that is engaged in dredged material excavation if that excavation is not more than a minority of the total cost of the construction contract in which the excavation is a single, integral part, and the vessel is-- (i) built in the United States; (ii) a non-self-propelled mechanical clamshell dredging vessel; and (iii) owned or chartered by a corporation that had on file with the Secretary of Transportation, on August 1, 1989, the certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883-1); or

"(D) any other documented vessel engaged in dredging and time chartered to an entity that, on August 1, 1989, was, and has continuously remained, the parent of a corporation that had on file with the Secretary of Transportation on August 1, 1989, a certificate specified in section 27A of the Merchant Marine Act, 1920 (46 App. U.S.C. 883-1) if the vessel is -- (i) not engaged in a federally funded navigation dredging project; and (ii) engaged only in dredging associated with, and integral to, accomplishment of that parent's regular business requirements."

Note that Section 5209(a) of Public Law 102-587, as amended by Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3439), the Coast Guard Authorization Act of 1998 (46 U.S.C. 2101 note), provides: "(b) The following vessels are deemed not to be a tank vessel for the purposes of any law: . . . (3) A vessel . . . (B) engaged in dredging operations which transfers fuel to other vessels engaged in the same dredging operation without charge."

For restrictions on the disposal of Corps of Engineers' dredges, see 40 U.S.C. 556, Disposal of dredge vessels, page 399.

[4] Section 2 of the Shipping Act, 1916 is set forth at page 236.

(3) for a vessel that is at least 5 net tons, the vessel is documented under chapter 121 of title 46, United States Code, with a coastwise endorsement.

(b) **Exception.** A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

(c) **Penalty.** When a vessel is operated in knowing violation of this section, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

USE OF FOREIGN VESSELS IN UNITED STATES PORTS. (46 App. U.S.C. 316 (2004)).

(a) **Towing United States Vessels; Fines and Penalties.** It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels[5] and not having in force a certificate of documentation issued under section 12106 of title 46, United States Code, to tow any vessel other than a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places, or to tow any vessel transporting valueless material or any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $ 250 nor more than $ 1,000[6], which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $ 50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

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[5] "A citizen of the United States within the meaning of the laws respecting the documentation of vessels," is set forth in 46 U.S.C. 12102(a), at page 245. 46 U.S.C. 12106 is set forth at page 251.

[6] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(b) **"Person" Defined.** The term "person" as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

(c) **Foreign Railroad Companies using Ferries, Tugboats, or Towboats.** Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: Provided, That except as authorized by section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1934 edition, Supp. IV, title 46, sec. 883), such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same.

(d) **Salvaging Operations by Foreign Vessels.** No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of the Act of June 19, 1878, as amended (U. S. C., 1934 edition, title 46, sec. 725): Provided, however, That if, on investigation, the Secretary of Commerce[7] is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to the Act of June 7, 1918, as amended (U. S. C., 1934 edition, Supp. IV, title 46, sec. 288), is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.

(e) **Operations Permitted by Treaty.** Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by article II of the treaty between the

[7] The term "Secretary of Commerce" should be read to mean the Commissioner of Customs pursuant to sections 101 to 104 of Reorganization Plan No. 3 of 1946 (60 STAT. 1097).

United States and Great Britain "concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage" signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico "to facilitate assistance to and salvage of vessels in territorial waters," signed at Mexico City, June 13, 1935 (49 Stat. 3359).

VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE

There are two provisions of law addressing this situation. Section 1119 of Public Law 106-554, approved December 21, 2000 (114 STAT. 2763A-209), the Consolidated Appropriations Act, 2001, and Section 404 of Public Law 107-295, approved November 25, 2002 (116 STAT. 2114), the Maritime Transportation Security Act of 2002. These provisions follow:

SEC. 404. VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE. (46 App. U.S.C. 316a (2004)).

(a) **In General.**—Except in the case of a vessel in distress, only a vessel of the United States (as that term is defined in section 2101 of title 46, United States Code) may perform the following escort vessel operations within the navigable waters of the United States:

(1) Operations that commence or terminate at a port or place in the United States.

(2) Operations required by United States law or regulation.

(3) Operations provided in whole or in part within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to those facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) **Addition to Towing Vessel.**—In the case of a vessel being towed under section 4370 of the Revised Statutes of the United States (46 App. U.S.C. 316(a)), an escort vessel is any vessel assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

(c) **Relationship to Other Law.**—Nothing in this section shall affect or be construed or interpreted to affect or modify section 4370 of the Revised Statutes of the United States (46 U.S.C. 316(a)).

(d) **Definition.**—In this section, the term ''escort vessel'' means any vessel that is assigned and dedicated to assist another vessel, whether or not tethered to that vessel, solely as a safety precaution to assist in controlling the speed or course of the assisted vessel in the event of a steering or propulsion equipment failure, or any other similar emergency cir-

cumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation.

(e) **Penalty.**—A person violating this section is liable to the United States Government for a civil penalty of not more than $10,000[8] for each day during which the violation occurs.

SEC. 1119. VESSEL ESCORT OPERATIONS AND TOWING ASSISTANCE.

(a) IN GENERAL. Except in the case of a vessel in distress, only a vessel of the United States (as that term is defined in section 2101 of title 46, United States Code) may perform the following vessel escort operations and vessel towing assistance within the navigable waters of the United States:

(1) Operations or assistance that commences or terminates at a port or place in the United States.

(2) Operations or assistance required by United States law or regulation.

(3) Operations provided in whole or in part for the purpose of escorting or assisting a vessel within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to such facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

(b) DEFINITIONS. Unless otherwise defined by a provision of law or regulation requiring that towing assistance or escort be rendered to vessels transiting United States waters or navigation facilities, for purposes of this section—

(1) the term "towing assistance" means operations by an assisting vessel in direct contact with an assisted vessel (including hull-to-hull, by towline, including if only pre-tethered, or made fast to that vessel by 1 or more lines) for purposes of exerting force on the assisted vessel to control or to assist in controlling the movement of the assisted vessel; and

(2) the term "escort operations" means accompanying a vessel for the purpose of providing towing or towing assistance to the vessel.

WRECKED VESSELS ACT (46 App. U.S.C. 14 (2004)).

The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall

[8] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

be proved to the satisfaction of the Secretary of Transportation, if he deems it necessary, through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salved value of the vessel: Provided, That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: Provided further, That if any of the material matters of fact sworn to or represented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackle, apparel, and furniture thereof.

SEC. 1117. USE OF FOREIGN REGISTRY OIL SPILL RESPONSE VESSELS.[9] Notwithstanding any other provision of law, an oil spill response vessel documented under the laws of a foreign country may operate in waters of the United States on an emergency and temporary basis, for the purpose of recovering, transporting, and unloading in a United States port oil discharged as a result of an oil spill in or near those waters, if—

(1) an adequate number and type of oil spill response vessels documented under the laws of the United States cannot be engaged to recover oil from an oil spill in or near those waters in a timely manner, as determined by the Federal On-Scene Coordinator for a discharge or threat of a discharge of oil; and

(2) that foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of that foreign country under this section.

VESSEL TO TRANSPORT LNG TO PUERTO RICO.[10]

(f) **Certificate of Documentation for a Liquefied Gas Tanker.**—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) and any agreement with the United States Government, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquefied natural gas or liquefied petroleum gas to the Commonwealth of Puerto Rico from other ports in the United States, if the vessel—

(1) is a foreign built vessel that was built prior to the date of enactment of this Act; or

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[9] Section 1117 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3973).

[10] Section 1120(f) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3978).

(2) is documented under chapter 121 of title 46, United States Code, before the date of enactment of this Act, even if the vessel is placed under a foreign registry and subsequently redocumented under that chapter for operation under this section.

46 APP. U.S.C. 446b (2004). SAILING SCHOOL VESSEL WITHOUT STATUS OF MERCHANT VESSEL OR VESSEL ENGAGED IN TRADE OR COMMERCE. For the purposes of section 3 of the Act of February 17, 1898 (46 U.S.C. 291), section 11101(a)-(c) of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), a sailing school vessel shall not be deemed to be a merchant vessel or a vessel engaged in trade or commerce.

MISCELLANEOUS PROVISIONS:

46 App. U.S.C. 289a (2004). Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay. Until such time as passenger service shall be established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Secretary of Commerce[11] is authorized in his discretion to issue annually permits to Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 8 of the Act of June 19, 1886, as amended by section 2 of the Act of February 17, 1898.

46 App. U.S.C. 289b (2004). Transportation of passengers and merchandise in Canadian vessels between points in Alaska and the United States. Notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation until the Secretary of Transportation determines that United States-flag service is available to provide such transportation.

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[11] The term "Secretary of Commerce" should be read to mean the Commissioner of Customs pursuant to sections 101 to 104 of Reorganization Plan No. 3 of 1946 (60 STAT. 1097).

CABOTAGE REGULATIONS

19 CFR 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise license or, where appropriate, a Great Lakes license endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term "citizen" for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR 67.3.

(b) Penalties for violating coastwise laws. (1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the port director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 883).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $ 300 for each passenger so transported and landed (46 U.S.C. App. 289, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990).

(c) Any vessel of the United States, whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the United States embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passengers for a foreign port, in ballast, or to transport certain articles in accordance with @ 4.93. Cargo laden at a foreign port may be retained onboard during such movements. Furthermore, certain barges of United States or foreign flag may transport transferred merchandise between points in the United States embraced within the coastwise laws, excluding transportation between the continental United States and a noncontiguous point in the United States embraced within the coastwise laws, in accordance with @ 4.81a.

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 883-1) shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license, or where appropriate, a Great Lakes license endorsement. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to Part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 through 923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, shall have the right to engage in such trade if it thereafter has been sold or transferred foreign in whole or in part or placed under foreign registry, or, if of more than 500 gross tons, has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States, its Territories (not including trust territories), or its possessions. However, no rebuilt vessel shall be deemed to have lost its coastwise privileges within the meaning of the above if rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before July 5, 1960, if the work of rebuilding commenced not later than 24 months after such date.

(f) No foreign-built vessel owned and documented as a vessel of the United States prior to February 1, 1920, by a citizen nor one owned by the United States on June 5, 1920, and sold to and owned by a citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership (section 22, Merchant Marine Act, of June 5, 1920; 46 U.S.C. 13). No foreign-built vessel which is owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the United States on June 5, 1920, shall engage in the coastwise trade or the American fisheries. No foreign-built vessel which has been sold, leased, or chartered by the Secretary of Commerce to any citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership, lease, or charter (section 9 of the

Act of Sept. 7, 1916, as amended, 46 U.S.C. 808). A vessel engaged in taking out fishing parties for hire, unless it intends to proceed to a foreign port, is considered to be engaged in the coastwise trade and not the fisheries.

(g) Certain vessels not documented under the laws of the United States which are acquired by or made available to the Secretary of Commerce may be documented under section 3 of the Act of August 9, 1954 (50 U.S.C. 198). Such vessels shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of section 3(c) of the said Act.

(h) A vessel which is at least 50 percent owned by a citizen as defined in 46 CFR subpart 68.05, and which, except for citizenship requirements, is otherwise entitled to be documented with a coastwise endorsement, may be documented with a limited coastwise endorsement, provided the vessel is owned by a not-for-profit oil spill response cooperative or by one or more members of such a cooperative who dedicate the vessel to the use of the cooperative (46 U.S.C. 12106(d)). Notwithstanding 46 U.S.C. App. 883, a vessel may be documented with such a limited endorsement even if formerly owned by a not-for-profit oil spill response cooperative or by one or more members thereof, as long as the citizenship criteria of 46 CFR subpart 68.05 are met. A vessel so documented may operate on the navigable waters of the United States or in the Exclusive Economic Zone only for the purpose of training for oil spill cleanup operations; deploying equipment, supplies and personnel for cleanup operations; and recovering and/or transporting oil discharged in a spill. Such vessel may also engage in any other employment for which a registry, fishery, or Great Lakes endorsement is not required, and may qualify to operate for other purposes by meeting the applicable requirements of 46 CFR part 67.

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see @ 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $ 500 for each port at which it arrives without the proper Certificate of Documentation. If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

ADMINISTRATIVE PROCESS FOR SMALL PASSENGER VESSEL JONES ACT WAIVERS[1]

SEC. 501. FINDINGS.

The Congress finds that—

(1) current coastwise trade laws provide no administrative authority to waive the United-States-built requirement of those laws for the limited carriage of passengers for hire on vessels built or rebuilt outside the United States;

(2) requests for such waivers require the enactment of legislation by the Congress;

(3) each Congress routinely approves numerous such requests for waiver and rarely rejects any such request; and

(4) the review and approval of such waiver requests is a ministerial function which properly should be executed by an administrative agency with appropriate expertise.

SEC. 502. ADMINISTRATIVE WAIVER OF THE COASTWISE TRADE LAWS.

Notwithstanding sections 12106 and 12108 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect-

(1) United States vessel builders; or

(2) the coastwise trade business of any person who employs vessels built in the United States in that business.

SEC. 503. REVOCATION.

(a) Revocation for Fraud. .—The Secretary shall revoke a certificate or an endorsement issued under section 502, after notice

[1] Enacted as Title V of Public Law 105 - 383, approved November 13, 1998 (112 STAT. 3411, 3445), the Coast Guard Authorization Act of 1998. Amended by Section 207(c) of Public Law 107-295, approved November 25, 2002 (116 STAT. 2097), the Maritime Transportation Security Act of 2002.

and an opportunity for a hearing, if the Secretary determines that the certificate or endorsement was obtained by fraud.

(b) Application with Criminal Penalties.—Nothing in this section affects—

(1) the criminal prohibition on fraud and false statements provided by section 1001 of title 18, United States Code; or

(2) any other authority of the Secretary to revoke a certificate or endorsement issued under section 502 of this Act.

SEC. 504. DEFINITIONS.

In this title:

(1) SECRETARY.–The term "Secretary" means the Secretary of Transportation.

(2) ELIGIBLE VESSEL.–The term "eligible vessel" means a vessel that-

(A) was not built in the United States and is at least 3 years of age; or

(B) if rebuilt, was rebuilt outside the United States at least 3 years before the certification required under section 502, if granted, would take effect.

(3) SMALL PASSENGER VESSEL; UNINSPECTED PASSENGER VESSEL; PASSENGER FOR HIRE.–The terms "small passenger vessel", "uninspected passenger vessel", and "passenger for hire" have the meaning given such terms by section 2101 of title 46, United States Code.

SEC. 505. SUNSET.[2]

[2] Section 505 was repealed by Section 207(c)(1) of Public Law 107-295, approved November 25, 2002 (116 STAT. 2097), the Maritime Transportation Security Act of 2002. Section 207(c)(1) further provides: "The repeal of section 505 shall have no effect on the validity of any certificate of endorsement issued under section 502 of the Act."

WAIVER OF NAVIGATION AND VESSEL INSPECTION LAWS[1]

The head of each department or agency responsible for the administration of the navigation and vessel-inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense. The head of such department or agency is authorized to waive compliance with such laws to such extent and in such manner and upon such terms as he may prescribe, either upon his own initiative or upon the written recommendation of the head of any other agency, whenever he deems that such action is necessary in the interest of national defense.

Sec. 2. The authority granted by this Act shall terminate at such time as the Congress by concurrent resolution or the President may designate.

[1] Public Law 81-891, approved December 27, 1950 (64 STAT. 1120) (Note preceding 46 App. U.S.C. 1).

STATUTORY WAIVERS OF THE JONES ACT

FOREIGN-BUILT TANKERS. Section 214 of Public Law 107-295 (116 STAT. 2100), provides:

"Sec. 214. Jones Act Waiver for Delayed Vessel Delivery.

(a) In General.—Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), section 8 of the Act of June 19, 1886 (24 Stat. 81, chapter 421; 46 U.S.C. App. 289), and sections 12106 and 12108 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for a self-propelled tank vessel not built in the United States as provided in this section.

(b) Waiver Requirements.—The Secretary may not grant a waiver under subsection (a) unless—

(1) the person requesting the waiver is a party to a binding legal contract, executed within 24 months after the date of enactment of this Act,[1] with a United States shipyard for the construction in the United States of a self-propelled tank vessel;

(2) the Secretary determines, on the basis of the terms of the contract, the parties to the contract, the actions of those parties in connection with the contract, and the circumstances under which the contract was executed, that the parties are making a bona fide effort to construct in the United States and deliver a self-propelled tank vessel in a timely manner;

(3) the vessel for which the waiver is granted will meet otherwise applicable requirements of law regarding ownership and operation for vessels employed in the coastwise trade;

(4) the shipyard owns a facility with sufficient infrastructure to construct the self-propelled tank vessel;

(5) the self-propelled tank vessel that is the subject of that contract will not be available for use on the contracted delivery date because of a delay in the construction or delivery of the vessel due to unusual circumstances; and

(6) the Secretary determines that no other suitable tank vessel or vessels, or tank vessel capacity, that would not require such a waiver are reasonably available to the person requesting the waiver.

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[1] Public Law 107-295, was enacted on November 25, 2002.

Prior to making the determination under paragraph (6), the Secretary shall provide public notice of a waiver request and shall provide persons who may have such suitable tank vessels an opportunity to indicate to the requester and the Secretary the particulars of available tank vessels or tank vessel capacity not requiring a waiver under this section.

(c) Limitations.—

(1) *Capacity of Tank Vessel.*—The Secretary may not grant a waiver under subsection (a) for a self-propelled tank vessel that has substantially greater capacity than the vessel described in subsection (b)(1).

(2) *Maximum Duration of Waiver.*—The Secretary may not grant a waiver under subsection (a) for a period prior to, or extending more than 48 months after, the original contract delivery date of the vessel described in subsection (b)(1).

(3) *Maximum Number of Waivers.*—The Secretary may grant waivers under subsection (a) for not more than 3 selfpropelled tank vessels.

(d) Determination of Waiver.—

(1) *In General.*—A waiver grant under subsection (a) shall terminate on the earlier of—

(A) the date established by the Secretary as its expiration date under subsection (c)(2); or

(B) the date that is 60 days after the day on which the vessel described in subsection (b)(1) is delivered.

(2) *Termination for International Delay.*—The Secretary may terminate a waiver granted under subsection (a) at any time if the Secretary determines that the delay in the construction or delivery of the vessel described in subsection (b)(1) is no longer due to unusual circumstances.

(e) Suspension of Waiver.—The Secretary may suspend a waiver granted under subsection (a) for any period of time if the Secretary determines that a suitable tank vessel, or suitable tank vessel capacity, that would not require such a waiver is reasonably available to the person requesting the waiver.

(f) Contracted-For Vessel Delivery.—If the Secretary grants a waiver under subsection (a), the shipyard constructing the vessel described in subsection (b)(1) shall deliver the vessel, constructed in accordance with the terms of the contract, as soon as practicable after the delivery date established by the contract.

(g) Unusual Circumstances Defined.—In this section, the term ''unusual circumstances'' means bankruptcy of the shipyard or Acts of God (other than ordinary storms or inclement weather conditions), labor strikes, acts of sabotage, explosions, fires, or vandalism, and similar circumstances beyond the control of the parties to the contract which prevent commencement of construction, or timely delivery or completion, of a vessel.''

STAD AMSTERDAM. Section 604 of Public Law 108-293, approved August 9, 2004 (118 STAT. 1052), provides:

"SEC. 604. OPERATION OF VESSEL STAD AMSTERDAM.

"(a) In General.—Notwithstanding section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), and the ruling by the Acting Director of the International Trade Compliance Division of the Customs Service on May 17, 2002 (Customs Bulletins and Decisions, Vol. 36, No. 23, June 5, 2002), the vessel STAD AMSTERDAM (International Maritime Organization number 9185554) shall be authorized to carry within United States waters and between ports or places in the United States individuals who are not directly and substantially connected with the operation, navigation, ownership, or business of the vessel, who are friends, guests, or employees of the owner of the vessel, and who are not actual or prospective customers for hire of the vessel.

"(b) Limitation.—This section does not authorize the vessel STAD AMSTERDAM—

"(1) to be used to carry individuals for a fare or to be chartered on a for hire basis in the coastwise trade; or

"(2) to carry individuals described in subsection (a) within United States waters and between ports or places in the United States for more than 45 calendar days in any calendar year.

"(c) Revocation.—The Secretary of the department in which the Coast Guard is operating shall revoke the authorization provided by subsection (a) if the Secretary determines that the STAD AMSTERDAM has been operated in violation of the limitations imposed by subsection (b)."

MERCHANT SHIP SALES ACT OF 1946[1]

SEC. 2. DECLARATION OF POLICY (50 U.S.C. App. 1735 (2004)).

(a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times; (2) capable of serving as a naval and military auxiliary in time of war or national emergency; (3) owned and operated under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine.

SEC. 3. DEFINITIONS (50 U.S.C. App. 1736 (2004)).

As used in this Act the term—

(a) "Secretary" means the Secretary of Transportation.

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Secretary, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

SEC. 5. CHARTER OF VESSELS (50 U.S.C. App. 1738 (2004)).

(c) **Laws Applicable to Charter Hire.** The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

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[1] The term "Citizen of the United States" used throughout the Merchant Ship Sales Act, 1946, is defined in Section 3(g) of that Act. Section 3(g) makes reference to Section 2 of the Shipping Act, 1916. Section 2 is located at page 236.

(e) **Proceedings and Findings; Extension of Charters.**

(1) Notwithstanding the provisions of sections 11 and 14 of this Act, as amended, war-built dry-cargo vessels owned by the United States on or after June 30, 1950, may be chartered pursuant to this Act for bareboat use in any service which, in the opinion of the Maritime Administration, is required in the public interest and is not adequately served, and for which privately owned American flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. No charters shall be made by the Secretary of Transportation under authority of this subsection until the Maritime Administration shall have given due notice to all interested parties and shall have afforded such parties an opportunity for a public hearing on such charters and shall have certified its findings to the Secretary of Transportation. The Secretary of Transportation is authorized to include in such charters such restrictions and conditions as the Maritime Administration determines to be necessary or appropriate to protect the public interest in respect of such charters and to protect privately owned vessels against competition from vessels chartered under this section: Provided, however, That all such charters shall contain a provision that they will be reviewed annually by the Maritime Administration with recommendations to the Secretary of Transportation, for the purpose of determining whether conditions exist justifying continuance of the charters under the provisions of this subsection.

(2) A charter existing on June 30, 1950, with respect to a war-built dry-cargo vessel may be extended to October 31, 1950, if application is made within ten days after the enactment hereof for the charter of such vessel under subsection (e) of this section and if the Secretary of Transportation deems such extension is justified in accordance with the provisions of section 5(e)(1): Provided, however, That a new voyage under such extended charter shall not be begun after October 31, 1950, unless it has been determined prior to such date, in accordance with the procedure set forth in this subsection, that the continued use of the vessel in the service is required. The Maritime Administration shall conduct all hearings on applications made under the paragraph immediately upon receipt thereof and shall promptly certify its findings to the Secretary of Transportation, provided that all such certifications shall be made not later than October 31, 1950.

(f) **Charter of Passenger Vessels.**

(1) Notwithstanding the provisions of sections 11 and 14 of this Act, as amended, the Secretary of Transportation may charter any passenger vessel, whether or not war-built, owned by the United States on or after June 30, 1950, pursuant to title VII of the Merchant Marine Act, 1936, as amended, and may charter any war-built passenger vessel owned by the United States for use in the domestic trade of the United States,

under the conditions prescribed for the charter of war-built cargo vessels in subsection (e) of this section.

(2) Charters existing on June 30, 1950, with respect to passenger vessels may be continued until December 31, 1951, or until expiration thereof by the terms of their provisions.

SEC. 8. EXCHANGE OF VESSELS (50 U.S.C. App. 1741 (2004)).

(d) **Transfer of Substitute Vessels.** In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Secretary, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Secretary to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States binding upon the old vessel, as the Secretary may prescribe.

SEC. 11. NATIONAL DEFENSE RESERVE FLEET (50 U.S.C. App. 1744 (2004)).

Section 11 provides for the National Defense Reserve Fleet, and is set forth below under that heading.

SEC. 12. RECONVERSION OF VESSELS FOR NORMAL COMMERCIAL OPERATION; APPLICABILITY OF OTHER LAWS TO CONSTRUCTION CONTRACTS; COASTWISE TRADE; DISPOSITION OF MONEYS; GREAT LAKES TRADE (50 U.S.C. App. 1745 (2004)).

(a) The Secretary is authorized to reconvert or restore for normal operation in commercial services and to convert for operation on the Great Lakes, including the Saint Lawrence River and Gulf, and their connecting waterways, including removal of national defense or war-service features, any vessel authorized to be sold or chartered under this Act. The Secretary is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type.

NATIONAL DEFENSE RESERVE FLEET READY RESERVE FORCE

BASIC STATUTORY AUTHORITY.

SEC. 11. NATIONAL DEFENSE RESERVE FLEET (50 U.S.C. App. 1744 (2004)).

(a) **Fleet Components.** The Secretary of Transportation shall maintain a National Defense Reserve Fleet, including any vessel assigned by the Secretary to the Ready Reserve Force component of the fleet, consisting of those vessels owned or acquired by the United States Government that the Secretary of Transportation, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the fleet.

(b)[1] **Permitted Uses.** Except as otherwise provided by law, a vessel in the fleet may be used—

(1) for an account of an agency of the United States Government in a period during which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); or

(2) on the request of the Secretary of Defense, and in accordance with memoranda of agreement between the Secretary of Transportation and the Secretary of Defense, for—

(A) testing for readiness and suitability for mission performance;

(B) defense sealift functions for which other sealift assets are not reasonably available; and

(C) support of the deployment of the United States armed forces in a military contingency, for military contingency operations, or for civil contingency operations upon orders from the National Command Authority;

(3) for otherwise lawfully permitted storage or transportation of non-defense-related cargo as directed by the Secretary of Transportation with the concurrence of the Secretary of Defense; or

(4) for training purposes to the extent authorized by the Secretary of Transportation with the concurrence of the Secretary of Defense.

(c) **Ready Reserve Force Management.**

(1) ***Minimum Requirements.*** To ensure the readiness of vessels in the Ready Reserve Force component of the National Defense Reserve Fleet, the Secretary of Transportation shall, at a minimum—

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[1] Section 6205(a) of Public Law 102-587, approved November 4, 1992 (106 STAT. 5094), reinstated subsection (b) and provides: "The effective date of this subsection is December 12, 1989."

(A) maintain all of the vessels in a manner that will enable each vessel to be activated within a period specified in plans for mobilization of the vessels;

(B) activate and conduct sea trials on each vessel at least once every twenty-four months;

(C) maintain in an enhanced activation status those vessels that are scheduled to be activated within 5 days;

(D) locate those vessels that are scheduled to be activated within 5 days near embarkation ports specified for those vessels; and

(E) notwithstanding section 2109 of title 46, United States Code, have each vessel inspected by the Secretary of the department in which the Coast Guard is operating to determine if the vessel meets the safety standards that would apply under part B of subtitle II of that title if the vessel were not a public vessel.

(2) ***Vessel Managers.***

(A) *Eligibility for Contract.* A person, including a shipyard, is eligible for a contract for the management of a vessel in the Ready Reserve Force if the Secretary determines, at a minimum, that the person has—

(i) experience in the operation of commercial-type vessels or public vessels owned by the United States Government; and

(ii) the management capability necessary to operate, maintain, and activate the vessel at a reasonable price.

(B) *Contract Requirement.* The Secretary of Transportation shall include in each contract for the management of a vessel in the Ready Reserve Force a requirement that each seaman who performs services on any vessel covered by the contract hold the license or merchant mariner's document that would be required under chapter 71 or chapter 73 of title 46, United States Code for a seaman performing that service while operating the vessel if the vessel were not a public vessel.

(e) **Exemption of Fleet from 46 U.S.C. 3703a.** Vessels in the National Defense Reserve Fleet are exempt from the provisions of section 3703a of title 46, United States Code.[2]

CERTAIN LAWS AFFECTING THE NATIONAL DEFENSE RESERVE FLEET[3]

HATTIESBURGH VICTORY/COAST GUARD AUTHORIZATION ACT OF 1998. Public Law 105–383, approved November 13,

[2] 46 U.S.C. 3703a, (2003). Tank Vessel Construction Standards, provides for the so-called double hull requirement. See page 497.

[3] The basic vessel disposal authority of the Maritime Administration is set forth in 40 U.S.C. 548. See page 398.

1998 (112 STAT. 3441), contains the following provision:

"Sec. 427. Authority to Convey National Defense Reserve Fleet Vessels.

(a) **Authority to Convey.**-Notwithstanding any other law, the Secretary of Transportation (referred to in this section as "the Secretary) may convey all right, title, and interest of the Federal Government in and to either or both of the vessels . . . S.S. HATTIESBURG VICTORY (United States official number 248651) to The Victory Ship, Inc., located in Tampa, Florida (in this section referred to as the "recipient"), and the recipient may use each vessel conveyed only as a memorial to the Victory class of ships.

(b) **Terms of Conveyance—**

(1) *Delivery of Vessel*.-In carrying out subsection (a), the Secretary shall deliver a vessel-

(A) at the place where the vessel is located on the date of conveyance;

(B) in its condition on that date; and

(C) at no cost to the Federal Government.

(2) *Required Conditions*.-The Secretary may not convey a vessel under this section unless-

(A) the recipient agrees to hold the Government harmless for any claims arising from exposure to hazardous material, including asbestos and polychlorinated biphenyls, after conveyance of the vessel, except for claims arising before the date of the conveyance or from use of the vessel by the Government after that date; and (B) the recipient has available, for use to restore the vessel, in the form of cash, liquid assets, or a written loan commitment, financial resources of at least $100,000.

(3) *Additional Terms*.-The Secretary may require such additional terms in connection with the conveyance authorized by this section as the Secretary considers appropriate.

(c) **Other Unneeded Equipment.** -The Secretary may convey to the recipient of any vessel conveyed under this section any unneeded equipment from other vessels in the National Defense Reserve Fleet, for use to restore the vessel conveyed under this section to museum quality."

USS HOIST\NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2004. Section 3513 of Public Law 108-136, approved November 23, 2003 (117 STAT. 1791) provides:

"Sec. 3513. Authority to Convey Vessel USS HOIST (ARS–40).

(a) **In General.** Notwithstanding section 510(j) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1160(j)), the Secretary of Transportation may convey the right, title, and interest of the United States Government in and to the vessel USS HOIST (ARS– 40), to the Last Patrol Museum, located in Toledo, Ohio (a not-for- profit corporation, in this section referred to as the ''recipient''),for use as a military museum, if—

(1) the recipient agrees to use the vessel as a nonprofit military museum;

(2) the recipient agrees not to use, or allow others to use, the vessel for commercial transportation purposes;

(3) the recipient agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;

(4) the recipient agrees that when the recipient no longer requires the vessel for use as a military museum—

(A) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

(B) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State in which the recipient is incorporated, then—

(i) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code, or to the Federal Government or a State or local government for a public purpose; and

(ii) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to such organizations as the court shall determine are organized exclusively for public purposes;

(5) the recipient agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;

(6) the recipient has available, for use to restore the vessel, in the form of cash, liquid assets, or a written loan commitment,

financial resources of at least $100,000; and

(7) the recipient has a conveyance plan and a business plan that describes the intended use of the vessel, each of which have been submitted to and approved by the Secretary.

(b) **Delivery of Vessel.** If a conveyance is made under this section, the Secretary shall deliver the vessel at the place where the vessel is located on the date of the enactment of this Act, in its present condition, and without cost to the Government.

(c) **Other Unneeded Equipment.** The Secretary may also convey any unneeded equipment from other vessels in the National Defense Reserve Fleet in order to restore the USS HOIST (ARS–40) to museum quality.

"(d) **Retention of Vessel in NDRF.**—

"(1) ***In General.*** The Secretary shall retain in the National Defense Reserve Fleet the vessel authorized to be conveyed under subsection (a), until the earlier of—

"(A) 2 years after the date of the enactment of this Act; or

(B) the date of conveyance of the vessel under subsection (a).

"(2) ***Limitation.*** Paragraph (1) does not require the Secretary to retain the vessel in the National Defense Reserve Fleet if the Secretary determines that retention of the vessel in the fleet will pose an unacceptable risk to the marine environment."

CONVEYANCE OF EQUIPMENT. Section 1009 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3968), the Coast Guard Authorization Act of 1996, provides:

"Sec. 1009. Conveyance of Equipment.

The Secretary of Transportation may convey any unneeded equipment from other vessels in the National Defense Reserve Fleet to the JOHN W. BROWN and other qualified United States memorial ships in order to maintain their operating condition."

VESSEL OPERATIONS REVOLVING FUND

VESSEL OPERATIONS REVOLVING FUND; ESTABLISHMENT; USES; LIMITATIONS (46 App. U.S.C. 1241a (2004)).[1] For working capital for the "Vessel Operations Revolving Fund", which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation, $20,000,000, to remain available until expended.

Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: Provided, That the provisions of sections 1(a), 1(c), 3(c) and 4 of Public Law 17, Seventy-eighth Congress (57 Stat. 45), as amended,[2] shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: Provided further, That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Office of Management and Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation "Salaries and expenses" for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: Provided further, That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts.

No money made available to the Department of Transportation, for Maritime Activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition

[1] Enacted as section 801 of the Act of June 2, 1951 (65 STAT. 59), as amended.

[2] 50 U.S.C. App. 1291(a), (c), 1293(c), 1294.

or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office.

AVAILABILITY OF VESSEL OPERATIONS REVOLVING FUND; VESSELS INVOLVED IN MORTGAGE FORECLOSURE OR FORFEITURE PROCEEDINGS; REDELIVERY AND LAYUP OF CHARTERED SHIPS; CUSTODY AND HUSBANDING OF GOVERNMENT-OWNED SHIPS (46 App. U.S.C. 1241b (2004)).[3] Hereafter the vessel operations revolving fund, created by the Third Supplemental Appropriation Act, 1951, shall be available for necessary expenses incurred, in connection with protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage-foreclosure or forfeiture proceedings instituted by the United States, including payment of prior claims and liens, expenses of sale, or other charges incident thereto; for necessary expenses incident to the redelivery and lay-up, in the United States, of ships now chartered under agreements which do not call for their return to the United States; for activation, repair and deactivation of merchant ships chartered for limited emergency purposes during the fiscal year 1957 under the jurisdiction of the Secretary of Transportation; and for payment of expenses of custody and husbanding of Government-owned ships other than those within reserve fleets.

EXPENSES FOR ACTIVATION, REPAIR AND DEACTIVATION OF MERCHANT SHIPS; RECEIPTS (46 App. U.S.C. 1241c (2004)).[4] The vessel operations revolving fund created by the Third Supplemental Appropriations Act, 1951, approved June 2, 1951 (Public Law 45, Eighty-second congress; 65 Stat. 52, at 59), shall, beginning July 1, 1956, be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary of Transportation. There shall be credited to such fund all receipts on account of operations after July 1, 1956, under charters of Government-owned ships under the jurisdiction of the Secretary of Transportation.

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[3] Enacted as part of Maritime Activities set forth in Public Law 84–604, approved June 20, 1956 (70 STAT. 319), the Department of Commerce and Related Agencies Appropriation Act, as amended.

[4] Enacted as Public Law 84–890, approved August 1, 1956 (70 STAT. 897), as amended.

VESSEL SCRAPPING[1]

NATIONAL MARITIME HERITAGE ACT. Section 6 of Public Law 103-451, as amended (16 U.S.C. 5405 (2003), the National Maritime Heritage Act provides:

"SEC. 6. FUNDING (16 U.S.C. 5405 (2004)).

(a) **Availability of funds from sale and scrapping of obsolete vessels.**

(1) ***In general.*** Notwithstanding any other provision of law, the amount of funds credited in a fiscal year to the Vessel Operations Revolving Fund established by the Act of June 2, 1951 (46 App. U.S.C. 1241a), that is attributable to the sale of obsolete vessels in the National Defense Reserve Fleet that are scrapped or sold under section 508 or 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158 or 1160(i)) shall be available until expended as follows:

(A) 50 percent shall be available to the Administrator of the Maritime Administration for such acquisition, maintenance, repair, reconditioning, or improvement of vessels in the National Defense Reserve Fleet as is authorized under other Federal law.

(B) 25 percent shall be available to the Administrator of the Maritime Administration for the payment or reimbursement of expenses incurred by or on behalf of State maritime academies or the United States Merchant Marine Academy for facility and training ship maintenance, repair, and modernization, and for the purchase of simulators and fuel.

(C) The remainder shall be available to the Secretary to carry out the Program,[2] as provided in subsection (b).

(2) ***Application.*** Paragraph (1) does not apply to amounts credited to the Vessel Operations Revolving Fund before July 1, 1994.

(b) **Use of amounts for program.**

(1) ***In general.*** Except as provided in paragraph (2), of amounts available each fiscal year for the Program under subsection (a)(1)(C)—

(A) 1/2 shall be used for grants under section 4(b); and

(B) 1/2 shall be used for grants under section 4(c).

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[1] The Maritime Administration scraps vessels in the National Defense Reserve Fleet under the authority set forth in sections 508 and 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(i)).

[2] Section 7(4) of the Act defines "Program" to mean the National Maritime Heritage Grants Program established under Section 4 of the Act.

(2) ***Use for interim projects.*** Amounts available for the Program under subsection (a)(1)(C) that are the proceeds of any of the first 8 obsolete vessels in the National Defense Reserve Fleet that are sold or scrapped after July 1, 1994, under section 508 or 510(i) of the Merchant Marine Act, 1936 (46 [App.] U.S.C. 1158 or 1160(i)) are available to the Secretary for grants for interim projects approved under section 4(j) of this Act.

(3) ***Administrative expenses.***

(A) *In general.* Not more than 15 percent or $ 500,000, whichever is less, of the amount available for the Program under subsection (a)(1)(C) for a fiscal year may be used for expenses of administering the Program.

(B) *Allocation.* Of the amount available under subparagraph (A) for a fiscal year—

(i) 1/2 shall be allocated to the National Trust for expenses incurred in administering grants under section 4(b); and

(ii) 1/2 shall be allocated as appropriate by the Secretary to the National Park Service and participating State Historic Preservation Officers.

(c) **Disposals of vessels.**

(1) ***Requirement.*** The Secretary of Transportation shall dispose of all vessels described in paragraph (2)—

(A) by September 30, 2006;

(B) in the manner that provides the best value to the Government except in any case in which obtaining the best value would require towing a vessel and such towing poses a serious threat to the environment; and

(C) in accordance with the plan of the Department of Transportation for disposal of those vessels and requirements under sections 508 and 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(i)).

(2) ***Vessels described.*** The vessels referred to in paragraph (1) are the vessels in the National Defense Reserve Fleet after July 1, 1994, that—

(A) are not assigned to the Ready Reserve Force component of that fleet; and

(B) are not specifically authorized or required by statute to be used for a particular purpose.

(d) **Treatment of amounts available.** Amounts available under this section shall not be considered in any determination of the amounts available to the Department of the Interior."

SCRAPPING OF NDRF VESSELS. Section 3502 of Public Law 106-398 (114 STAT. 1654a-490), the DOD Authorization Act, FY 2001, provides as follows:

"SEC. 3502. SCRAPPING OF NATIONAL DEFENSE RESERVE FLEET VESSELS.

* * * * * * *

(b) **Section of Scrapping Facilities.**–The Secretary of Transportation may scrap obsolete vessels pursuant to section 6(c)(1) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(1)) through qualified scrapping facilities, using the most expeditious scrapping methodology and location practicable. Scrapping facilities shall be selected under that section on a best value basis consistent with the Federal Acquisition Regulation, as in effect on the date of the enactment of this Act, without any predisposition toward foreign or domestic facilities taking into consideration, among other things, the ability of facilities to scrap vessels—

(1) at least cost to the Government;

(2) in a timely manner;

(3) giving consideration to worker safety and the environment; and

(4) in a manner that minimizes the geographic distance that a vessel must be towed when towing a vessel poses a serious threat to the environment.

(c) **Limitation on Scrapping Before Program.**—

(1) ***In General.***–Until the report required by subsection (d)(1) is transmitted to the congressional committees referred to in that subsection,[3] the Secretary may not proceed with the scrapping of any vessel in the National Defense Reserve Fleet except the following:

* * * * * * *

(d) **SCRAPPING PROGRAM FOR OBSOLETE NATIONAL DEFENSE RESERVE FLEET VESSELS.**—

(1) *Development of Program, Report.*—The Secretary of Transportation, in consultation with the Secretary of the Navy and the Administrator of the Environmental Protection Agency, shall within 6 months after the date of the enactment of this Act—

(A) develop a program for the scrapping of obsolete National Defense Reserve Fleet vessels; and

(B) submit a report on the program to the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives, the Committee on Commerce,

[3] This report was submitted on June 6, 2001.

Science, and Transportation of the Senate, and the Committees on Armed Services of the House of Representatives and the Senate.

(2) *Contents of Report.*—The report shall include information concerning the initial determination of scrapping capacity, both domestically and abroad, appropriate proposed regulations to implement the program, funding and staffing requirements, milestone dates for the disposal of each obsolete vessel, and longterm cost estimates for the program.

(3) *Alternatives.*—In developing the program, the Secretary of Transportation, in consultation with the Secretary of the Navy and the Administrator of the Environmental Protection Agency, shall consider all alternatives and available information, including—

(A) alternative scrapping sites;

(B) vessel donations;

(C) sinking of vessels in deep water;

(D) sinking vessels for development of artificial reefs;

(E) sales of vessels before they become obsolete;

(F) results from the Navy Ship Disposal Program under section 8124 of the Department of Defense Appropriations Act, 1999; and

(G) the Report of the Department of Defense's Interagency Panel on Ship Scrapping issued in April 1998.

(e) **Report.**—Not later than 1 year after the date of the enactment of this Act, and every 6 months thereafter, the Secretary of Transportation, in coordination with the Secretary of the Navy, shall report to the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Armed Services of the House of Representatives and the Senate on the progress of the vessel scrapping program developed under subsection (d)(1) and on the progress of any other scrapping of obsolete Government-owned vessels.

(f) **Presidential Recommendation.**—The President shall transmit with the report required by subsection (d)(1) a recommendation on—

(1) whether it is necessary to amend the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) or any other environmental statute or regulatory requirements relevant to the disposal of vessels described in section 6(c)(2) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(2)) by September 30, 2006; and

(2) any proposed changes to those requirements to carry out such disposals."

FUNDING FOR SCRAPPING OF NDRF VESSELS

Public Law 108-199. Public Law 108-199, approved January 23, 2004, the Consolidated Appropriations Act, 2004, appropriates the following funds to the Maritime Administration at 118 STAT. 312: "SHIP DISPOSAL. For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $16,211,000, to remain available until expended."

Public Law 108-447. Public Law 108-447, approved December 8, 2004, the Consolidated Appropriations Act, 2005, appropriates the following funds to the Maritime Administration at 118 STAT. 3231: "SHIP DISPOSAL. For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $21,616,000, to remain available until expended."

ARTIFICIAL REEF PROGRAM

CHAPTER 25B. REEFS FOR MARINE LIFE CONSERVATION

16 U.S.C. 1220 (2004). State applications for obsolete ships for use as offshore reefs.

(a) **Conservation of marine life.** Any State may apply to the Secretary of Transportation (hereafter referred to in this Act as the "Secretary") for obsolete ships which, but for the operation of this Act, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

(b) **Manner and form of applications; minimum requirements**. A State shall apply for obsolete ships under this Act in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

(c) **Copies to Federal officers for official comments and views.** Before taking any action with respect to an application submitted under this Act, the Secretary shall provide copies of the application to the Secretary of the Interior, the Secretary of Defense, and any other appropriate Federal officer, and shall consider comments and views of such officers with respect to the application.

16 U.S.C. 1220a (2004). Transfer of title; terms and conditions. If, after consideration of such comments and views as are received pursuant to section 3(c), the Secretary finds that the use of obsolete ships proposed by a State will not violate any Federal law, contribute to degradation of the marine environment, create undue interference with commercial fishing or navigation, and is not frivolous, he may transfer without consideration to the State all right, title, and interest of the United States in and to any obsolete ships which are available for transfer under this Act if—

(1) the State gives to the Secretary such assurances as he deems necessary that such ships will be utilized and maintained only for the purposes stated in the application and, when sunk, will be charted and marked as a hazard to navigation;

(2) the State agrees to secure any licenses or permits which may be required under the provisions of any other applicable Federal law;

(3) the State agrees to such other terms and conditions as the Secretary shall require in order to protect the marine environment and other interests of the United States; and

(4) the transfer would be at no cost to the Government (except for any financial assistance provided under section 7) with the State taking delivery of such obsolete ships at fleetside of the National Defense Reserve Fleet in an "as is—where is" condition.

16 U.S.C. 1220b (2004). Obsolete ships available; number; equitable administration. A State may apply for more than one obsolete ship under this Act. The Secretary shall, however, taking into account the number of obsolete ships which may be or become available for transfer under this Act, administer this Act in an equitable manner with respect to the various States.

16 U.S.C. 1220c (2004). Denial of applications; finality of decision. A decision by the Secretary denying any application for a [an] obsolete ship under this Act is final.

16 U.S.C. 1220c-1 (2004). Financial assistance to State to prepare transferred ship[1]

(a) Assistance authorized. The Secretary, subject to the availability of appropriations, may provide, to any State to which an obsolete ship is transferred under this Act, financial assistance to prepare the ship for use as an artificial reef, including for—

(1) environmental remediation;

(2) towing; and

(3) sinking.

(b) Amount of assistance. The Secretary shall determine the amount of assistance under this section with respect to an obsolete ship based on—

(1) the total amount available for providing assistance under this section;

(2) the benefit achieved by providing assistance for that ship; and

(3) the cost effectiveness of disposing of the ship by transfer under

[1] Section 3504(a) of Public Law 107-314, approved December 2, 2002 (116 STAT. 2754). the National Defense Authorization Act for fiscal year 2003, inserted 16 U.S.C. 1220c-1 in Chapter 25B of Title 16. Section 3504(b) of Public Law 107-314, provides for Environmental Best Management Practices for Preparing Vessels for Use as Artificial Reefs, and is set forth at page 359.

this Act and provision of assistance under this section, compared to other disposal options for that ship.

(c) Terms and conditions. The Secretary—

(1) shall require a State seeking assistance under this section to provide cost data and other information determined by the Secretary to be necessary to justify and document the assistance; and

(2) may require a State receiving such assistance to comply with terms and conditions necessary to protect the environment and the interests of the United States.

16 U.S.C. 1220d (2004). Definition of "obsolete ship." For purposes of sections 3, 4, 5, and 6, the term "obsolete ship" means any vessel owned by the Department of Transportation that has been determined to be of insufficient value for commercial or national defense purposes to warrant its maintenance and preservation in the national defense reserve fleet and has been designated as an artificial reef candidate.

* * * * * * *

PREPARATION AS ARTIFICIAL REEFS AND SCRAPPING OF OBSOLETE VESSELS.

Section 3504(a) of Public Law 107-314, approved December 2, 2002 (116 STAT. 2754), the National Defense Authorization Act for fiscal year 2003, generally amended Chapter 25B of Title 16, United States Code, Reefs for Marine Life Conservation, by inserting 16 U.S.C. 1220c-1, Financial Assistance to State to Prepare Transferred Ship. Chapter 25B is set forth above. Section 3504(b) of Public Law 107-314, provides for Environmental Best Management Practices for Preparing Vessels for Use as Artificial Reefs. Section 3504(b) as amended, provides:

"Section 3504(b) Environmental Best Management Practices for Preparing Vessels for Use as Artificial Reefs. —(1) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs.

(2) The guidance recommending environmental best management practices under paragraph (1) shall be developed in consultation with the heads of other Federal agencies, and State agencies, having an interest in the use of vessels as artificial reefs.

(3) The environmental best management practices under paragraph (1) shall—

(A) include practices for the preparation of vessels for use as artificial reefs to ensure that vessels so prepared will be environmentally sound in their use as artificial reefs;

(B) promote consistent use of such practices nationwide;

(C) provides a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs; and

(D) include mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.

(4) The environmental best management practices developed under paragraph (1) shall serve as national guidance for Federal agencies for the preparation of vessels for use as artificial reefs.

(5) Not later than March 31, 2004, the Secretary of Transportation, acting through the Maritime Administration, and the Administrator of the Environmental Protection Agency shall jointly establish an application process for governments of States, commonwealths, and United States territories and possession, and foreign governments, for the preparation of vessels for use as artificial reefs, including documentation and certification requirements for that application process.

(6) The Secretary of Transportation shall submit to Congress a report on the environmental best management practices developed under paragraph (1) through the existing ship disposal reporting requirements in section 3502 of Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 1654A–492)[2]. The report shall describe such practices, and may include such other matters as the Secretary considers appropriate.

* * * * * * *

Section 3504(d) Construction.—Nothing in this section shall be construed to establish a preference for the reefing or export of obsolete vessels in the National Defense Reserve Fleet over other alternatives available to the Secretary for the scrapping of such vessels under section 3502(d)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.[3]

[2] Set forth in section 3502(d), set forth at page 353.

[3] Set forth at page 354.

TRANSFER OF VESSELS STRICKEN FROM THE NAVAL VESSEL REGISTER FOR USE AS ARTIFICIAL REEFS. Section 1013 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1590), the National Defense Authorization Act For Fiscal Year 2004, added the following provision to title 10:

"10 U.S.C. 7306b. (2004) Vessels stricken from Naval Vessel Register: transfer by gift or otherwise for use as artificial reefs

(a) **Authority to make Transfer.** The Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register to any State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, for use as provided in subsection (b).

(b) **Vessel to be used as Artificial Reef.** An agreement for the transfer of a vessel under subsection (a) shall require that—

(1) the recipient use, site, construct, monitor, and manage the vessel only as an artificial reef in accordance with the requirements of the National Fishing Enhancement Act of 1984 (33 U.S.C. 2101 et seq.), except that the recipient may use the artificial reef to enhance diving opportunities if that use does not have an adverse effect on fishery resources (as that term is defined in section 2(14) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(14)); and

(2) the recipient obtain, and bear all responsibility for complying with, applicable Federal, State, interstate, and local permits for using, siting, constructing, monitoring, and managing the vessel as an artificial reef.

(c) **Preparation of Vessel for use as Artificial Reef.** The Secretary shall ensure that the preparation of a vessel transferred under subsection (a) for use as an artificial reef is conducted in accordance with—

(1) the environmental best management practices developed pursuant to section 3504(b) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 16 U.S.C. 1220 note); and

(2) any applicable environmental laws.

(d) **Cost Sharing.** The Secretary may share with the recipient of a vessel transferred under subsection (a) any costs associated with transferring the vessel under that subsection, including costs of the preparation of the vessel under subsection (c).

(e) **No Limitation on Number of Vessels Transferable to Particular Recipient.** A State, Commonwealth, or possession of the United States, or any municipal corporation or political subdivision thereof, may be the recipient of more than one vessel transferred under subsection (a).

(f) **Additional Terms and Conditions.** The Secretary may require such additional terms and conditions in connection with a transfer authorized by subsection (a) as the Secretary considers appropriate.

(g) **Construction.** Nothing in this section shall be construed to establish a preference for the use as artificial reefs of vessels stricken from the Naval Vessel Register in lieu of other authorized uses of such vessels, including the domestic scrapping of such of such vessels, or other disposals of such vessels, under this chapter or other applicable authority."

MERCHANT MARINE ACT, 1928

SEC. 1. DECLARATION OF POLICY. (46 App. U.S.C. 891 (2004)). The policy and primary purpose declared in section 1 of Merchant Marine Act, 1920 (U. S. C., Title 46, App. 861) are hereby confirmed.

SEC. 202. VESSELS OF SECRETARY; REMODELING AND IMPROVING. (46 App. U.S.C. 891b (2004)). In addition to his power to recondition and repair vessels under section 12 of the Merchant Marine Act, 1920 as amended (U. S. C., Title 46, App. 871), the Secretary of Transportation may remodel and improve vessels owned by the United States and in its possession or under his control, so as to equip them adequately for competition in the foreign trade of the United States. Any vessel so remodeled or improved shall be documented under the laws of the United States and shall remain documented under such laws for not less than five years from the date of the completion of the remodeling or improving and so long as there remains due the United States any money or interest on account of such vessel, and during such period it shall be operated only on voyages which are not exclusively coastwise.

SEC. 203. REPLACEMENT VESSELS. (46 App. U.S.C. 891c (2004)). The necessity for the replacement of vessels owned by the United States and in the possession or under the control of the Secretary of Transportation and the construction for the board of additional up-to-date cargo, combination cargo and passenger, and passenger ships, to give the United States an adequate merchant marine, is hereby recognized, and the Secretary of Transportation is authorized and directed to present to Congress from time to time, recommendations setting forth what new vessels are required for permanent operation under the United States flag in foreign trade, and the estimated cost thereof, to the end that Congress may, from time to time, make provision for replacements and additions. All vessels built for the Secretary of Transportation shall be built in the United States, and they shall be planned with reference to their possible usefulness as auxiliaries to the naval and military services of the United States.

SEC. 703. DEFINITIONS. (46 App. U.S.C. 891u (2004)).

(a) When used in this Act, and for the purposes of this Act only, the words "foreign trade" mean trade between the United States, its Territories or possessions, or the District of Columbia and a foreign country: Provided, however, That the loading or the unloading of cargo, mail, or passengers at any port in any Territory or possession of the

United States shall be construed to be foreign trade if the stop at such Territory or possession is an intermediate stop on what would otherwise be a voyage in foreign trade.

(b) When used in this Act the term "citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended.[1]

SEC. 704. REAFFIRMATION OF STEAMSHIP LINE POLICY (46 App. U.S.C. 891v (2004)). The policy and the primary purpose declared in section 7 of the Merchant Marine Act, 1920, are hereby reaffirmed.

SEC. 705. SHIP OPERATIONS; ALLOCATIONS. (46 App. U.S.C. 891w (2004)). In the allocations of the operations of the ships, the Secretary of Transportation shall distribute them as far as possible and without detriment to the service among the various ports of the country.

SEC. 706. SHORT TITLE. (46 App. U.S.C. 891x (2004)). This Act may be cited as the "Merchant Marine Act, 1928."

[1] The term "citizen of the United States" is defined in Section 703(b) of the Merchant Marine Act, 1928, but not used in that Act. It is defined to include a corporation, partnership, or association within the meaning of Section 2 of the Shipping Act, 1916. Section 2 is located at page 236.

SHIPPING ACT OF 1984[1]

SEC. 1. (46 App. U.S.C. 1701 note (2004)). This Act may be cited as the "Shipping Act of 1984".

SEC. 2. DECLARATION OF POLICY (46 App. U.S.C. 1701 (2004)). The purposes of this Act are—

(1) to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

(2) to provide an efficient and economic transportation system in the ocean commerce of the United States that is, insofar as possible, in harmony with, and responsive to, international shipping practices; and

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs; and

(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

SEC. 3. DEFINITIONS (46 App. U.S.C. 1702 (2004)). As used in this Act—

(1) "agreement" means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof; but the term does not include a maritime labor agreement.

(2) "antitrust laws" means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; the Antitrust Civil Process Act (76 Stat. 548), as amended; and amendments and Acts supplementary thereto.

(3) "assessment agreement" means an agreement, whether part of a collective-bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

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[1] Title I of Public Law 105-258, approved October 14, 1998 (112 STAT. 1902), the Ocean Shipping Reform Act of 1998, made comprehensive amendments to the Shipping Act of 1984. Section 2 of Public Law 105-258, provides: "Except as otherwise expressly provided in this Act, this Act and the amendments made by this Act take effect May 1, 1999."

(4) "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(5) "Commission" means the Federal Maritime Commission.

(6) "common carrier" means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker or by vessel when primarily engaged in the carriage of perishable agricultural commodities (i) if the common carrier and the owner of those commodities are wholly-owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and (ii) only with respect to the carriage of those commodities. As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7) "conference" means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

(8) "controlled carrier" means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(B) that government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer, or the chief executive officer of the carrier.

(9) "deferred rebate" means a return by a common carrier of any portion of the freight money to a shipper as a consideration for that shipper

giving all, or any portion, of its shipments to that or any other common carrier over a fixed period of time, the payment of which is deferred beyond the completion of service for which it is paid, and is made only if the shipper has agreed to make a further shipment or shipments with that or any other common carrier.

(10) "forest products" means forest products, including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper and paper board in rolls, or in pallet or skid-sized sheets.

(11) "inland division" means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

(12) "inland portion" means the charge to the public by a common carrier for the nonocean portion of through transportation.

(13) "loyalty contract" means a contract with an ocean common carrier or agreement by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or agreement and the contract provides for a deferred rebate arrangement.

(14) "marine terminal operator" means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter 11 of chapter 135 of title 49, United States Code.

(15) "maritime labor agreement" means a collective-bargaining agreement between an employer subject to this Act, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(16) "ocean common carrier" means a vessel-operating common carrier.

(17) "ocean transportation intermediary" means an ocean freight forwarder or a non-vessel-operating common carrier. For purposes of this paragraph, the term:

(A) "ocean freight forwarder" means a person that—

(i) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and

(ii) processes the documentation or performs related activities incident to those shipments; and

(B) "non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(18) "person" includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(19) "service contract" means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers makes a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level, such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(21) "shipment" means all of the cargo carried under the terms of a single bill of lading.

(21) "shipper" means—

(A) a cargo owner;

(B) the person for whose account the ocean transportation is provided;

(C) the person to whom delivery is to be made;

(D) a shippers' association; or

(E) an ocean transportation intermediary, as defined in paragraph (17)(B) of this section, that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(22) "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(23) "through rate" means the single amount charged by a common carrier in connection with through transportation.

(24) "through transportation" means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port.

(25) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

SEC. 4. AGREEMENTS WITHIN SCOPE OF ACT (46 App. U.S.C. 1703 (2004)).

(a) **Ocean common carriers.** This Act applies to agreements by or among ocean common carriers to—

(1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;

(2) pool or apportion traffic, revenues, earnings, or losses;

(3) allot ports or restrict or otherwise regulate the number and character of sailings between ports;

(4) limit or regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to service contracts.

(b) **Marine terminal operators.** This Act applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to—

(1) discuss, fix, or regulate rates or other conditions of service; or

(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

(c) **Acquisitions.** This Act does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

SEC. 5. AGREEMENTS (46 App. U.S.C. 1704 (2004)).

(a) **Filing Requirements.** A true copy of every agreement entered into with respect to an activity described in section 4(a) or (b) of this Act shall be filed with the Commission, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. In the case of an oral agreement, a complete memorandum specifying in detail the substance of the agreement shall be filed. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

(b) **Conference Agreements.** Each conference agreement must—

(1) state its purpose;

(2) provide reasonable and equal terms and conditions for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

(3) permit any member to withdraw from conference membership upon reasonable notice without penalty;

(4) at the request of any member, require an independent neutral body to police fully the obligations of the conference and its members;

(5) prohibit the conference from engaging in conduct prohibited by section 10(c)(1) or (3) of this Act;

(6) provide for a consultation process designed to promote—

(A) commercial resolution of disputes, and

(B) cooperation with shippers in preventing and eliminating malpractices;

(7) establish procedures for promptly and fairly considering shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and that, except for exempt commodities not published in the conference tariff, the conference will include the new rate or service item in its tariff for use by that member, effective no later than 5 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

(c) **Ocean Common Carrier Agreements.** An ocean common carrier agreement may not—

(1) prohibit or restrict a member or members of the agreement from engaging in negotiations for service contracts with 1 or more shippers;

(2) require a member or members of the agreement to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required to be published under section 8(c)(3) of this Act; or

(3) adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into service contracts.

An agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's or agreement members' service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. These guidelines shall be confidentially submitted to the Commission.

(d) **Interconference Agreements.** Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

(e) **Assessment Agreements.** Assessment agreements shall be filed with the Commission and become effective on filing. The Commission shall thereafter, upon complaint filed within 2 years of the date of the agreement, disapprove, cancel, or modify any such agreement, or charge or assessment pursuant thereto, that it finds, after notice and hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in any such proceeding within 1 year of the date of filing of the complaint. To the extent that an assessment or charge is found in the proceeding to be unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall remedy the unjust discrimination or unfairness for the period of time between the filing of the complaint and the final decision by means of assessment adjustments. These adjustments shall be implemented by prospective credits or debits to future assessments or charges, except in the case of a complainant who has ceased activities subject to the assessment or charge, in which case reparation may be awarded. Except for this subsection and section 7(a) of this Act, this Act does not apply to assessment agreements.

(f) **Maritime Labor Agreements.** This Act does not apply to maritime labor agreements. This subsection does not exempt from this Act any rates, charges, regulations, or practices of a common carrier that are required to be set forth in a tariff, or are essential terms of a service contract whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

(g) **Vessel Sharing Agreements.** An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a United States-flag liner vessel documented pursuant to sections 12012(a) or (d) of title 46, United States Code, is authorized to agree with an ocean common carrier that is not the owner, operator or bareboat charterer for at least one year of United States-flag liner vessels which are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program pursuant to subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 *et seq.*), to which it charters or subcharters the United States-flag vessel or space on the United States-flag vessel that such charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for United States-flag vessels.[2]

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[2] Section 5(g) was added by Section 424(a) of Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3441), the Coast Guard Authorization Act of 1998. Section 424(b) made a conforming amendment to Section 10(c)(6) of the Shipping Act of 1984 (46 App. U.S.C. 1709(c)(6)). Section 424(c) provides: "Nothing in this section shall affect or in any way diminish the authority or effectiveness of orders issued by the Maritime Administration pursuant to sections 9 and 41 of the Shipping Act, 1916 (46 U.S.C. App. 808 and 839)."

SEC. 6. ACTION ON AGREEMENTS (46 App. U.S.C. 1705 (2004)).

(a) **Notice.** Within 7 days after an agreement is filed, the Commission shall transmit a notice of its filing to the Federal Register for publication.

(b) **Review Standard.** The Commission shall reject any agreement filed under section 5(a) of this Act that, after preliminary review, it finds does not meet the requirements of section 5. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement.

(c) **Review and Effective Date.** Unless rejected by the Commission under subsection (b), agreements, other than assessment agreements, shall become effective—

(1) on the 45th day after filing, or on the 30th day after notice of the filing is published in the Federal Register, whichever day is later; or

(2) if additional information or documentary material is requested under subsection (d), on the 45th day after the Commission receives—

(A) all the additional information and documentary material requested; or

(B) if the request is not fully complied with, the information and documentary material submitted and a statement of the reasons for noncompliance with the request. The period specified in paragraph (2) may be extended only by the United States District Court for the District of Columbia upon an application of the Commission under subsection (i).

(d) **Additional Information.** Before the expiration of the period specified in subsection (c)(1), the Commission may request from the person filing the agreement any additional information and documentary material it deems necessary to make the determinations required by this section.

(e) **Request for Expedited Approval.** The Commission may, upon request of the filing party, shorten the review period specified in subsection (c), but in no event to a date less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(f) **Term of Agreements.** The Commission may not limit the effectiveness of an agreement to a fixed term.

(g) **Substantially Anticompetitive Agreements.** If, at any time after the filing or effective date of an agreement, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h).

(h) **Injunctive Relief.** The Commission may, upon making the determination specified in subsection (g), bring suit in the United States District Court for the District of Columbia to enjoin operation of the agreement. The court may issue a temporary restraining order or preliminary injunction and, upon a showing that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, may enter a permanent injunction. In a suit under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene with respect to a claim under this subsection.

(i) **Compliance with Informational Needs.** If a person filing an agreement, or an officer, director, partner, agent, or employee thereof, fails substantially to comply with a request for the submission of additional information or documentary material within the period specified in subsection (c), the United States District Court for the District of Columbia, at the request of the Commission—

(1) may order compliance;

(2) shall extend the period specified in subsection (c)(2) until there has been substantial compliance; and

(3) may grant such other equitable relief as the court in its discretion determines necessary or appropriate.

(j) **Nondisclosure of Submitted Material.** Except for an agreement filed under section 5 of this Act, information and documentary material filed with the Commission under section 5 or 6 is exempt from disclosure under section 552 of title 5, United States Code and may not be made public except as may be relevant to an administrative or judicial action or proceeding. This section does not prevent disclosure to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(k) **Representation.** Upon notice to the Attorney General, the Commission may represent itself in district court proceedings under subsections (h) and (i) of this section and section 11(h) of this Act. With the approval of the Attorney General, the Commission may represent itself in proceedings in the United States Courts of Appeal under subsections (h) and (i) of this section and section 11(h) of this Act.

SEC. 7. EXEMPTION FROM ANTITRUST LAWS (46 App. U.S.C. 1706 (2004)).

(a) **In General.** The antitrust laws do not apply to—

(1) any agreement that has been filed under section 5 of this Act and is effective under section 5(d) or section 6, or is exempt under section 16 of this Act from any requirement of this Act;

(2) any activity or agreement within the scope of this Act, whether

permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place, or (B) it is exempt under section 16 of this Act from any filing or publication requirement of this Act;

(3) any agreement or activity that relates to transportation services within or between foreign countries, whether or not via the United States, unless that agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;

(4) any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(5) any agreement or activity to provide or furnish wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation approved by the Commission before the effective date of this Act under section 15 of the Shipping Act, 1916, or permitted under section 14b thereof, and any properly published tariff, rate, fare, or charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) **Exceptions.** This Act does not extend antitrust immunity—

(1) to any agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this Act with respect to transportation within the United States;

(2) to any discussion or agreement among common carriers that are subject to this Act regarding the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) to any agreement among common carriers subject to this Act to establish, operate, or maintain a marine terminal in the United States; or

(4) to any loyalty contract.

(c) **Limitations.**

(1) Any determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws set forth in subsection (a) shall not remove or alter the antitrust immunity for the period before the determination.

(2) No person may recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by this Act.

SEC. 8. TARIFFS (46 App. U.S.C. 1707 (2004)).

(a) **In General.**

(1) Except with regard to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, and paper waste,

each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, common carriers shall not be required to state separately or otherwise reveal in tariffs the inland divisions of a through rate. Tariffs shall—

(A) state the places between which cargo will be carried;

(B) list each classification of cargo in use;

(C) state the level of ocean transportation intermediary, as defined in section 3(17)(A), compensation, if any, by a carrier or conference;

(D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges;

(E) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(F) include copies of any loyalty contract, omitting the shipper's name.

(2) Tariffs shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations, and a reasonable charge may be assessed for such access. No charge may be assessed a Federal agency for such access.

(b) **Time-Volume Rates.** Rates shown in tariffs filed under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(c) **Service Contracts.**

(1) **In General.** An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this Act. The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree. In no case may the contract dispute resolution forum be controlled by or in any way affiliated with a controlled carrier as defined in section 3(8) of this Act, or by the government which owns or controls the carrier.

(2) **Filing Requirements.** Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste, each contract entered into under this subsection by an individual ocean common carrier or an agreement shall be filed confidentially with the Commission. Each service contract shall include the following essential terms—

(A) the origin and destination port ranges;

(B) the origin and destination geographic areas in the case of through intermodal movements;

(C) the commodity or commodities involved;

(D) the minimum volume or portion;

(E) the line-haul rate;

(F) the duration;

(G) service commitments; and

(H) the liquidated damages for nonperformance, if any.

(3) **Publication of Certain Terms.** When a service contract is filed confidentially with the Commission, a concise statement of the essential terms described in paragraphs 2(A), (C), (D), and (F) shall be published and made available to the general public in tariff format.

(4) **Disclosure of Certain Terms.**

(A) An ocean common carrier, which is a party to or is subject to the provisions of a collective bargaining agreement with a labor organization, shall, in response to a written request by such labor organization, state whether it is responsible for the following work at dock areas and within port areas in the United States with respect to cargo transportation under a service contract described in paragraph (1) of this subsection—

(i) the movement of the shipper's cargo on a dock area or within the port area or to or from railroad cars on a dock area or within the port area;

(ii) the assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area;

(iii) the assignment of the carriage of the shipper's cargo between a container yard on a dock area or within the port area and a rail yard adjacent to such container yard; and

(iv) the assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(B) The common carrier shall provide the information described in subparagraph (A) of this paragraph to the requesting labor organization within a reasonable period of time.

(C) This paragraph requires the disclosure of information by an ocean common carrier only if there exists an applicable and otherwise lawful collective bargaining agreement which pertains to that carrier. No disclosure made by an ocean common carrier shall be deemed to be an admission or agreement that any work is covered by a collective bargaining agreement. Any dispute regarding whether any work is covered by a collective bargaining agreement and the responsibility of

the ocean common carrier under such agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act, and without reference to this paragraph.

(D) Nothing in this paragraph shall have any effect on the lawfulness or unlawfulness under this Act, the National Labor Relations Act, the Taft-Hartly Act, the Federal Trade Commission Act, the antitrust laws, or any other Federal or State law, or any revisions or amendments thereto, of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract under this subsection.

(E) For purposes of this paragraph the terms "dock area" and "within the port area" shall have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(d) **Tariff Rates.** No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 calendar days after publication. The Commission, for good cause, may allow such a new or initial rate or change to become effective in less than 30 calendar days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication.

(e) **Refunds.** The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

(1) there is an error [in a,] in failing to publish a new tariff, or an error in quoting a tariff, and the refund will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference has, prior to filing an application for authority to make a refund for an error in a tariff or a failure to publish a tariff, published a new tariff that sets forth the rate on which the refund or waiver would be based; and

(3) the application for refund or waiver is filed with the Commission within 180 days from the date of shipment.

(f) **Marine Terminal Operator Schedules.** A marine terminal operator may make available to the public, subject to section 10(d) of this Act, a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public shall be enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) **Regulations.** The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission may, after periodic review, prohibit the use of any automated tariff system that fails to meet the requirements established under this section. The Commission may not require a common carrier to provide a remote terminal for access under subsection (a)(2). The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

SEC. 9. CONTROLLED CARRIERS (46 App. U.S.C. 1708 (2004)).

(a) **Controlled Carrier Rates.** No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts, or charge or assess rates, that are below a level that is just and reasonable, nor may any such carrier establish maintain, or enforce unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, prohibit the publication or use of any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations that have been suspended or prohibited by the Commission are void and their use is unlawful.

(b) **Rate Standards.** For the purpose of this section, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs. For purposes of the preceding sentence, the term "constructive costs" means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade. The Commission may also take into account other appropriate factors, including but not limited to, whether—

(1) the rates, charges, classifications, rules, or regulations are the same as or similar to those published or assessed [or assessed] by other carriers in the same trade;

(2) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or

(3) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(c) **Effective Date of Rates.** Notwithstanding section 8(d) of this Act and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of publication. Each controlled carrier shall, upon the request of the Commission, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(d) **Prohibition of Rates.** Within 120 days after the receipt of information requested by the Commission under this section, the Commission shall determine whether the rates, charges, classifications, rules, or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be prohibited. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend the rates, charges, classifications, rules, or regulations at any time before their effective date. In the case of rates, charges, classifications, rules, or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules, or regulations on not less than 30 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days. Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected controlled carrier may publish new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations—except that the Commission may reject the new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

(e) **Presidential Review.** Concurrently with the publication thereof, the Commission shall transmit to the President each order of suspension or final order of prohibition of rates, charges, classifications, rules, or

regulations of a controlled carrier subject to this section. Within 10 days after the receipt or the effective date of the Commission order, the President may request the Commission in writing to stay the effect of the Commission's order if the President finds that the stay is required for reasons of national defense or foreign policy, which reasons shall be specified in the report. Notwithstanding any other law, the Commission shall immediately grant the request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(f) **Exceptions.** This section does not apply to—

(1) a controlled carrier of a state whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(2) a trade served exclusively by controlled carriers.

SEC. 10. PROHIBITED ACTS (46 App. U.S.C. 1709 (2004)).

(a) **In General.** No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable;

(2) operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

(b) **Common Carriers.** No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means;

(2) provide service in the liner trade that—

(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under section 8 of this Act unless excepted or exempted under section 8(a)(1) or 16 of this Act; or

(B) is under a tariff or service contract which has been suspended or prohibited by the Commission under section 9 of this Act or the Foreign Shipping Practices Act of 1988 (46 U.S.C. App. 1710a);

(3) retaliate against any shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates or charges;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

(D) the loading and landing of freight; or

(E) the adjustment and settlement of claims;

(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

(6) use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

(7) offer or pay any deferred rebates;

(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

(10) unreasonably refuse to deal or negotiate;

(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 19 of this Act;

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 19 of this Act, or with an affiliate of such ocean transportation intermediary; or

(13) knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier without the consent of the shipper or consignee if that information—

(A) may be used to the detriment or prejudice of the shipper or consignee;

(B) may improperly disclose its business transaction to a competitor; or

(C) may be used to the detriment or prejudice of any common carrier.

Nothing in paragraph (13) shall be construed to prevent providing such information, in response to legal process, to the United States, the Commission, or to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this Act. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or for the purpose of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act is prohibited.

(c) **Concerted Action.** No conference or group of two or more common carriers may—

(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

(4) negotiate with a nonocean carrier or group of nonocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this Act (for example, truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those nonocean carriers, unless such negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this Act: Provided, That this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or an association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean transportation intermediary, as defined by section

3(17)(A) of this Act, or limit that compensation to less than a reasonable amount;

(6)[3] allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as authorized by section 5(g) of this Act, or as otherwise required by the law of the United States or the importing or exporting country, or as agreed to by a shipper in a service contract;

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers associations or ocean transportation intermediaries; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries;

(d) **Common Carriers, Ocean Transportation Intermediaries, and Marine Terminal Operators.**

(1) No common carrier, ocean transportation intermediary, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, any common carrier or ocean tramp.

(3) The prohibitions in subsections (b)(10) and (13) of this section apply to marine terminal operators.

(4) No marine terminal operator may give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person.

(5) The prohibition in subsection (b)(13) of this section applies to ocean transportation intermediaries, as defined by section 3(17)(A) of this Act.

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[3] Paragraph (6) was amended by Section 424 (b) of Public Law 105-383, approved November 13, 1998 (112 STAT. 3411, 3441), the Coast Guard Authorization Act of 1998, to include the phrase "authorized by section 5(g) of this Act, or as." Section 424(a) of Public Law 105-383 added subsection (g) to Section 5 of the Shipping Act of 1984. Section 424(c) of Public Law 105-383 provides: "Nothing in this section shall affect or in any way diminish the authority or effectiveness of orders issued by the Maritime Administration pursuant to sections 9 and 41 of the Shipping Act, 1916 (46 U.S.C. App. 808 and 809)."

(e) **Joint Ventures.** For purposes of this section, a joint venture or consortium of two or more common carriers but operated as a single entity shall be treated as a single common carrier.

SEC. 11. COMPLAINTS, INVESTIGATIONS, REPORTS, AND REPARATIONS (46 App. U.S.C. 1710 (2004)).

(a) **Filing of Complaints.** Any person may file with the Commission a sworn complaint alleging a violation of this Act, other than section 6(g), and may seek reparation for any injury caused to the complainant by that violation.

(b) **Satisfaction or Investigation of Complaints.** The Commission shall furnish a copy of a complaint filed pursuant to subsection (a) of this section to the person named therein who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Commission shall investigate it in an appropriate manner and make an appropriate order.[4]

(c) **Commission Investigations.** The Commission, upon complaint or upon its own motion, may investigate any conduct or agreement that it believes may be in violation of this Act. Except in the case of an injunction granted under subsection (h) of this section, each agreement under investigation under this section remains in effect until the Commission issues an order under this subsection. The Commission may by order disapprove, cancel, or modify any agreement filed under section 5(a) of this Act that operates in violation of this Act. With respect to agreements inconsistent with section 6(g) of this Act, the Commission's sole remedy is under section 6(h).

(d) **Conduct of Investigation.** Within 10 days after the initiation of a proceeding under this section, the Commission shall set a date on or before which its final decision will be issued. This date may be extended for good cause by order of the Commission.

(e) **Undue Delays.** If, within the time period specified in subsection (d), the Commission determines that it is unable to issue a final decision because of undue delays caused by a party to the proceedings, the Commission may impose sanctions, including entering a decision adverse to the delaying party.

(f) **Reports.** The Commission shall make a written report of every investigation made under this Act in which a hearing was held stating its conclusions, decisions, findings of fact, and order. A copy of this report shall be furnished to all parties. The Commission shall publish each

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[4] On May 28, 2002, the Supreme Court of the United States ruled that the Federal Maritime Commission may not adjudicate complaints filed against unconsenting state instrumentalities due to those instrumentalities' sovereign immunity from suit. *Federal Maritime Commission* v. *South Carolina State Ports Authority*, 535 U.S. 743 (2002).

report for public information, and the published report shall be competent evidence in all courts of the United States.

(g) **Reparations.** For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section 10(b)(3) or (6) or section 10(c)(1) or (3) of this Act, or that violates section 10(a)(2) or (3), the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by section 10(b)(4)(A) or (B) of this Act, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

(h) **Injunction.**

(1) In connection with any investigation conducted under this section, the Commission may bring suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation. Any such suit shall be brought in a district in which the defendant resides or transacts business.

(2) After filing a complaint with the Commission under subsection (a), the complainant may file suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the complaint. Any such suit shall be brought in the district in which the defendant has been sued by the Commission under paragraph (1); or, if no suit has been filed, in a district in which the defendant resides or transacts business. A defendant that prevails in a suit under this paragraph shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

SEC. 12. SUBPENAS AND DISCOVERY (46 App. U.S.C. 1711 (2004)).

(a) **In General.** In investigations and adjudicatory proceedings under this Act—

(1) depositions, written interrogatories, and discovery procedures may be utilized by any party under rules and regulations issued by the Commission that, to the extent practicable, shall be in conformity with the rules applicable in civil proceedings in the district courts of the United States; and

(2) the Commission may by subpena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

(b) **Witness Fees.** Witnesses shall, unless otherwise prohibited by law, be entitled to the same fees and mileage as in the courts of the United States.

SEC. 13. PENALTIES (46 App. U.S.C. 1712 (2004)).

(a) **Assessment of Penalty.** Whoever violates a provision of this Act, a regulation issued thereunder, or a Commission order is liable to the United States for a civil penalty. The amount of the civil penalty, unless otherwise provided in this Act, may not exceed $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. The amount of any penalty imposed upon a common carrier under this subsection shall constitute a lien upon the vessels operated by that common carrier and any such vessel may be libeled therefore in the district court of the United States for the district in which it may be found.

(b) **Additional Penalties.**

(1) For a violation of section 10(b)(1),(2), or (7) of this Act, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

(2) For failure to supply information ordered to be produced or compelled by subpena under section 12 of this Act, the Commission may, after notice and an opportunity for hearing, suspend any or all tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member.

(3) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or after its right to utilize that tariff has been suspended is subject to a civil penalty of not more than $50,000 for each shipment.

(4) If the Commission finds, after notice and an opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the Commission may request that the Secretary of the Treasury refuse or

revoke any clearance required for a vessel operated by that common carrier. Upon request by the Commission, the Secretary of the Treasury shall, with respect to the vessel concerned, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(5) If, in defense of its failure to comply with a subpena or discovery order, a common carrier alleges that documents or information located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. Upon receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

(6) If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including the imposition of any of the penalties authorized under paragraphs (1), (2), (3), and (4) of this subsection.

(7) Before an order under this subsection becomes effective, it shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove the order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) **Assessment Procedures.** Until a matter is referred to the Attorney General, the Commission may, after notice and an opportunity for hearing, assess each civil penalty provided for in this Act. In determining the amount of the penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and such other matters as justice may require. The Commission may compromise, modify, or remit, with or without conditions, any civil penalty.

(d) **Review of Civil Penalty.** A person against whom a civil penalty is assessed under this section may obtain review thereof under chapter 158 of title 28, United States Code.

(e) **Failure to Pay Assessment.** If a person fails to pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to recover the amount assessed in an appropriate district court of the United States.

In such an action, the court shall enforce the Commission's order unless it finds that the order was not regularly made or duly issued.

(f) **Limitations.**

(1) No penalty may be imposed on any person for conspiracy to violate section 10(a)(1), (b)(1), or (b)(2) of this Act, or to defraud the Commission by concealment of such a violation. Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.

(2) Each proceeding to assess a civil penalty under this section shall be commenced within 5 years from the date the violation occurred.

SEC. 14. COMMISSION ORDERS (46 App. U.S.C. 1713 (2004)).

(a) **In General.** Orders of the Commission relating to a violation of this Act or a regulation issued thereunder shall be made, upon sworn complaint or on its own motion, only after opportunity for hearing. Each order of the Commission shall continue in force for the period of time specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(b) **Reversal or Suspension of Orders.** The Commission may reverse, suspend, or modify any order made by it, and upon application of any party to a proceeding may grant a rehearing of the same or any matter determined therein. No rehearing may, except by special order of the Commission, operate as a stay of that order.

(c) **Enforcement of Nonreparation Orders.** In case of violation of an order of the Commission, or for failure to comply with a Commission subpena, the Attorney General, at the request of the Commission, or any party injured by the violation, may seek enforcement by a United States district court having jurisdiction over the parties. If, after hearing, the court determines that the order was properly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(d) **Enforcement of Reparation Orders.**

(1) In case of violation of an order of the Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a United States district court having jurisdiction of the parties.

(2) In a United States district court the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor for the costs of any

subsequent stage of the proceedings, unless they accrue upon his appeal. A petitioner in a United States district court who prevails shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

(3) All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in the order may be joined as defendants, in a single suit in a district in which any one plaintiff could maintain a suit against any one defendant. Service of process against a defendant not found in that district may be made in a district in which is located any office of, or point of call on a regular route operated by, that defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

(e) **Statute of Limitations.** An action seeking enforcement of a Commission order must be filed within 3 years after the date of the violation of the order.

SEC. 15. REPORTS (46 App. U.S.C. 1714 (2004)). The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Conference minutes required to be filed with the Commission under this section shall not be released to third parties or published by the Commission.

SEC. 16. EXEMPTIONS (46 App. U.S.C. 1715 (2004)). The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

SEC. 17. REGULATIONS (46 App. U.S.C. 1716 (2004)).

(a) The Commission may prescribe rules and regulations as necessary to carry out this Act.

(b) The Commission may prescribe interim rules and regulations necessary to carry out this Act. For this purpose, the Commission is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules and regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the date of enactment of this Act.

SEC. 19. OCEAN TRANSPORTATION INTERMEDIARIES (46 App. U.S.C. 1718 (2004)).

(a) **License.** No person in the United States may act as an ocean transportation intermediary unless that person holds a license issued by the Commission. The Commission shall issue an intermediary's license to any person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

(b) **Financial Responsibility.**

(1) No person may act as an ocean transportation intermediary unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

(2) A bond, insurance, or other surety obtained pursuant to this section—

(A) shall be available to pay any order for reparation issued pursuant to section 11 or 14 of this Act, or any penalty assessed pursuant to section 13 of this Act;

(B) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities described in section 3(17) of this Act with the consent of the insured ocean transportation intermediary and subject to review by the surety company, or when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

(C) shall be available to pay any judgement for damages against an ocean transportation intermediary arising from its transportation-related activities under section 3(17) of this Act, provided the claimant has first attempted to resolve the claim pursuant to subparagraph (B) of this paragraph and the claim has not been resolved within a reasonable period of time

(3) The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a

judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

(4) An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

(c) **Suspension or Revocation.** The Commission shall, after notice and hearing, suspend or revoke a license if it finds that the ocean transportation intermediary is not qualified to render intermediary services or that it willfully failed to comply with a provision of this Act or with a lawful order, rule, or regulation of the Commission. The Commission may also revoke an intermediary's license for failure to maintain a bond, proof of insurance, or other surety in accordance with subsection (b)(1).

(d) **Exception.** A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without a license.

(e) **Compensation of Intermediaries by Carriers.**

(1) A common carrier may compensate an ocean transportation intermediary, as defined in section 3(17)(A) of this Act, in connection with a shipment dispatched on behalf of others only when the ocean transportation intermediary has certified in writing that it holds a valid license, if required by subsection (a), and has performed the following services:

(A) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space.

(B) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(2) No common carrier may pay compensation for services described in paragraph (1) more than once on the same shipment.

(3) No ocean transportation intermediary may receive compensation from a common carrier with respect to a shipment in which the intermediary has a direct or indirect beneficial interest nor shall a common carrier knowingly pay compensation on that shipment.

(4) No conference or group of 2 or more ocean common carriers in the foreign commerce of the United States that is authorized to agree upon the level of compensation paid to an ocean transportation intermediary, as defined in section 3(17)(A) of this Act, may—

(A) deny to any member of the conference or group the right, upon notice of not more than 5 calendar days, to take independent action on

any level of compensation paid to an ocean transportation intermediary, as so defined; or

(B) agree to limit the payment of compensation to an ocean transportation intermediary, as so defined, to less than 1.25 percent of the aggregate of all rates and charges which are applicable under a tariff and which are assessed against the cargo on which the intermediary services are provided.

SEC. 20. CONTRACTS, AGREEMENTS, AND LICENSES UNDER PRIOR SHIPPING LEGISLATION (46 App. U.S.C. 1719 (2004)).

(d) **Effects on Certain Agreements and Contracts.** All agreements, contracts, modifications, licenses, and exemptions previously issued, approved, or effective under the Shipping Act, 1916, or the Shipping Act of 1984, shall continue in force and effect as if issued or effective under this Act, as amended by the Ocean Shipping Reform Act of 1998, and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act, as amended by the Ocean Shipping Reform Act of 1998.

(e) **Savings Provisions.**[5]

(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of enactment of this Act may remain in full force and effect and need not comply with the requirements of section 8(c) of this Act until 15 months after the date of enactment of this Act.

(2) This Act and the amendments made by it shall not affect any suit—

(A) filed before the date of enactment of this Act, or

(B) with respect to claims arising out of conduct engaged in before the date of enactment of this Act filed within 1 year after the date of enactment of this Act.

(3) The Ocean Shipping Reform Act of 1998 shall not affect any suit—

(A) filed before the effective date of that Act: or

(B) with respect to claims arising out of conduct engaged in before the effective date of that Act filed within one year after the effective date of that Act.

(4) Regulations issued by the Federal Maritime Commission shall remain in force and effect where not inconsistent with this Act, as amended by the Ocean Shipping Reform Act of 1998.

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[5] The Shipping Act of 1984 was enacted on March 20, 1984. The Ocean Shipping Reform Act of 1998 is effective May 1, 1999.

FOREIGN SHIPPING PRACTICES ACT

SEC. 10001. SHORT TITLE.

This subtitle may be cited as the "Foreign Shipping Practices Act of 1988".

SEC. 10002. FOREIGN LAWS AND PRACTICES (46 App. U.S.C. 1710a (2004)).

(a) **Definitions.** For purposes of this section—

(1) "common carrier", "marine terminal operator", "ocean transportation intermediary", "ocean common carrier", "person", "shipper", "shippers' association", and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 A.P.. U.S.C. 1702);

(2) "foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) "maritime services" means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(5) "United States carrier" means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) **Authority to Conduct Investigations.** The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country result in the existence of conditions that—

(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

(c) **Investigations.**

(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

(d) **Information Requests.**

(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

(e) **Action Against Foreign Carriers.**

(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs and service contracts, including the right of an ocean common carrier to use any or all tariffs and service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed $1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) **Actions Upon Request of the Commission.** Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) **Report.** The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

(2) an analysis of conditions described in subsection (b) of this section being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset such conditions;

(4) any recommendations for additional legislation to offset such conditions; and

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13(b)(6) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(6)) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

TITLE 40–PUBLIC BUILDINGS, PROPERTY, AND WORKS[1]

[Excerpts]

40 U.S.C. 102 (2004). DEFINITIONS. The following definitions apply in chapters 1 through 7 of this title and in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.):

* * * * * *

(9) Property. The term "property" means any interest in property except—

* * * * * *

(B) naval vessels that are battleships, cruisers, aircraft carriers, destroyers, or submarines;

* * * * * *

40 U.S.C. 111 (2004). APPLICATION TO FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949. In the following provisions, the words "this subtitle" are deemed to refer also to title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.):[2]

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(3) Section 113 of this title.

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(22) Section 558(a) of this title.

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40 U.S.C. 113 (2004). LIMITATIONS.

(a) In general. Except as otherwise provided in this section, the authority conferred by this subtitle is in addition to any other authority conferred by law and is not subject to any inconsistent provision of law.

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[1] Public Law 107-217, approved August 21, 2002 (116 STAT. 1062), revised, codified, and enacted without substantive change the general and permanent laws of the United States related to public buildings, property, and works, as title 40, United States Code.

[2] This section is added to provide an accurate literal translation of the words "this Act", meaning the Federal Property and Administrative Services Act of 1949. In the positive law codification of title 40, most of the Federal Property and Administrative Services Act of 1949 is restated as subtitle I of title 40. However, title III of the Act, which is outside the scope of the positive law codification, remains classified to the United States Code as 41 U.S.C. 251 et seq. Where the words "this Act" are restated, substituting the words "this subtitle" does not yield an accurate literal translation because "this subtitle" does not include title III of the Act. This section does not subject any provision of law to title III of the Act if that provision was not subject to title III prior to the positive law codification of title 40.

(e) Other limitations. Nothing in this subtitle impairs or affects the authority of—

* * * * * *

(15) the Maritime Administration with respect to the acquisition, procurement, operation, maintenance, preservation, sale, lease, charter, construction, reconstruction, or reconditioning (including outfitting and equipping incidental to construction, reconstruction, or reconditioning) of a merchant vessel or shipyard, ship site, terminal, pier, dock, warehouse, or other installation necessary or appropriate for carrying out a program of the Administration authorized by law or nonadministrative activities incidental to a program of the Administration authorized by law, but the Administration shall, to the maximum extent it considers practicable, consistent with the purposes of its programs and the effective, efficient conduct of its activities, coordinate its operations with the requirements of this subtitle and with policies and regulations prescribed under this subtitle;

* * * * * *

40 U.S.C. 548 (2004). SURPLUS VESSELS. The Maritime Administration shall dispose of surplus vessels of 1,500 gross tons or more which the Administration determines to be merchant vessels or capable of conversion to merchant use. The vessels shall be disposed of in accordance with the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), and other laws authorizing the sale of such vessels.

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40 U.S.C. 554 (2004). PROPERTY FOR DEVELOPMENT OR OPERATION OF A PORT FACILITY.

(a) Definitions. In this section, the following definitions apply:

(1) Base closure law. The term "base closure law" means the following:

(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(C) Section 2687 of title 10.

(2) State. The term "State" includes the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands.

(b) Authority for assignment to the Secretary of Transportation. Under regulations that the Administrator of General Services, after con-

sultation with the Secretary of Defense, may prescribe, the Administrator, or the Secretary of Defense in the case of property located at a military installation closed or realigned pursuant to a base closure law, may assign to the Secretary of Transportation for disposal surplus real property, including buildings, fixtures, and equipment situated on the property, that the Secretary of Transportation recommends as needed for the development or operation of a port facility.

(c) Authority for conveyance by the Secretary of Transportation.

(1) In general. Subject to disapproval by the Administrator or the Secretary of Defense within 30 days after notice of a proposed conveyance by the Secretary of Transportation, the Secretary of Transportation, for the development or operation of a port facility, may convey property assigned to the Secretary of Transportation under subsection (b) to a State or political subdivision, municipality, or instrumentality of a State.

* * * * * *

40 U.S.C. 556 (2004). DISPOSAL OF DREDGE VESSELS.

(a) In general. The Administrator of General Services, pursuant to sections 521 through 527, 529, and 549 of this title, may dispose of a United States Army Corps of Engineers vessel used for dredging, together with related equipment owned by the Federal Government and under the control of the Chief of Engineers, if the Secretary of the Army declares the vessel to be in excess of federal needs.

(b) Recipients and purposes. Disposal under this section is accomplished—

(1) through sale or lease to—

(A) a foreign government as part of a Corps of Engineers technical assistance program;

(B) a federal or state maritime academy for training purposes; or

(C) a non-federal public body for scientific, educational, or cultural purposes; or

(2) through sale solely for scrap to foreign or domestic interests.

(c) No dredging activities. A vessel described in subsection (a) shall not be disposed of under any law for the purpose of engaging in dredging activities within the United States.

(d) Deposit of amounts collected. Amounts collected from the sale or lease of a vessel or equipment under this section shall be deposited into the revolving fund authorized by section 101 (9th par.) of the Civil Functions Appropriation Act, 1954 (33 U.S.C. 576), to be available, as provided in appropriation laws, for the operation and maintenance of vessels under the control of the Corps of Engineers.

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40 U.S.C. 558 (2004). DONATION OF FORFEITED VESSELS.

(a) In general. A vessel that is forfeited to the Federal Government may be donated, in accordance with procedures under this subtitle, to an eligible institution described in subsection (b).

(b) Eligible institution. An eligible institution referred to in subsection (a) is an educational institution with a commercial fishing vessel safety program or other vessel safety, education and training program. The institution must certify to the federal officer making the donation that the program includes, at a minimum, all of the following courses in vessel safety:

(1) Vessel stability.
(2) Firefighting.
(3) Shipboard first aid.
(4) Marine safety and survival.
(5) Seamanship rules of the road.

(c) Terms and conditions. The donation of a vessel under this section shall be made on terms and conditions considered appropriate by the federal officer making the donation. All of the following terms and conditions are required:

(1) *No warranty.* The institution must accept the vessel as is, where it is, and without warranty of any kind and without any representation as to its condition or suitability for use.

(2) *Maintenance.* The institution is responsible for maintaining the vessel.

(3) *Instruction only.* The vessel may be used only for instructing students in a vessel safety education and training program.

(4) *Documentation.* If the vessel is eligible to be documented, it must be documented by the institution as a vessel of the United States under chapter 121 of title 46. The requirements of paragraph (5) must be noted on the permanent record of the vessel.

(5) *Disposal.* The institution must obtain prior approval from the Administrator of General Services before disposing of the vessel and any proceeds from disposal shall be payable to the Government.

(6) *Inspection or regulation.* The vessel shall be inspected or regulated in the same manner as a nautical school vessel under chapter 33 of title 46.

(d) Government liability. The Government is not liable in an action arising out of the transfer or use of a vessel transferred under this section.

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40 U.S.C. 1306 (2004). DISPOSITION OF ABANDONED OR FORFEITED PERSONAL PROPERTY.

(a) Definitions. In this section—

(1) *Agency.* The term "agency" includes any executive department, independent establishment, board, commission, bureau, service, or division of the Federal Government, and any corporation in which the Government owns at least a majority of the stock.

(2) *Property.* The term "property" means all personal property, including vessels, vehicles, and aircraft.

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(h) Administrative.

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(2) *Other laws not repealed.* This section does not repeal any other laws relating to the disposition of forfeited or abandoned property, except provisions of those laws directly in conflict with this section which were enacted prior to August 27, 1935.

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40 U.S.C. 3134 (2004). WAIVERS FOR CERTAIN CONTACTS.

(a) Military. The Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Transportation may waive this subchapter with respect to cost-plus-a-fixed fee and other cost-type contracts for the construction, alteration, or repair of any public building or public work of the Federal Government and with respect to contracts for manufacturing, producing, furnishing, constructing, altering, repairing, processing, or assembling vessels, aircraft, munitions, materiel, or supplies for the Army, Navy, Air Force, or Coast Guard, respectively, regardless of the terms of the contracts as to payment or title.

(b) Transportation. The Secretary of Transportation may waive this subchapter with respect to contracts for the construction, alteration, or repair of vessels when the contract is made under sections 1535 and 1536 of title 31, the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 et seq.), regardless of the terms of the contracts as to payment or title.

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MILITARY PROGRAMS
Fast Sealift Program

SEC. 1424.[1] FAST SEALIFT PROGRAM.

(a) **Establishment of Program.** The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

(b) **Program Requirements.** The program under this section shall be carried out as follows:

(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

(A) are manufactured in the United States; and

(B) have more than half of their value, in terms of cost, added in the United States.

(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

(A) the system or equipment is not available; or

(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

(c) **Charter of Vessels Constructed.**

(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the Secretary, in consultation with the Administrator of the Maritime Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

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[1] Section 1424 of Public Law 101-510, approved November 5, 1990 (104 STAT. 1485, 1683), the National Defense Authorization Act for Fiscal Year 1991, as amended (10 U.S.C. 7291, note).

(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association, shall be determined in the manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802));[2] and

(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that operation would not unfairly compete with another United States-flag vessel.

(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

(d) **Reports to Congress.**

(1) Not later than six months after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

(2) Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

(e) **Availability of Funds.** Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.

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[2] Section 2 of the Shipping Act, 1916 is located at page 236.

SEC. 1021.[3] PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.

(a) **Acquisition and Conversion of U.S. Built Vessels.** Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

(2) to convert in United States shipyards vessels built in United States shipyards.

(b) **Acquisition of Five Foreign-Built Vessels.** Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.

SEC. 375.[4] CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.

(a) **Consideration of Vessel Location in the Award of LAYBERTH Contracts.** As a factor in the evaluation of bids and proposals for the award of contracts to LAYBERTH sealift vessels of the Department of the Navy, the Secretary of the Navy shall include the location of the vessels, including whether the vessels should be layberthed at locations where—

(1) members of the Armed Forces are likely to be loaded onto the vessels; and

(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

(b) **Establishment of Location as a Major Criterion.** In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

(c) **Applicability.** Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act.

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[3] Section 1021 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2485) (10 U.S.C. 7291, note).

[4] Section 375 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2385, 2315) the National Defense Authorization Act for Fiscal Year 1993, (10 U.S.C. 7291, note).

National Defense Sealift Fund[1]

10 U.S.C. 2218 (2004). NATIONAL DEFENSE SEALIFT FUND.

(a) **Establishment.** There is established in the Treasury of the United States a fund to be known as the "National Defense Sealift Fund".

(b) **Administration of Fund.** The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) **Fund Purposes.**

(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) **Deposits.** There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration,

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[1] Note that Public Law 106-65, approved October 5, 1999, (113 STAT. 512), the DOD Authorization Act FY 2000, amended the provisions of the National Defense Sealift Fund in two significant respects. Section 1014(b) (113 STAT. 742), expanded the definition of "Department of Defense sealift vessel," now set forth in 10 U.S.C. 2218(l), to include a strategic sealift ship, a combat logistics force ship, a maritime prepositioned ship, and "any other auxiliary support vessel." Section 1015 (113 STAT. 743), added a new subsection (k) generally providing for DOD national defense features on a vessel.

Note that funds from the National Defense Sealift Fund have been allocated for the construction of a Philadelphia Military Cargo Terminal. See page 594.

and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).[2]

(e) **Acceptance of Support.**

(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) **Limitations.**

(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101-510 (104 Stat. 1683).[3]

(g) **Expiration of Funds after 5 Years.** No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

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[2] Section 1424 is set forth under Fast Sealift Program, page 403.

[3] Id.

(h) **Budget Requests.** Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) **Title or Management of Vessels.** Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) **Authority for Certain Use of Funds.** Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1) (A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) **Contracts for Incorporation of Defense Features in Commercial Vessels.**

(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer.

As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contact under paragraph (1) in a lump sum, in annual pay-

ments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as "ROS-4 status" in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall-

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(l) **Definitions.** In this section:

(1) The term “Fund” means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following—

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683)[4]

(B) A maritime propositioning ship

(C) An afloat propositioning ship

(D) An aviation maintenance support ship.

(E) A hospital ship.

(F) A strategic sealift ship.

(G) A combat logistics force ship.

(H) A maritime prepositioned ship.

(I) Any other auxiliary support vessel.

(3) The term "national defense sealift vessel" means—

(A) A Department of Defense sealift vessel; and

(B) A national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term "head of an agency" has the meaning given that term in section 2302(1) of this title.[5]

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NATIONAL DEFENSE SEALIFT FUND APPROPRIATIONS FY 2005.

Public Law 108-287. Public Law 108-287, approved August 5, 2004 (118 STAT. 966), the Department of Defense Appropriations Act, 2005, provides:

"For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $1,204,626,000, to remain available until expended: *Provided*, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: *Provided further*, That the exercise of an option in a contract awarded through the obligation of previously

appropriated funds shall not be considered to be the award of a new contract: *Provided further*, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes."

NATIONAL DEFENSE SEALIFT FUND AUTHORIZATIONS FY 2005.

Public Law 108-375. Section 302 of Public Law 108-375, approved October 28, 2004 (118 STAT. 1841), the National Defense Authorization Act for Fiscal Year 2005, provides:

"SEC. 302. WORKING CAPITAL FUNDS.

"Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

* * * * * *

"(2) For the National Defense Sealift Fund, $1,269,252,000.",

NAVY SHIPBUILDING AND CONVERSIONS - AUTHORIZATIONS FY 2005.

Public Law 108-375. Section 102(a) of Public Law 108-375, approved October 28, 2004 (118 STAT. 1826), the National Defense Authorization Act for Fiscal Year 2005, provides:

"(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Navy as follows: * * * (3) For shipbuilding and conversion, $10,116,827,000."

NAVY SHIPBUILDING AND CONVERSIONS - APPROPRIATIONS FY 2005.

Public Law 108-287. Public Law 108-287, approved August 5, 2004 (118 STAT. 951), the Department of Defense Appropriations Act, 2005, provides:

"Shipbuilding and Conversion, Navy. At 118 STAT. 961: "For expenses necessary for the construction, acquisition or conversion of vessels as authorized by law, . . . In all: $10,427,443,000, to remain available for obligation until September 30, 2009: *Provided*, That additional obligations may be incurred after September 30, 2009, for engi-

neering services, tests, evaluations, and other such budgeted work that must be performed in the final stage of ship construction: *Provided further*, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: *Provided further*, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards."

LIMITATION ON DISPOSAL OF OBSOLETE NAVAL VESSEL.

Section 1015 of Public Law 108-375, approved October 28, 2004 (118 STAT. 2042). provides:

"The Secretary of the Navy may not dispose of the decommissioned destroyer ex-Edson (DD–946) before October 1, 2007, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code."

T-AKE Class Vessels/Buy American/Diesel Engines.

Section 8078 of Public Law 108-287, approved August 5, 2004 (118 STAT. 988), provides:

"SEC. 8078. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: *Provided*, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference."

DOD EXPORT LOAN GUARANTEE PROGRAM[1]

10 U.S.C. 2540. (2004). Establishment of loan guarantee program.

(a) Establishment. In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) Covered countries. The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title, as in effect on that date.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) Authority subject to provisions of appropriations. The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

10 U.S.C. 2540a. (2004). Transferability A guarantee issued under this subchapter shall be fully and freely transferable.

10 U.S.C. 2540b. (2004). Limitations

(a) Terms and conditions of loan guarantees. In issuing a guarantee under this subchapter for a medium-term or long-term loan, the

[1] Note that Title IX of Public Law 107-248, approved October 23, 2002 (116 STAT. 1519, 1573), the Department of Defense Appropriations Act, 2003, provides for the Commercial Reusable In-Space Transportation Act of 2002. The Conference Report (H. Rpt. 107-732) to accompany H.R. 5010, provides at page 330: "The conferees included a new title IX which provides the Secretary of Defense the authority to make loan guarantees to eligible U.S. commercial providers for the purpose of producing commercial reusable inspace transportation services or systems."

Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) Losses arising from fraud or misrepresentation. No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) No right of acceleration. The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

10 U.S.C. 2540c. (2004). Fees charged and collected

(a) Exposure fees. The Secretary of Defense shall charge a fee (known as "exposure fee") for each guarantee issued under this subchapter.

(b) Amount of exposure fee. To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) Payment terms. The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) Administrative fees. (1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the

Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

10 U.S.C. 2540d. (2004). Definitions

In this subchapter:

(1) The terms "defense article", "defense services", and "design and construction services" have the meanings given those terms in section 47 of the Arms Export Control Act *(22 U.S.C. 2794)*.

(2) The term "cost", with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 *(2 U.S.C. 661a)*.

LOAN GUARANTEE AUTHORITY. Section 8065 of Public Law 108-287, approved August 5, 2004 (118 STAT. 951, 985), the Department of Defense Appropriations Act, 2005, provides:

"SEC. 8065. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantee issued under the authority of this section may not exceed $15,000,000,000: *Provided further,* That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code."

DOD ENVIRONMENTAL EMERGENCY ASSISTANCE

Clarification of Department of Defense Response to Environmental Emergencies. Section 312 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1429), the National Defense Authorization Act for Fiscal Year 2004, amended 10 U.S.C. 402, 404 and 2561(a) to generally grant the Secretary of Defense discretionary authority to provide environmental emergency assistance if such assistance would not otherwise be available and would be subject to reimbursement. As so amended, these sections provide:

SHIPYARD CAPABILITY PRESERVATION.

10 U.S.C. 7315. (2004) PRESERVATION OF NAVY SHIPBUILDING CAPABILITY.[1]

(a) **Shipbuilding Capability Preservation Agreements.**—The Secretary of the Navy may enter into an agreement, to be known as a "shipbuilding capability preservation agreement", with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

(b) **Cost Reimbursement Rules.**—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

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[1] 10 U.S.C. 7315, was enacted by Section 1027(a) of Public Law 105–85, approved November 18, 1997 (111 STAT. 1878), the Department of Defense Authorization Act for fiscal year 1998. Section 1027 further provides:

"(b) **Implementation.**—Not later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall establish application procedures, and procedures for expeditious consideration of shipbuilding capability preservation agreements as authorized by section 7315 of title 10, United States Code, as added by subsection (a).

"(c) **Report.**—Not later than February 15, 1998, the Secretary of the Navy shall submit to Congress a report on applications for shipbuilding capability preservation agreements under section 7315 of title 10, United States Code, as added by subsection (a). The report shall specify the number of the applications received, the number of the applications approved, and a discussion of the reasons for disapproval of any application disapproved.

"(d) **Repeal of Superseded Provision.**—Section 808 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 393; 10 U.S.C. 2501 note) is repealed."

"(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder's allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of a shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder's established accounting practices.

(c) **Authority To Modify Cost Reimbursement Rules.**—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) **Applicability.**—(l) An agreement entered into with a shipbuilder under Subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

* * * * * *

Vessel Transfer Between Departments

10 U.S.C. 2578 (2004). Vessels: transfer between departments.

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Homeland Security, and a vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

Competition Between DOD Maintenance Activities and Private Firms.

Section 8031 of Public Law 108-287, approved August 5, 2004 (118 STAT. 977), provides: "SEC. 8031. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or Defense Agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Circular A–76 shall not apply to competitions conducted under this section."

Navy Charter of RV CORY CHOUEST.

Section 8124 of Public Law 108-87, approved September 30, 2003 (117 STAT. 1054, 1101), the Department of Defense Appropriations Act, 2004, provides:

"SEC. 8124. Notwithstanding the provisions of section 2401 of title 10, United States Code, the Secretary of the Navy is authorized to enter into a contract for the charter for a period through fiscal year 2008, of the vessel, RV CORY CHOUEST (United States Official Number 933435) in support of the Surveillance Towed Array Sensor (SURTASS) program: Provided, That funding for this lease shall be from within funds provided in this Act and future appropriations Acts."

DOD Notwithstanding Sealift Operations.

Section 1106 of Public Law 108-106, approved November 6, 2003 (117 STAT. 1214), the Emergency Supplemental Appropriations Act for

Defense and for the Reconstruction of Iraq and Afghanistan, 2004, provides:

"SEC. 1106. During the current fiscal year, funds available to the Department of Defense for operation and maintenance may be used, notwithstanding any other provision of law, to provide supplies, services, transportation, including airlift and sealift, and other logistical support to coalition forces supporting military and stability operation in Iraq: Provided, That the Secretary of Defense shall provide quarterly reports to the congressional defense committees regarding support provided under this section."

Support for Transfers of Decommissioned Vessels and Shipboard Equipment.

Section 1015 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1591), the National Defense Authorization Act for Fiscal Year 2004, added the following new section.

10 U.S.C. 7316. (2004) Support for transfers of decommissioned vessels and shipboard equipment.

(a) **Authority to provide assistance.** The Secretary of the Navy may provide an entity described in subsection (b) with assistance in support of a transfer of a vessel or shipboard equipment described in such subsection that is being executed under section 2572, 7306, 7307, or 7545 of this title, or under any other authority.

(b) **Covered Vessels and Equipment.** The authority under this section applies—

(1) in the case of a decommissioned vessel that—

(A) is owned and maintained by the Navy, is located at a Navy facility, and is not in active use; and

(B) is being transferred to an entity designated by the Secretary of the Navy or by law to receive transfer of the vessel; and

(2) in the case of any shipboard equipment that—

(A) is on a vessel described in paragraph (1)(A); and

(B) is being transferred to an entity designated by the Secretary of the Navy or by law to receive transfer of the equipment.

(c) **Reimbursement.** The Secretary may require a recipient of assistance under subsection (a) to reimburse the Navy for amounts expended by the Navy in providing the assistance.

(d) **Deposit of Funds Received.** Funds received in a fiscal year under subsection (c) shall be credited to the appropriation available for such fiscal year for operation and maintenance for the office of the

Navy managing inactive ships, shall be merged with other sums in the appropriation that are available for such office, and shall be available for the same purposes and period as the sums with which merged.

Limitation on Disposal of Obsolete Naval Vessel.

Section 1018 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1593), the National Defense Authorization Act for Fiscal Year 2004, provides:

"Sec. 1018. Limitation on Disposal of Obsolete Naval Vessel. The Secretary of the Navy may not dispose of the decommissioned destroyer ex-Forrest Sherman (DD–931) before October 1, 2004, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code."

TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.

Section 1013 of Public Law 108-375, approved October 28, 2004 (118 STAT. 2040), provides:

"(a) Transfers by Grant.—The President is authorized to transfer vessels to foreign recipients on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as follows:

"(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer USS O'BANNON (DD–987).

"(2) PORTUGAL.—To the Government of Portugal, the OLIVER HAZARD PERRY class guided missile frigates GEORGE PHILIP (FFG–12) and SIDES (FFG–14).

"(b) Transfers by Sale.—The President is authorized to transfer vessels to foreign recipients on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as follows:

"(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer FLETCHER (DD–992).

"(2) TAIWAN.—To the Taipei Economic and Cultural Representative Office of the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act (22 U.S.C. 3309(a))), the ANCHORAGE class dock landing ship ANCHORAGE (LSD–36).

"(c) Grants not Counted in Annual Total of Transferred Excess Defense Articles.—The value of a vessel transferred to another country on a grant basis pursuant to authority provided by subsection (a) shall not be counted against the aggregate value of excess defense

articles transferred to countries in any fiscal year under section 516(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(g)).

"(d) Costs of Transfers.—Any expense incurred by the United States in connection with a transfer authorized under subsection (a) or (b) shall be charged to the recipient.

"(e) Repair and Refurbishment in United States Shipyards.— To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

"(f) Expiration of Authority.—The authority to transfer a vessel under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act."

UNITED STATES COMMERCIAL SHIPYARDS

MANUFACTURING EXTENSION PROGRAM.

Section 8062 of Public Law 108-87, approved September 30, 2003 (117 STAT. 1054,1086), the Department of Defense Appropriations Act, 2004, provides: " SEC. 8062. Notwithstanding any other provision of law, the Naval shipyards of the United States shall be eligible to participate in any manufacturing extension program financed by funds appropriated in this or any other Act or hereafter in any other Act."

CONTRACTS FOR NUCLEAR SHIPS; SALES OF NAVY SHIPYARD ARTICLES AND SERVICES TO PRIVATE SHIPYARDS.

10 U.S.C. 7300. (2004) Contracts for nuclear ships; sales of naval shipyard articles and services to private shipyards. The conditions set forth in section 2208(j)(1)(B) of this title and subsections (a)(1) and (c)(1)(A) of section 2563 of this title shall not apply to a sale by a naval shipyard of articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard's fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

NAVAL VESSELS NOT TO BE MAINTAINED BY FOREIGN SHIPYARD. Act Oct. 18, 1986, P.L. 99-500 and Act Oct. 30, 1986, P.L. 99-591, Title I, §101(c) in part, 100 Stat. 3341-118 (10 U.S.C. 7291, note), provide: "No naval vessel or any vessel owned and operated by the Department of Defense homeported in the United States may be overhauled, repaired, or maintained in a foreign owned and operated shipyard located outside of the United States, except for voyage repairs."

ENCOURAGEMENT OF CONSTRUCTION IN U.S. SHIPYARDS OF COMBATANT VESSELS FOR U.S. ALLIES.

Section 1455 of Public Law 99-145, approved November 8, 1985 (99 STAT. 583, 761) provides:

"SEC. 1455. ENCOURAGEMENT OF CONSTRUCTION IN UNITED STATES SHIPYARDS OF COMBATANT VESSELS FOR UNITED STATES ALLIES

(a) IN GENERAL.— The Secretary of the Navy shall take such steps as necessary—

(1) to encourage United States shipyards to construct combatant vessels for nations friendly to the United States, subject to the requirement to safeguard sensitive warship technology; and

(2) to ensure that no effort is made by any element of the Department of the Navy to inhibit, delay, or halt the provision of any United States naval system to a nation allied with the United States if that system is approved for export to a foreign nation, unless approval of such system for export is withheld solely for the purpose of safeguarding sensitive warship technology;

(3) if opportunities arise to construct combatant vessels (including diesel submarines) outside the United States in a shipyard of a friendly foreign nation, with some or all of the costs provided by United States funds—

(A) to encourage United States firms to participate in such construction to the maximum extent possible, subject to the requirement to safeguard sensitive warship technology; and

(B) to ensure, whenever practicable, that at least 51 percent of the dollar value of such construction is provided by United States firms.

(b) DEFINITION.—For the purposes of this section, the term "sensitive warship technology" means technology relating to the design or construction of a combatant naval vessel that is determined by the Secretary of Defense to be vital to United States security."

MARITIME ADMINISTRATION FUNDING

Authorizations. 2004, 2005, 2006, 2007 and 2008

Section 3511 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1789), the National Defense Authorization Act for Fiscal Year 2004, provides:

"Sec. 3511. Authorization of Appropriations for Fiscal Years 2004, 2005, 2006, 2007, and 2008. There are authorized to be appropriated to the Secretary of Transportation for the Maritime Administration—

(1) for expenses necessary for operations and training activities, not to exceed $104,400,000 for the fiscal year ending September 30, 2004, $106,000,000 for the fiscal year ending September 30, 2005, $109,000,000 for the fiscal year ending September 30, 2006, $111,000,000 for the fiscal year ending September 30, 2007, and $113,000,000 for the fiscal year ending September 30, 2008;

(2) for expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), $36,000,000 for each of fiscal years 2004, 2005, 2006, 2007, and 2008 of which—

(A) $30,000,000 shall be for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees under the program; and

(B) $6,000,000 shall be for administrative expenses related to loan guarantee commitments under the program; and

(3) for ship disposal, $18,422,000 for fiscal year 2004, $11,422,000 for each of fiscal years 2005 and 2006, and $12,000,000 for each of fiscal years 2007 and 2008."

AUTHORIZATIONS. 2005.

Section 3501 of Public Law 108-375, approved October 28, 2004 (118 STAT. 2194), the National Defense Authorization Act, FY 2005, provides:

"SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR MARITIME ADMINISTRATION.

"There are authorized to be appropriated to the Secretary of Transportation for the Maritime Administration for fiscal year 2005 (in lieu of amounts authorized for the same purposes by section 3511 of the National Defense Authorization Act for Fiscal Year 2004)—

"(1) for expenses necessary for operations and training activities, $109,300,000;

"(2) for administrative expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), $4,764,000; and

"(3) for ship disposal, $35,000,000, of which $2,000,000 shall be for decommissioning, removal, and disposal of the nuclear reactor and hazardous materials on board the vessel SAVANNAH."

APPROPRIATIONS. 2004

Public Law 108-199, approved January 23, 2004 (118 STAT. 3, 312), the Consolidated Appropriations Act, 2004, appropriated funds for the Maritime Administration for fiscal year 2004, as follows:

"**Maritime Security Program.** For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $98,700,000, to remain available until expended.

"**Operations and Training.** For necessary expenses of operations and training activities authorized by law, $106,997,000, of which $23,600,000 shall remain available until September 30, 2004, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $13,500,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; of which $8,063,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair; of which $500,000 shall remain available until expended for the evaluation and provision of the fourteen commercially strategic ports; and of which $1,000,000 shall remain available until September 30, 2005, for Maritime Security Professional Training in support of section 109 of the Maritime Transportation Security Act of 2002.[1]

"**Ship Disposal.** For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $16,211,000, to remain available until expended.

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[1] The Conference Report (108-401), provides at page 1002: " OPERATIONS AND TRAINING * * * Maritime Security Professional Training.—In support of Section 109 of the Maritime Transportation Security Act, the conference agreement includes a one-time appropriation of $1,000,000 to initiate maritime security training for any federal, state, local, and private law enforcement or security personnel as proposed by the House. The conferees expect MARAD to coordinate with the state maritime academies, the U.S. Merchant Marine Academy, and the Appalachian Transportation Institute in the facilitation of this training. Furthermore, the conferees encourage MARAD to seek assistance from the Department of Homeland Security in the implementation of this training.

"**Maritime Guaranteed Loan (Title XI) Program Account.** For administrative expenses to carry out the guaranteed loan program, not to exceed $4,498,000, which shall be transferred to and merged with the appropriation for Operations and Training.

"**Ship Construction (Recision).** Of the unobligated balances available under this heading, $4,107,056 are rescinded.

"General Provisions-Maritime Administration.

"Sec. 180. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: Provided, That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

"Sec. 181. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriation Act."

APPROPRIATIONS, 2005

Public Law 108-447, approved December 8, 2004 (118 STAT. 3230), the Consolidated Appropriations Act, 2005, appropriated funds for the Maritime Administration for fiscal year 2005, as follows:

"**Maritime Security Program.** For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $98,700,000, to remain available until expended.

" Intermodal Efficiency.—The conferees direct MARAD to report to the House and Senate Committees on Appropriations, no later than 90 days after enactment of this Act, on the performance of the intermodal system with respect to the efficiency of the most congested ports. Within this report, particular emphasis should be placed on summarizing the performance of the 14 strategic commercial ports during the military force build-up for Operation Iraqi Freedom and on identifying the most glaring deficiencies of the intermodal system as a whole. This report is to contain a thorough comparison of the most congested ports in terms of operational efficiency; identification of significant intermodal obstacles associated with each port; and a summary of future actions MARAD plans to take to address and improve the throughput of cargo in America's ports. The conferees expect MARAD to work with industry groups as well as the scientific community in the completion of this study.

"Additional Required Reports.—The conferees direct MARAD to submit all reports as directed in the House report no later than 45 days after enactment of this Act."

"**Operations and Training.** For necessary expenses of operations and training activities authorized by law, $109,478,000, of which $23,753,000 shall remain available until September 30, 2005, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $13,138,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and of which $8,090,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair.

"**Ship Disposal.** For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $21,616,000, to remain available until expended.

"**Maritime Guarantee Loan (Title XI) Program Account. (Including Transfer of Funds).** For administrative expenses to carry out the guaranteed loan program, not to exceed $4,764,000, which shall be transferred to and merged with the appropriation for Operations and Training: Provided, That of the $25,000,000 authorized for the cost of guaranteed loans in Chapter 10 of Public Law 108–11, Making Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes, available until September 30, 2005,[2] and pursuant to the Department of Transportation Inspector General report CR–2004–095 certifying that the recommendations of report CR–2003–031 have been implemented to the Inspector General's satisfaction, up to $2,000,000 shall be used by the Department of Transportation to develop a comprehensive computer based financial monitoring system.

"**National Defense Tank Vessel Construction Program.** For necessary expenses to carry out the program of financial assistance for the construction of new product tank vessels as authorized by section 53101 of title 46, United States Code, as amended, $75,000,000, to remain available until expended.

"**Ship Construction (Rescission).** Of the unobligated balances available under this heading, $1,979,000 are rescinded.

"**General Provisions-Maritime Administration.**

"Sec. 180. Notwithstanding any other provision of this Act, the Maritime Administration is authorized to furnish utilities and services and make necessary repairs in connection with any lease, contract, or occupancy involving Government property under control of the Maritime Administration, and payments received therefore shall be credited to the appropriation charged with the cost thereof: Provided,

[2] Chapter 10 of Public Law 108-11, approved April 16, 2003 (117 STAT. 588).

That rental payments under any such lease, contract, or occupancy for items other than such utilities, services, or repairs shall be covered into the Treasury as miscellaneous receipts.

"Sec. 181. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936, or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriations Act."[3]

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[3] The Conference Report (108-792) provides in part at page 1438:

"***Operations and Training.***

* * *

"The conferees provide $610,000 as a one-time appropriation for relocation and reconfiguration of the CAPE CHALMERS from the National Defense Reserve Fleet to the Federal Law Enforcement Training Center in Charleston, South Carolina to establish a maritime security professional training center. Funds shall not be used for training purposes or for administration purposes associated with the Federal Law Enforcement Training Center.

"The conferees provide $1,000,000 to prepare a conditions and performance report and needs assessment for the inland waterways system. In developing the conditions and performance and needs assessment report, MARAD should consider and evaluate the potential for applying information technology and data management to the inland waterways infrastructure to address increased transportation demands.

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"***Maritime Guarantee Loan (Title XI) Program Account (Including Transfer of Funds)*** The conference agreement includes $4,764,000 for administration expenses of the maritime guaranteed loan program (Title XI) as proposed by the House and Senate. This level is adequate to fund the three requested full time equivalents to improve the administration and oversight of the Title XI loan process, as recommended by the DOT Inspector General. Further, MARAD is prohibited from detailing any personnel overseeing the Title XI program to any other modal administration, including the Office of the Secretary, without the advance consent of both the House and Senate Committees on Appropriations. In addition, the conferees direct MARAD to implement the additional three recommendations detailed in the Inspector General's follow-up audit of the Title XI program dated September 28, 2004, and make available up to $2,000,000 of the Title XI funds provided under Public Law 108– 11 to be used to develop and acquire a comprehensive computer- based financial monitoring system."

MARITIME LIABILITY

CHAPTER 301—GENERAL.

46 U.S.C. 30101 (2004). DEFINITIONS.

In this subtitle—

(1) "documented vessel" means a vessel documented under chapter 121 of this title;

(2) "foreign vessel" means a vessel of foreign registry or operated under the authority of a foreign country;

(3) "public vessel" means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;

(4) "recreational vessel" means a vessel—

(A) operated primarily for pleasure; or

(B) leased, rented, or demise chartered to another for the latter's pleasure;

(5) "seaman" means a master or a crewmember of a vessel in operation;

(6) "State" means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;

(7) "State vessel" means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;

(8) "United States", when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and

(9) "vessel of the United States" means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

CHAPTER 313—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

SUBCHAPTER I—GENERAL.

46 U.S.C. 31301 (2004). DEFINITIONS.

In this chapter—

(1) "acknowledge" means making—

(A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 1961;

(2) "district court" means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) "mortgagee" means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) "necessaries" includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) "preferred maritime lien" means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage; and

(6) "preferred mortgage"—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

46 U.S.C. 31302 (2004)). AVAILABILITY OF INSTRUMENTS, COPIES, AND INFORMATION.

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

46 U.S.C. 31303 (2004). CERTAIN CIVIL ACTIONS NOT AUTHORIZED. If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

46 U.S.C. 31304 (2004). LIABILITY FOR NONCOMPLIANCE.

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

46 U.S.C. 31305 (2004). WAIVER OF LIEN RIGHTS. This chapter does not prevent a mortgagee or other lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

46 U.S.C. 31306 (2004). DECLARATION OF CITIZENSHIP.

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

46 U.S.C. 31307 (2004). STATE STATUTES SUPERSEDED. This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessaries.

46 U.S.C. 31308 (2004). SECRETARY OF COMMERCE OR TRANSPORTATION AS MORTGAGEE. When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 *et seq.*), subject to section 362(b) of title 11.

46 U.S.C. 31309 (2004). GENERAL CIVIL PENALTY. Except as otherwise provided in this chapter, a person violating this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $10,000.[1]

46 U.S.C. 31321 (2004). FILING, RECORDING, AND DISCHARGE.

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

(A) the grantor, mortgagor, or assignor;

(B) the heir or devisee of the grantor, mortgagor, or assignor; and

(C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

[1] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(4) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an

acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

46 U.S.C. 31322 (2004) PREFERRED MORTGAGES.

(a) A preferred mortgage is a mortgage, whenever made, that--

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title; and

(3) (A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter and

(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee-

(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

(B) a state or federally chartered financial institution that is insured by the Federal Deposit Insurance Corporation;

(C) a farm credit lender established under title 12, chapter 23 of the United States Code;

(D) a commercial fishing and agriculture bank established pursuant to State law;

(E) a commercial lender organized under the laws of the United States or of a State and eligible to own a vessel under section 12102(a) of this title; or

(F) a mortgage trustee under subsection (f) of this section.

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to

be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c) (1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action in rem, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection--

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d) (1) A mortgage, security agreement, or instrument granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if--

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

(B) information on the vessel covered by the mortgage, security agreement, or instrument made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to mortgages, security agreements, or instruments covering vessels titled in a State after--

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed--

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

(f)(1) A mortgage trustee may hold in trust, for an individual or entity, an instrument or evidence of indebtedness, secured by a mortgage of the vessel to the mortgage trustee, provided that the mortgage trustee—

(A) is eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section;

(B) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

(C) is authorized under those laws to exercise corporate trust powers;

(D) is subject to supervision or examination by an official of the United States Government or a State;

(E) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

(F) meets any other requirements prescribed by the Secretary.

(2) If the beneficiary under the trust arrangement is not a commercial lender, a lender syndicate or eligible to be a preferred mortgagee under subsection (a)(4), subparagraphs (A)–(E) of this section, the Secretary must determine that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel to a person not eligible to own a vessel with a fishery endorsement under section 12102(c) of this title.

(3) A vessel with a fishery endorsement may be operated by a mortgage trustee only with the approval of the Secretary.

(4) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under this section only with the approval of the Secretary.

(5) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this subsection is voidable by the Secretary.

(g) For purposes of this section a "commercial lender" means an entity primarily engaged in the business of lending and other financing transactions with a loan portfolio in excess of $100,000,000, of which not more than 50 per centum in dollar amount consists of loans to borrowers in the commercial fishing industry, as certified to the Secretary by such lender.

(h) For purposes of this section a "lender syndicate" means an arrangement established for the combined extension of credit of not less than $20,000,000 made up of four or more entities that each have a beneficial interest, held through an agent, under a trust arrangement established pursuant to subsection (f), no one of which may exercise powers thereunder without the concurrence of at least one other unaffiliated beneficiary.

SUBCHAPTER II. COMMERCIAL INSTRUMENTS.

46 U.S.C. 31323 (2004). DISCLOSING AND INCURRING OBLIGATIONS BEFORE EXECUTING PREFERRED MORTGAGES.

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel;

(3) general average; or

(4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

46 U.S.C. 31324 (2004). RETENTION AND EXAMINATION OF MORTGAGES OF VESSELS COVERED BY PREFERRED MORTGAGES.

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

46 U.S.C. 31325 (2004). PREFERRED MORTGAGE LIENS AND ENFORCEMENT.

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action in rem for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a vessel titled in a State, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, a vessel titled in a State, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title an unexpired notice of claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by

the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded an unexpired notice of claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

46 U.S.C. 31326 (2004). COURT SALES TO ENFORCE PREFERRED MORTGAGE LIENS AND MARITIME LIENS AND PRIORITY OF CLAIMS.

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI

of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under title XI of that Act, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

46 U.S.C. 31327 (2004). FORFEITURE OF MORTGAGEE INTEREST. The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

46 U.S.C. 31329 (2004). COURT SALES OF DOCUMENTED VESSELS.

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12102 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

(1) the vessel must be held by the mortgagee for resale;

(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

46 U.S.C. 31330 (2004). PENALTIES.[2]

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

(D) with intent to defraud, does not comply with section 31321(h) of this title.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than $10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title;

(C) files with the Secretary a mortgage made not in good faith; or

(D) does not comply with section 31321(h) of this title.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than $25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

SUBCHAPTER III. MARITIME LIENS

46 U.S.C. 31341 (2004). PERSONS PRESUMED TO HAVE AUTHORITY TO PROCURE NECESSARIES.

(a) The following persons are presumed to have authority to procure necessaries for a vessel:

(1) the owner;

(2) the master;

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[2] Note that the penalty amounts set forth may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

(b) A person tortuously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

46 U.S.C. 31342 (2004). ESTABLISHING MARITIME LIENS.

(a) Except as provided in subsection (b) of this section, a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

46 U.S.C. 31343 (2004). RECORDING AND DISCHARGING LIENS ON PREFERRED MORTGAGE VESSELS.

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel documented, or for which an application for documentation has been filed, under chapter 121 may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

(1) state the nature of the lien;

(2) state the date the lien was established;

(3) state the amount of the lien;

(4) state the name and address of the person; and

(5) be signed and acknowledged.

(b)(1) The Secretary shall record a notice complying with subsection (a) of this section if, when the notice is presented to the Secretary for recording, the person having the claim files with the notice a declaration stating the following:

(A) The information in the notice is true and correct to the best of the knowledge, information, and belief of the individual who signed it.

(B) A copy of the notice, as presented for recordation, has been sent to each of the following:

(i) The owner of the vessel.

(ii) Each person that recorded under subsection (a) of this section an unexpired notice of a claim of an undischarged lien on the vessel.

(iii) The mortgagee of each mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) A declaration under this subsection filed by a person that is not an individual must be signed by the president, member, partner, trustee, or other individual authorized to execute the declaration on behalf of the person.

(c)(1) On full and final discharge of the indebtedness that is the basis for a notice of claim of lien recorded under subsection (b) of this section, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(2) The district courts of the United States shall have jurisdiction over a civil action in Admiralty to declare that a vessel is not subject to a lien claimed under subsection (b) of this section, or that the vessel is not subject to the notice of claim of lien, or both, regardless of the amount in controversy or the citizenship of the parties. Venue in such an action shall be in the district where the vessel is found or where the claimant resides or where the notice of claim of lien is recorded. The court may award costs and attorneys fees to the prevailing party, unless the court finds that the position of the other party was substantially justified or other circumstances make an award of costs and attorneys fees unjust. The Secretary shall record any such declaratory order.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

(e) A notice of claim of lien recorded under subsection (b) of this section shall expire 3 years after the date the lien was established, as such date is stated in the notice under subsection (a) of this section.

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

TITLE 49, SUBTITLE IV—INTERSTATE TRANSPORTATION[1]

[EXCERPTS]

TITLE II - SURFACE TRANSPORTATION BOARD

CHAPTER 7 - SURFACE TRANSPORTATION BOARD.

49 U.S.C. 701 (2004). ESTABLISHMENT OF BOARD.

(a) **Establishment.** There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) **Membership.**

(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the

[1] These provisions of law were enacted by Public Law 104-88, approved December 29, 1995 (109 STAT. 804), the I.C.C. Termination Act of 1995, as amended.

Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) **Chairman.**

(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

49 U.S.C. 702 (2004). FUNCTIONS.

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before January 1, 1996, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

49 U.S.C. 703 (2004). ADMINISTRATIVE PROVISIONS.

(a) **Executive Reorganization.** Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

(b) **Open Meetings.** For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

(c) **Independence.** In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

(d) **Representation by Attorneys.** Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

(e) **Admission to Practice.** Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

(f) **Budget Requests.** In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Board.

(g) **Direct Transmittal to Congress.** The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.

49 U.S.C. 704 (2004). ANNUAL REPORT. The Board shall annually transmit to the Congress a report on its activities.

49 U.S.C. 705 (2004). AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated for the activities of the Board—

(1) $8,421,000 for fiscal year 1996;

(2) $12,000,000 for fiscal year 1997; and

(3) $12,000,000 for fiscal year 1998.

49 U.S.C. 706 (2004). REPORTING OFFICIAL ACTION.

(a) **Reports on Proceedings.** The Board shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Board and, if damages are awarded, the findings of fact supporting the award. The Board may have its reports published for public use. A published report of the Board is competent evidence of its contents.

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49 U.S.C. 721 (2004). POWERS.

(a) **In General.** The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

(b) **Inquiries, Reports, and Orders.** The Board may—

(1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;

(3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and

(4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.

(c) **Subpoena Witnesses.**

(1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.

(2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) **Depositions.**

(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Board or agreed on by the parties by written stipulation filed with the Board. A deposition shall be filed with the Board promptly.

(e) **Witness Fees.** Each witness summoned before the Board or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

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CHAPTER 131. GENERAL PROVISIONS.

49 U.S.C. 13101 (2004). TRANSPORTATION POLICY.

(a) **In General.** To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

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(K) promote intermodal transportation;

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(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) **Administration to Carry out Policy.** This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

49 U.S.C. 13102 (2004). DEFINITIONS. In this part, the following definitions shall apply:

(1) **Board.** The term "Board" means the Surface Transportation Board.

(2) **Broker.** The term "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) **Carrier.** The term "carrier" means a motor carrier, a water carrier, and a freight forwarder.

(4) **Contract Carriage.** The term "contract carriage" means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) **Control.** The term "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

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(8) **Freight Forwarder.** The term "freight forwarder" means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

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(10) **Household Goods.** The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term

does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

(11) **Household Goods Freight Forwarder.** The term "household goods freight forwarder" means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

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(15) **Noncontiguous Domestic Trade.** The term "noncontiguous domestic trade" means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(16) **Person.** The term "person", in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

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(18) **Secretary.** The term "Secretary" means the Secretary of Transportation.

(19) **State.** The term "State" means the 50 States of the United States and the district of Columbia.

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(21) **Transportation.** The term "transportation" includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(22) **United States.** The term "United States" means the States of the United States and the District of Columbia.

(23) **Vessel.** The term "vessel" means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(24) **Water carrier.** The term "water carrier" means a person providing water transportation for compensation.

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CHAPTER 133. ADMINISTRATIVE PROVISIONS.

49 U.S.C. 13301 (2004). POWERS.

(a) **General Powers of Secretary.** Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

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(f) **Powers of Board.** For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.

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CHAPTER 135. JURISDICTION

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SUBCHAPTER II. WATER CARRIER TRANSPORTATION

49 U.S.C. 13521 (2004). GENERAL JURISDICTION.

(a) **General Rules.** The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

(A) by motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and

(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by motor carrier, the transportation is provided in the United States;

(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from

a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) **Definitions.** In this section, the terms "State" and "United States" include the territories and possessions of the United States.

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SUBCHAPTER III. FREIGHT FORWARDER SERVICE

49 U.S.C. 13531 (2004). GENERAL JURISDICTION.

(a) **In General.** The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) a place in a State and another place in the same State through a place outside the State; or

(3) a place in the United States and a place outside the United States.

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SUBCHAPTER IV. AUTHORITY TO EXEMPT.

49 U.S.C. 13541 (2004). Authority to Exempt Transportation or Services.

(a) **In General.** In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

(b) **Initiation of Proceeding.** The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Board's own initiative or on application by an interested party.

(c) **Period of Exemption.** The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) **Revocation.** The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

(e) **Limitations.**

(1) *In General*. The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

(2) *Water Carriers*. The Secretary or Board, as applicable, may not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

(f) **Continuation of Certain Existing Exemptions for Water Carriers.** The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.

CHAPTER 137. RATES AND THROUGH ROUTES

49 U.S.C. 13701 (2004). REQUIREMENTS FOR REASONABLE RATES, CLASSIFICATIONS, THROUGH ROUTES, RULES, AND PRACTICES FOR CERTAIN TRANSPORTATION.

(a) **Reasonableness.**

(1) *Certain Household Goods Transportation; Joint Rates Involving Water Transportation*. A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703, must be
reasonable.

(2) *Through Routes and Divisions of Joint Rates*. Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) **Prescription by Board for Violations.** When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) **Filing of Complaint.** A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

(d) **Zone of Reasonableness.**

(1) *In General*. For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) *Adjustments to the Zone*. The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

(3) *Determinations after Complaint*. The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) *Reparations*. Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

49 U.S.C. 13702 (2004). TARIFF REQUIREMENT FOR CERTAIN TRANSPORTATION.

(a) **In General.** Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff

that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

(b) **Tariff Requirements for Noncontiguous Domestic Trade.**[2]

(1) *Filing*. A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) *Contents*. The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

(A) the carriers that are parties to it;

(B) the places between which property will be transported;

(C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(3) *Inland Divisions*. A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) *Time-Volume Rates*. Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) *Changes*. The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

(A) publish new tariffs that incorporate changes, or

(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

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[2] The Surface Transportation Board (Board), in STB Ex Parte No. 580, served February 3, 1999, revised its tariff filing regulations, effective May 1, 1999, to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission's Automated Tariff Filing and Information System, which was phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs in alternative electronic formats.

(6) *Complaints*. A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

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49 U.S.C. 13707 (2004). PAYMENT OF RATES.

(a) **Transfer of Possession upon Payment.** Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

(b) **Exceptions.**

(1) *Regulations*. Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

(2) *Extensions of Credit to Governmental Entities*. Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

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49 U.S.C. 13712 (2004). GOVERNMENT TRAFFIC. A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

CHAPTER 141. OPERATIONS OF CARRIERS

SUBCHAPTER I. GENERAL REQUIREMENTS

49 U.S.C. 14101 (2004). PROVIDING TRANSPORTATION AND SERVICE.

(a) **On Reasonable Request.** A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

(b) **Contracts with Shippers.**

(1) *In General.* A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) *Remedy for Breach of Contract.* The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

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CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES.

49 U.S.C. 14701 (2004). GENERAL AUTHORITY.

(a) **Investigations.** The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) **Complaints.** A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) **Deadline.** A formal investigative proceeding begun by the Secretary or Board under subsection (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

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49 U.S.C. 14704 (2004). RIGHTS AND REMEDIES OF PERSONS INJURED BY CARRIERS OR BROKERS.

(a) **In General.**

(1) *Enforcement of Order.* A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) *Damages for Violations.* A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) **Liability and Damages for Exceeding Tariff Rate.** A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) **Election.**

(1) *Complaint to DOT or Board; Civil Action.* A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

(2) Order of DOT or Board.

(A) <u>In General.</u> When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

(B) <u>Enforcement by Civil Action.</u> The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) **Procedure.**

(1) *In General*. When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) *Parties*. All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) **Attorney's Fees.** The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

49 U.S.C. 14705 (2004). LIMITATION ON ACTIONS BY AND AGAINST CARRIERS.

(a) **In General.** A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) **Overcharges.** A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) **Damages.** A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) **Extensions.** The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) **Payment.** A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) **Government Transportation.** This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31.

(g) **Accrual Date.** A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

49 U.S.C. 14706 (2004). LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

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(c) **Special Rules.**

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(2) *Water Carriers*. If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(d) **Civil Actions.**

(1) *Against Delivering Carrier.* A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) *Against Carrier Responsible for Loss*. A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) *Jurisdiction of Courts*. A civil action under this section may be brought in a United States district court or in a State court.

(4) *Judicial District Defined*. In this section, "judicial district" means—

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) **Minimum Period for Filing Claims.**

(1) *In General*. A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) *Special Rules*. For the purposes of this subsection—

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

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(g) **Modifications and Reforms.**

(1) *Study.* The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) *Factors to Consider.* In conducting the study, the Secretary, at a minimum, shall consider—

(A) the efficient delivery of transportation services;

(B) international and intermodal harmony;

(C) the public interest; and

(D) the interest of carriers and shippers.

(3) *Report*. Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

CHAPTER 149. CIVIL AND CRIMINAL PENALTIES

49 U.S.C. 14901 (2004). GENERAL CIVIL PENALTIES.

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(g) **Business Entertainment Expenses.**

(1) *In General.* Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

(2) *Cost of Service.* Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

49 U.S.C. 14902 (2004). CIVIL PENALTY FOR ACCEPTING REBATES FROM CARRIER.

A person—

(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702; is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

49 U.S.C. 14903 (2004). TARIFF VIOLATIONS.

(a) **Civil Penalty for Undercharging and Overcharging.** A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for a civil penalty of not more than $100,000 for each violation.

(b) **General Criminal Penalty.** A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its

tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

(c) **Actions of Agents and Employees.** When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) **Venue.** Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

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49 U.S.C. 14906 (2004). EVASION OF REGULATION OF CARRIERS AND BROKERS. A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of $200 for the first violation and at least $250 for a subsequent violation.

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49 U.S.C. 14908 (2004). UNLAWFUL DISCLOSURE OF INFORMATION.

(a) **Disclosure of Shipment and Routing Information.**

(1) *Violations.* A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, or receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(2) *Penalty.* A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than $2,000.

(b) **Limitation on Statutory Construction.** This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

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49 U.S.C. 14913 (2004). CONCLUSIVENESS OF RATES IN CERTAIN PROSECUTIONS. When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

49 U.S.C. 14914 (2004). CIVIL PENALTY PROCEDURES.

(a) **In General.** After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provision of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) **Compromise.** The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) **Collection.** If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) **Refunds.** The Board may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within 1 year from the date of payment; and

(2) the Board finds that the penalty was unlawfully, improperly, or excessively imposed.

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ADMIRALTY/MARITIME JURISDICTION

EXTENSION OF ADMIRALTY AND MARITIME JURISDICTION

LIBEL IN REM OR IN PERSONAM; EXCLUSIVE REMEDY; WAITING PERIOD (46 App. U.S.C. 740 (2004)). The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after the date of the passage of this Act and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

SUITS IN ADMIRALTY ACT

46 App. U.S.C. 741 (2004). Exemption of United States vessels and cargoes from arrest or seizure. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter [after March 9, 1920], in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: Provided, That this Act shall not apply to the Panama Railroad Company [Panama Canal Commission].

46 App. U.S.C. 742 (2004). Libel in personam. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United

States or against any corporation mentioned in section 1 of this Act. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

46 App. U.S.C. 743 (2004). Procedure in cases of libel in personam. Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now [on March. 9, 1920] provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder.

46 App. U.S.C. 744 (2004). Release of privately owned vessel after seizure. If a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

46 App. U.S.C. 745 (2004). Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived;

interest on claims. Suits as herein authorized may be brought only within two years after the cause of action arises: Provided, That where a remedy is provided by this Act it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after the enactment of this amendatory Act [enacted December. 13, 1950] if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel: And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 2 of this Act unless upon a contract expressly stipulating for the payment of interest.

46 App. U.S.C. 746 (2004). Exemptions and limitations of liability. The United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

46 App. U.S.C. 747 (2004). Seizures in foreign jurisdictions. If any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the Maritime Administration, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the Maritime Administration, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is here-

by vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the Maritime Administration, or of such corporation, for the allowance and payment of such judgments: Provided, however, That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

46 App. U.S.C. 748 (2004). Payment of judgment, award, or settlement. Any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

46 App. U.S.C. 749 (2004). Arbitration, compromise, or settlement of claims. The Secretary of any department of the Government of the United States, or the board of trustees of such corporation, are, and each is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act

46 App. U.S.C. 750 (2004). Recovery for salvage services by vessel or crew. The United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of such corporation, having control of the possession or operation of such vessel.

46 App. U.S.C. 751 (2004). Disposition of moneys recovered by the United States. All moneys recovered in any suit brought by the United

States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

46 App. U.S.C. 752 (2004). Reports as to awards and settlements. The Secretary of any department of the Government of the United States, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

AMERICAN GREAT LAKES VESSELS[1]

SEC. 1521. EXEMPTION OF AMERICAN GREAT LAKES VESSELS FROM RESTRICTIONS ON CARRIAGE OF PREFERENCE CARGOES (46 App. U.S.C. 1241q (2004)).

(a) **Exemption from Restriction.** The restriction described in subsection (b) shall not apply to an American Great Lakes vessel while it is so designated.

(b) **Restriction Described.** The restriction referred to in subsection (a) is the restriction in section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)), that a vessel that is—

(1) built outside the United States;

(2) rebuilt outside the United States; or

(3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) **Subsequent Application of Restriction.** Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) shall apply as if the vessel had never been a vessel documented under the laws of the United States.

SEC. 1522. DESIGNATION OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241r (2004)).

(a) **In General.** The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of this subtitle if—

(1) the vessel is documented under the laws of the United States;

(2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d);

(3) the owner of the vessel enters into an agreement in accordance with subsection (b);

(4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or

(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

[1] Sections 1521 through 1527 are set forth in Subtitle B of Title XV of Public Law 101-624, approved November 28, 1990 (104 STAT. 3665-3668).

(5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) **Construction and Purchase Agreement.** As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120 day period following the date of any revocation of such designation under section 1524, an exclusive right to purchase the vessel for a price equal to—

(1) the approximate world market value of the vessel; or

(2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel; whichever is greater.

(c) **Certain Foreign Registry and Sale Not Prohibited.** Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b), the owner of the vessel shall not be prohibited from—

(1) transferring the vessel to a foreign registry; or

(2) selling the vessel to a person who is not a citizen of the United States.

(d) **Issuance of Regulations.** Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

SEC. 1523. RESTRICTIONS ON OPERATIONS OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241s (2004)).

(a) **In General.** Subject to subsection (b), an American Great Lakes vessel shall not be used—

(1) to engage in trade—

(A) from a port in the United States that is not located on the Great Lakes; or

(B) between ports in the United States;

(2) to carry bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702(4)) which is subject to section 901(b) or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) or 1241f), or section 2631 of title 10, United States Code; or

(3) to provide any service other than ocean freight service—

(A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) **Off-Season Carriage Exception.**

(1) *In General.* Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) for not more than 90 days during any 12-month period.

(2) *Limitation.* An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

SEC. 1524. REVOCATION AND TERMINATION OF DESIGNATION (46 App. U.S.C. 1241t (2004)).

(a) **Revocation.** The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1522 as an American Great Lakes vessel if the Secretary determines that—

(1) the vessel does not meet a requirement for such designation;

(2) the vessel has been operated in violation of this subtitle; or

(3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1522(b).

(b) **Civil Penalty.** The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than $1,000,000[2] against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a).

(c) **Termination of Designation.** The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under this subtitle upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

SEC. 1525. ALLOCATION BASED ON LOWEST LANDED COST (46 App. U.S.C. 1241f(c) (2004)).[3]

SEC. 1526. STUDY AND REPORT. (46 App. U.S.C. 1241u (2004)).

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[2] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

[3] Section 1525 amended the Food Security Act of 1985, and does not directly pertain to American Great Lakes vessels. It is codified at Section 901b(c)(3) of the Merchant Marine Act, 1936, at page 142.

(a) **Study.** The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of this subtitle. The study shall include analysis of—

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.); and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) **Report.** Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a).

SEC. 1527. DEFINITIONS (46 App. U.S.C. 1241v (2004)).

As used in this subtitle—

(1) *American Great Lakes Vessel*. The term "American Great Lakes vessel" means a vessel which is so designated by the Secretary in accordance with section 1522.

(2) *Great Lakes*. The term "Great Lakes" means Lake Superior; Lake Michigan; Lake Huron; Lake Erie; Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) *Great Lakes Shipping Season*. The term "Great Lakes shipping season" means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) *Secretary*. The term "Secretary" means the Secretary of Transportation.

CIVIL PROCEDURES

CIVIL PENALTY PROCEDURES (49 U.S.C. 336 (2004)).

(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

ORDER OF FEDERAL AGENCIES, REVIEW—THE HOBBS ACT

JURISDICTION OF COURT OF APPEALS. (28 U.S.C. 2342 (2004)). The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

* * *

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839[, and 841a]) or pursuant to part B or C of subtitle IV of title 49; and

(B) the Federal Maritime Commission issued pursuant to—

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d)[)];

(iv), (v) [Redesignated]

* * *

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

* * *

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

VENUE. (28 U.S.C. 2343 (2004)). The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

REVIEW OF ORDERS; TIME; NOTICE; CONTENTS OF PETITIONS; SERVICE (28 U.S.C. 2344 (2004)).

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief is sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

PREHEARING CONFERENCE (28 U.S.C. 2345 (2004)). The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

CERTIFICATION OF RECORD ON REVIEW (28 U.S.C. 2346 (2004)). Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

PETITIONS TO REVIEW, PROCEEDINGS (28 U.S.C. 2347 (2004)).

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency;

the court may order the additional evidence and any counter evidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

REPRESENTATION IN PROCEEDING; INTERVENTION (28 U.S.C. 2348 (2004)). The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented

by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

JURISDICTION OF THE PROCEEDING (28 U.S.C. 2349 (2004)).

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

REVIEW IN SUPREME COURT ON CERTIORARI OR CERTIFICATION (28 U.S.C. 2350 (2004)).

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals

in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

ENFORCEMENT OF ORDERS BY DISTRICT COURTS (28 U.S.C. 2351 (2004)). The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT

Public Law 101-410, approved October 5, 1990 (104 STAT. 890), Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461, note).[1]

Short Title

Section 1. This Act may be cited as the "Federal Civil Penalties Inflation Adjustment Act of 1990".

Findings and purpose

Sec. 2. (a) Findings. The Congress finds that--

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

[1] Section 31001(s)(2) of Public Law 104-134, approved April 26, 1996 (110 STAT. 1321-373), provides: "(2) Limitation on Initial Adjustment. The first adjustment of a civil monetary penalty made pursuant to the amendment made by paragraph (1) [amending Sec. 4 and 5(a) and adding Sec. 7] may not exceed 10 percent of such penalty." Section 31001(a)(2)(A) provides this provision is effective upon enactment.

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) Purpose. The purpose of this Act is to establish a mechanism that shall--

(1) allow for regular adjustment for inflation of civil monetary penalties;

(2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) improve the collection by the Federal Government of civil monetary penalties.

Definitions

Sec. 3. For purposes of this Act, the term--

(1) "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;

(2) "civil monetary penalty" means any penalty, fine, or other sanction that--

(A)

(i) is for a specific monetary amount as provided by Federal law; or

(ii) has a maximum amount provided for by Federal law; and

(B) is assessed or enforced by an agency pursuant to Federal law; and

(C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and

(3) "consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

Civil monetary penalty inflation adjustment reports[2]

Sec. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996

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[2] Presidential Memorandum of May 3, 1991, 56 Fed. Reg. 21911, provides: "Memorandum for the Director of the Office of Management and Budget. By the authority vested in me by the Constitution and laws of the United States of America, including sections 4 and 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410), and section 301 of title 3 of the United States Code, I hereby delegate to you the responsibility for submitting reports on civil monetary penalties to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and to the Congress as required by sections 4 and 6 of that Act. You are authorized and directed to publish this memorandum in the Federal Register."

[enacted April 26, 1996], and at least once every 4 years thereafter--

(1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986, the Tariff Act of 1930, the Occupational Safety and Health Act of 1970, or the Social Security Act, by the inflation adjustment described under section 5 of this Act; and

(2) publish each such regulation in the Federal Register.

Cost-of-living adjustments of civil monetary penalties

Sec. 5. (a) Adjustment. The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest--

(1) multiple of $ 10 in the case of penalties less than or equal to $ 100;

(2) multiple of $ 100 in the case of penalties greater than $ 100 but less than or equal to $ 1,000;

(3) multiple of $ 1,000 in the case of penalties greater than $ 1,000 but less than or equal to $ 10,000;

(4) multiple of $ 5,000 in the case of penalties greater than $ 10,000 but less than or equal to $ 100,000;

(5) multiple of $ 10,000 in the case of penalties greater than $ 100,000 but less than or equal to $ 200,000; and

(6) multiple of $ 25,000 in the case of penalties greater than $ 200,000.

(b) Definition. For purposes of subsection (a), the term "cost-of-living adjustment" means the percentage (if any) for each civil monetary penalty by which--

(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Sec. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.[3]

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[3] Id.

DEFENSE PRODUCTION ACT

[Excerpts]

SECTION 101 (50 U.S.C. App. 2071 (2004)). PRIORITY IN CONTRACTS AND ORDERS

(a) **Allocation of materials and facilities**. The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials, services, and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense.

(b) **Critical and strategic materials**. The powers granted in this section shall not be used to control the general distribution of any material in the civilian market unless the President finds (1) that such material is a scarce and critical material essential to the national defense, and (2) that the requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship.

(c) **Domestic energy supplies.**

(1) Notwithstanding any other provision of this Act, the President may, by rule or order, require the allocation of, or the priority performance under contracts or orders (other than contracts of employment) relating to, materials, equipment, and services in order to maximize domestic energy supplies if he makes the findings required by paragraph (3) of this subsection.

(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, services, and facilities in the marketplace, unless the President finds that--

A) such materials, services, and facilities are scarce, critical, and essential--

(i) to maintain or expand exploration, production, refining, transportation;

(ii) to conserve energy supplies; or

(iii) to construct or maintain energy facilities; and

(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection.

(3) During any period when the authority conferred by this subsection is being exercised, the President shall take such action as may be appropriate to assure that such authority is being exercised in a manner which assures the coordinated administration of such authority with any priorities or allocations established under subsection (a) of this section and in effect during the same period.

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SECTION. 708. (50 U.S.C. APP. 2158 (2004)) VOLUNTARY AGREEMENTS FOR PREPAREDNESS PROGRAMS AND EXPANSION OF PRODUCTION CAPACITY AND SUPPLY

(a) **Immunity from civil and criminal liability or defense to action under antitrust laws; exceptions.** Except as specifically provided in subsection (j) of this section, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) **Definitions.** For purposes of this Act —

(1) *Antitrust laws*. The term "antitrust laws" has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(2) *Plan of action*. The term "plan of action" means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

(c) **Prerequisites for agreements; delegation of authority to Presidential designees.**

(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are

holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).

(d) **Advisory committees; establishment; applicable provisions; membership; notice and participation in meetings; verbatim transcript; availability to public.**

(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(e) **Rules; promulgation by Presidential designees; consultation by Attorney General with Chairman of Federal Trade Commission; approval of Attorney General; procedures; incorporation of standards and procedures for development of agreements.**

(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code—

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate, and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter of matters to be discussed at such meeting falls within the purview of matters to be described in section 552b(c) of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

(f) **Commencement of agreements; expiration date; extensions.**

(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publish such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of two years.

(g) **Monitoring of agreements by Attorney General and Chairman of Federal Trade Commission.** The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

(1) that the agreement or plan is carrying out the purposes of subsection (c)(1);

(2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement or plan; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(h) **Required provisions of rules for implementation of agreements.** The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

(1) for the maintenance, by participants in any voluntary agreement and plans of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;

(2) that participants in any voluntary agreement and plans of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5, United States Code;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action; unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement or plan of action at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

(i) **Rules; promulgation by Attorney General and Chairman of Federal Trade Commission.** The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

(j) **Defenses.**

(1) *In general.* Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

(2) *Scope of defense.* Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

(3) *Burden of persuasion.* Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

(4) *Exception for actions taken to violate the antitrust laws.* The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

(k) **Surveys and studies by Attorney General and Federal Trade Commission; content; annual report to Congress and President by Attorney General.** The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

(l) **Annual report to Congress and President by Presidential designees; contents.** The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

(m) **Jurisdiction to enjoin statutory exemption or suspension and order for production of transcripts, etc.; procedures.** On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

(n) **Exemption From Advisory Committee Act provisions.** Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

(o) **Preemption of contract law in emergencies**. In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

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DOUBLE HULL PROVISIONS

Double Hull Report.

The Conference Report to accompany H.R. 4475 (H. Rpt. 106-940), enacted as Public Law 106-346, approved October 23, 2000 (114 STAT. 1356), the Department of Transportation and related agencies appropriations act for fiscal year 2001, provides at page 68:

Assessment of progress to replace single hull tanker fleet with double hull ships. The conferees direct the United States Coast Guard, in consultation with the Maritime Administration, to assess the status of replacement of single hull tank vessels with double hull tank vessels, and report the findings of this assessment to the House and Senate Committee on Appropriations. This report should include: (1) a list of double hull vessels and their carrying capacity in the U.S.-flag fleet; (2) a list of single hull vessels and their carrying capacity and the year in which each single hull vessel is scheduled to be phased out of service under the Oil Pollution Act; and (3) the amount of oil transported each year by domestic U.S.-flag tank vessels to meet the energy needs of the United States. This report shall be submitted by February 1, 2001.

Double Hull Requirement.

46 U.S.C. 3703a. (2004) Tank vessel construction standards.

(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull--

(1) if it is constructed or adapted to carry, or carries, oil in bulk as cargo or cargo residue; and

(2) when operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(b) This section does not apply to--

(1) a vessel used only to respond to a discharge of oil or a hazardous substance;

(2) a vessel of less than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil;

(3) before January 1, 2015--

(A) a vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

(B) a delivering vessel that is offloading in lightering activities--

(i) within a lightering zone established under section 3715(b)(5) of this title; and

(ii) more than 60 miles from the baseline from which the territorial sea of the United States is measured;

(4) a vessel documented under chapter 121 of this title that was equipped with a double hull before August 12, 1992;

(5) a barge of less than 1,500 gross tons (as measured under chapter 145 of this title carrying refined petroleum product in bulk as cargo in or adjacent to waters of the Bering Sea, Chukchi Sea, and Arctic Ocean and waters tributary thereto and in the waters of the Aleutian Islands and the Alaskan Peninsula west of 155 degrees west longitude; or

(6) a vessel in the National Defense Reserve Fleet pursuant to section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

(c) (1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel--

(A) is delivered after original construction;

(B) is delivered after completion of a major conversion; or

(C) had its appraised salvage value determined by the Coast Guard and is qualified for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14).

(2) A vessel of less than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel of less than 5,000 gross tons that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or the Exclusive Economic Zone of the United States after January 1, 2015, unless the vessel is equipped with a double hull or with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil.

(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 App. U.S.C. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull--

(A) in the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons as measured under section 14502 of this title, or an

alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--

(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) after January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides; and

(vii) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(B) in the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--

(i) after January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 32 years old or older and has a single hull, or 37 years old or older and has a double bottom or double sides;

(vi) after January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) after January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) after January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) after January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) after January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides; and

(xi) after January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(C) in the case of a vessel of at least 30,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title--

(i) after January 1, 1995, if the vessel is 28 years old or older and has a single hull, or 33 years old or older and has a double bottom or double sides;

(ii) after January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) after January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) after January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(v) after January 1, 1999, if the vessel is 24 years old or older and has a single hull, or 29 years old or older and has a double bottom or double sides; and

(vi) after January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides.

(4) Except as provided in subsection (b) of this section--

(A) a vessel that has a single hull may not operate after January 1, 2010; and

(B) a vessel that has a double bottom or double sides may not operate after January 1, 2015.

(d) The operation of barges described in subsection (b)(5) outside waters described in that subsection shall be on any conditions as the Secretary may require.

(e) (1) For the purposes of this section and except as otherwise provided in paragraphs (2) and (3) of this subsection, the gross tonnage of a vessel shall be the gross tonnage that would have been recognized by the Secretary on July 1, 1997, as the tonnage measured under section 14502 of this title, or as an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(2) (A) The Secretary may waive the application of paragraph (1) to a tank vessel if--

(i) the owner of the tank vessel applies to the Secretary for the waiver before January 1, 1998;

(ii) the Secretary determines that--

(I) the owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the tank vessel into protectively located segregated ballast tanks; and

(II) that conversion will result in a significant reduction in the risk of a discharge of oil;

(iii) at least 60 days before the date of the issuance of the waiver, the Secretary--

(I) publishes notice that the Secretary has received the application and made the determinations required by clause (ii), including a description of the agreement entered into pursuant to clause (ii)(I); and

(II) provides an opportunity for submission of comments regarding the application; and

(iv) the alterations referred to in clause (ii)(I) are completed before the later of--

(I) the date by which the first special survey of the tank vessel is required to be completed after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [enacted Nov. 18, 1997]; or

(II) July 1, 1999.

(B) A waiver under subparagraph (A) shall not be effective after the expiration of the 3-year period beginning on the first date on which the tank vessel would have been prohibited by subsection (c) from operating

if the alterations referred to in subparagraph (A)(ii)(I) were not made.

(3) This subsection does not apply to a tank vessel that, before July 1, 1997, had undergone, or was the subject of a contract for, alterations that reduce the gross tonnage of the tank vessel, as shown by reliable evidence acceptable to the Secretary.

EXISTING TANK VESSEL RESEARCH. Section 1134 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3984), the Coast Guard Authorization Act of 1996, provides:

"SEC. 1134. EXISTING TANK VESSEL RESEARCH.

"(a) Funding.—The Secretary of Transportation shall take steps to allocate funds appropriated for research, development, testing, and evaluation, including the combination of funds from any source available and authorized for this purpose, to ensure that any Government-sponsored project intended to evaluate double hull alternatives that provide equal or greater protection to the marine environment, or interim solutions to remediate potential environmental damage resulting from oil spills from existing tank vessels, commenced prior to the date of enactment of this section, is fully funded for completion by the end of fiscal year 1997. Any vessel construction or repair necessary to carry out the purpose of this section must be performed in a shipyard located in the United States.

"(b) Use of Public Vessels.—The Secretary may provide vessels owned by, or demise chartered to, and operated by the Government and not engaged in commercial service, without reimbursement, for use in and the support of projects sponsored by the Government for research, development, testing, evaluation, and demonstration of new or improved technologies that are effective in preventing or mitigating oil discharges and protecting the environment."

DOUBLE HULL ALTERNATIVES. Section 705 of Public Law 108-293 (118 STAT. 1075), provides:

"SEC. 705. ALTERNATIVES. Section 4115(e)(3) of the Oil Pollution Act of 1990 (46 U.S.C. 3703a note) is amended to read as follows:

"(3) No later than one year after the date of enactment of the Coast Guard and Maritime Transportation Act of 2004, the Secretary shall, taking into account the recommendations contained in the report by the Marine Board of the National Research Council entitled 'Environmental Performance of Tanker Design in Collision and Grounding' and dated 2001, establish and publish an environmental equivalency evaluation index (including the methodology to develop that index) to assess overall outflow performance due to collisions and groundings for double hull tank vessels and alternative hull designs."

VESSELS IN TERRITORIAL WATERS OF THE UNITED STATES

50 USC 191. (2004). Regulation of anchorage and movement of vessels during national emergency.[1] Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

Whenever the President finds that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, the President is authorized to institute such measures and issue such rules and regulations--

(a) to govern the anchorage and movement of any foreign-flag vessels in the territorial waters of the United States, to inspect such vessels at any time, to place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of rights and obligations of the United States, may take for such purposes full possession and control of such vessels and remove therefrom the officers and crew thereof, and all other persons not especially authorized by him to go or remain on board thereof;

[1] Note that Presidential Proclamation No. 7757, February 26, 2004 (69 Fed. Reg. 9515)(50 U.S.C. 191, note), generally directs the Secretary of Homeland Security to make and issue rules and regulations to regulate the anchorage and movement of vessels.

(b) to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States.

The President may delegate the authority to issue such rules and regulations to the Secretary of the department in which the Coast Guard is operating. Any appropriation available to any of the Executive Departments shall be available to carry out the provisions of this title.

50 U.S.C. 191a. (2004). Transfer of Secretary of Treasury's [Secretary of Transportation] powers to Secretary of Navy when Coast Guard operates as part of Navy. When the Coast Guard operates as a part of the Navy pursuant to section 3 of Title 14, United States Code, the powers conferred on the Secretary of the Treasury [Secretary of Transportation] by section 1, title II, of the Act of June 15, 1917 (40 Stat. 220; U. S. C., title 50, sec. 191), shall vest in and be exercised by the Secretary of the Navy.

50 U.S.C. 192. (2004). Seizure and forfeiture of vessel; fine and imprisonment

(a) In general. If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment for not more than ten years and may in the discretion of the court, be fined not more than $10,000.

(b) Application to others. If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000.

(c) Civil penalty.[2] A person violating this title, or a regulation prescribed under this title, shall be liable to the United States Government for a civil penalty of not more than $25,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

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[2] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended, set forth at page 483.

(d) In rem liability. Any vessel that is used in violation of this title, or of any regulation issued under this title, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.

(e) Withholding of clearance.

(1) In general. If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under this section, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(2) Clearance upon filing of bond or other surety. The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

50 U.S.C. 194. (2004). Enforcement provisions. The President may employ such departments, agencies, officers, or instrumentalities of the United States as he may deem necessary to carry out the purpose of this title.

50 U.S.C. 195. (2004). "United States" defined. In this Act:

(1) United States. The term "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(2) Territorial waters. The term "territorial waters of the United States" includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988 [43 U.S.C. 1331 note].

50 U.S.C. 196. (2004). Emergency foreign vessel acquisition; purchase or requisition of vessels lying idle in United States waters. During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended , the President is authorized and empowered through the Secretary of Transportation to purchase, or to requisition, or for any part of such period to charter or requisition the use of, or to take over the title to or possession of, for such use or disposition as he shall direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense. Just compensation shall be determined and made to the

owner or owners of any such vessel in accordance with the applicable provisions of section 902 of the Merchant Marine Act, 1936, as amended. Such compensation hereunder, or advances on account thereof, shall be deposited with the Treasurer of the United States in a separate deposit fund. Payments for such compensation and also for payment of any valid claim upon such vessel in accord with the provisions of the second paragraph of subsection (d) of such section 902, as amended, shall be made from such fund upon the certificate of the Secretary of Transportation.

50 U.S.C. 197 (2004). Voluntary purchase or charter agreements. During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, the President is authorized through the Secretary of Transportation to acquire by voluntary agreement of purchase or charter the ownership or use of any merchant vessel not owned by citizens of the United States.

50 U.S.C. 198. (2004). Requisitioned vessels.

(a) Documentation of vessels. Any vessel not documented under the laws of the United States, acquired by or made available to the Secretary of Transportation under this Act, or otherwise, may, notwithstanding any other provision of law, in the discretion of the Secretary of the Treasury [Secretary of Transportation] be documented as a vessel of the United States under such rules and regulations or orders, and with such limitations, as the Secretary of the Treasury [Secretary of Transportation] may prescribe or issue as necessary or appropriate to carry out the purposes and provisions of this Act, and in accordance with the provisions of subsection (c) hereof, engage in the coastwise trade when so documented. Any document issued to a vessel under the provisions of this subsection shall be surrendered at any time that such surrender may be ordered by the Secretary of the Treasury [Secretary of Transportation]. No vessel, the surrender of the documents of which has been so ordered, shall, after the effective date of such order, have the status of a vessel of the United States unless documented anew.

(b) Waiver of compliance. The President may, notwithstanding any other provisions of law, by rules and regulations or orders, waive compliance with any provision of law relating to masters, officers, members of the crew, or crew accommodations on any vessel documented under authority of this section to such extent and upon such terms as he finds necessary because of the lack of physical facilities on such vessels, and because of the need to employ aliens for their operation. No vessel shall cease to enjoy the benefits and privileges of a vessel of the United States by reason of the employment of any person in accordance with the provisions of this subsection.

(c) Coastwise trade; inspection. Any vessel while documented under the provisions of this section, when chartered under this Act by the Secretary of Transportation to Government agencies or departments or to private operators, may engage in the coastwise trade under permits issued by the Secretary of Transportation, who is hereby authorized to issue permits for such purpose pursuant to such rules and regulations as he may prescribe. The Secretary of Transportation is hereby authorized to prescribe such rules and regulations as he may deem necessary or appropriate to carry out the purposes and provisions of this section. The second paragraph of section 9 of the Shipping Act, 1916, as amended, shall not apply with respect to vessels chartered to Government agencies or departments or to private operators or otherwise used or disposed of under this Act. Existing laws covering the inspection of steam vessels are hereby made applicable to vessels documented under this section only to such extent and upon such conditions as may be required by regulations of the Secretary of the department in which the Coast Guard is operating: Provided, That in determining to what extent those laws should be made applicable, due consideration shall be given to the primary purpose of transporting commodities essential to the national defense.

(d) Reconditioning of vessels. The Secretary of Transportation without regard to the provisions of section 3709 of the Revised Statutes [41 U.S.C. 51] may repair, reconstruct, or recondition any vessels to be utilized under this Act. The Secretary of Transportation and any other Government department or agency by which any vessel is acquired or chartered, or to which any vessel is transferred or made available under this Act may, with the aid of any funds available and without regard to the provisions of said section 3709, repair, reconstruct, or recondition any such vessels to meet the needs of the services intended, or provide facilities for such repair, reconstruction, or reconditioning. The Secretary of Transportation may operate or charter for operation any vessel to be utilized under this Act to private operators, citizens of the United States, or to any department or agency of the United States Government, without regard to the provisions of title VII of the Merchant Marine Act, 1936, and any department or agency of the United States Government is authorized to enter into such charters.

(e) Effective period. In case of any voyage of a vessel documented under the provisions of this section begun before the date of termination of an effective period of section 1 hereof , but is completed after such date, the provisions of this section shall continue in effect with respect to such vessel until such voyage is completed.

(f) Definition. When used in this Act, the term "documented" means "registered," "enrolled and licensed," or "licensed".

GAMBLING

GAMBLING SHIPS.

DEFINITIONS (18 U.S.C. 1081 (2004)

As used in this chapter:

The term "gambling ship" means a vessel used principally for the operation of one or more gambling establishments. Such term does not include a vessel with respect to gambling aboard such vessel beyond the territorial waters of the United States during a covered voyage (as defined in section 4472 of the Internal Revenue Code of 1986 as in effect on January 1,1994).

The term "gambling establishment" means any common gaming or gambling establishment operated for the purpose of gaming or gambling, including accepting, recording, or registering bets, or carrying on a policy game or any other lottery, or playing any game of chance, for money or other thing of value.

The term "vessel" includes every kind of water and air craft or other contrivance used or capable of being used as a means of transportation on water, or on water and in the air, as well as any ship, boat, barge, or other water craft or any structure capable of floating on the water.

The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if such vessel is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

The term "wire communication facility" means any and all instrumentalities, personnel, and services (among other things, the receipt, forwarding, or delivery of communications) used or useful in the transmission of writings, signs, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission.

GAMBLING SHIPS (18 U.S.C. 1082 (2004)).

(a) It shall be unlawful for any citizen or resident of the United States, or any other person who is on an American vessel or is otherwise under or within the jurisdiction of the United States, directly or indirectly—

(1) to set up, operate, or own or hold any interest in any gambling ship or any gambling establishment on any gambling ship; or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any

person to bet or play at any such establishment, if such gambling ship is on the high seas, or is an American vessel or otherwise under or within the jurisdiction of the United States, and is not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined under this title or imprisoned not more than two years, or both.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, shall use, or knowingly permit the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

TRANSPORTATION BETWEEN SHORE AND SHIP; PENALTIES (18 U.S.C. 1083 (2004)).

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions. For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of $200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be subject to a civil penalty of $300.[1] Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

TRANSMISSION OF WAGERING INFORMATION; PENALTIES (18 U.S.C. 1084 (2004)).

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assist-

[1] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

ing in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

GAMBLING DEVICES - THE JOHNSON ACT.[2]

SEC. 1. DEFINITIONS (15 U.S.C. 1171 (2004)).

As used in this Act—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the oper-

[2] The Act of January 2, 1951, as amended (15 U.S.C. 1171-1178).

ation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in paragraph (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(f) The term "boundaries" has the same meaning given that term in section 2 of the Submerged Lands Act.

SEC. 2. TRANSPORTATION OF GAMBLING DEVICES AS UNLAWFUL; EXCEPTIONS; AUTHORITY OF FEDERAL TRADE COMMISSION (15 U.S.C. 1172 (2004)).

(a) **General Rule.** It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State, the District of Columbia, or possession: Provided, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: Provided further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling

device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

(b) **Authority of Federal Trade Commission.** Nothing in this Act shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act, as amended (15 U.S.C. 41—58).

(c) **Exception.** This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 5, not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

SEC. 3. REGISTRATION OF MANUFACTURERS AND DEALERS (15 U.S.C. 1173 (2004)).

(a) **Activities Requiring Registration; Contents of Registration Statement.**

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or

receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records, required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

(b) **Numbering of Devices.**

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of the first section of this Act shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(c) **Records; Required Information.**

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of the first section of this Act, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) **Retention of Records.** Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) **Dealing in, Owning, Possessing or Having Custody of Devices Not Marked or Numbered; False Entries in Records.**

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) **Authority of Federal Bureau of Investigation.** Agents of the Federal Bureau of Investigation shall; at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

SEC. 4. LABELING AND MARKING OF SHIPPING PACKAGES (15 U.S.C. 1174 (2004)). All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

SEC. 5. SPECIFIC JURISDICTION WITHIN WHICH MANUFACTURING, REPAIRING, SELLING, POSSESSING, ETC., PROHIBITED (15 U.S.C. 1175 (2004)).

(a) **General Rule.** It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 of the United States Code or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18 of the United States Code, including on a vessel documented under chapter 121 of title 46, United States Code, or documented under the laws of a foreign country.

(b) **Exception.**

(1) *In General.* Except for a voyage or a segment of a voyage that begins and ends in the State of Hawaii, or as provided in paragraph (2), this section does not prohibit—

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such a voyage on Lake Michigan.

(2) *Application to Certain Voyages.*

(A) General Rule. Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use on that voyage or segment.

(B) Voyage and Segment Described. A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

(i) that begins and ends in the same State or possession of the United States, and

(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

(C) Exclusion of Certain Voyages and Segments.[3]—Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if it includes or consists of a segment—

(i) that begins and ends in the same State;

(ii) that is part of a voyage to another State or to a foreign country; and

(iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which it begins.

(c) **Exception.**—(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries—

(A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and

(B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that—

(A) includes a stop in Canada or in a State other than the State of Alaska;

(B) includes stops in at least 2 different ports situated in the State of Alaska; and

(C) is of at least 60 hours duration.

SEC. 6. PENALTIES (15 U.S.C. 1176 (2004)). Whoever violates any of the provisions of sections 2, 3, 4, or 5 of this Act shall

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[3] Subparagraph (C) was added by Section 1222 of Public Law 104–264, approved October 9, 1996 (110 STAT. 3286), the Federal Aviation Reauthorization Act of 1996. An identical provision was added by Section 1106(b) of Publc Law 104–324, approved October 19, 1996 (110 STAT. 3967), the Coast Guard Authorization Act, 1996. Only one subparagraph (C) is shown.

be fined not more than $5,000 or imprisoned not more than two years, or both.

SEC. 7. CONFISCATION OF GAMBLING DEVICES AND MEANS OF TRANSPORTATION; LAWS GOVERNING (15 U.S.C. 1177 (2004)).

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

SEC. 8. NONAPPLICABILITY OF CHAPTER TO CERTAIN MACHINES AND DEVICES (15 U.S.C. 1178 (2004)).

None of the provisions of this Act shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with pari-mutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

MERCHANT MARINER DOCUMENTS GAMBLING VESSELS.

Section 324 of Public Law 107-295 (116 STAT. 2104), amended 46 U.S.C. 7302, and 46 U.S.C. 8701, to authorize the Secretary to issue an interim merchant mariner's document, valid for 120 days, to service personnel on passenger vessels not engaged in foreign commerce.

46 U.S.C. 7302 (2004). Issuing merchant mariners' documents and continuous discharge books

(a) The Secretary shall issue a merchant mariner's document to an individual required to have that document under part F of this subtitle if the individual satisfies the requirements of this part . The document serves as a certificate of identification and as a certificate of service, specifying each rating in which the holder is qualified to serve on board vessels on which that document is required under part F.

(b) The Secretary also may issue a continuous discharge book to an individual issued a merchant mariner's document if the individual requests.

(c) The Secretary may not issue a merchant mariner's document under this chapter unless the individual applying for the document makes available to the Secretary, under 30305 (b) (5) of title 49, any information contained in the National Driver Register related to an offense described in section 30304 (a) (3) (A) or (B) of title 49 committed by the individual.

(d) The Secretary may review the criminal record of an individual who applies for a merchant mariner's document under this section.

(e) The Secretary shall require the testing of an individual applying for issuance or renewal of a merchant mariner's document under this chapter for the use of a dangerous drug in violation of law or Federal regulation.

(f) Except as provided in subsection (g), a merchant mariner's document issued under this chapter is valid for 5 years and may be renewed for additional 5-year periods.

(g)(1) The Secretary may, pending receipt and review of information required under subsections (c) and (d), immediately issue an interim merchant mariner's document valid for a period not to exceed 120 days, to—

(A) an individual to be employed as gaming personnel, entertainment personnel, wait staff, or other service personnel on board a passenger vessel not engaged in foreign service, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; or

(B) an individual seeking renewal of, or qualifying for a supplemental endorsement to, a valid merchant mariner's document issued under this section.

(2) No more than one interim document may be issued to an individual under paragraph (1)(A) of this subsection.

46 U.S.C. 8701 (2004). Merchant mariners' documents required

(a) This section applies to a merchant vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title except—

* * * * * *

(9) a passenger vessel not engaged in a foreign voyage with respect to individuals on board employed for a period of not more than 30 service days within a 12 month period as entertainment personnel, with no duties, including emergency duties, related to the navigation of the vessel or the safety of the vessel, its crew, cargo or passengers; and

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MISCELLANEOUS

GENERAL DEFINITION OF VESSEL[1]

VESSEL DEFINITION. (1 U.S.C. 3 (2004)). The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Public Law 108-199, approved January 23, 2004 (118 STAT. 3), the Consolidated Appropriations Act, 2004, provides at 118 STAT. 312:

"Saint Lawrence Seaway Development Corporation

"The Saint Lawrence Seaway Development Corporation is hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to the Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended, as may be necessary in carrying out the programs set forth in the Corporation's budget for the current fiscal year.

"Operation and Maintenance (Harbor Maintenance Trust Fund)

"For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, $14,400,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662."

See also 117 STAT. 134, where Public Law 108-7, generally authorizes the Army Chief of Engineers to use appropriated funds to determine the advisability of undertaking restoration, modification, or modernization of the Great Lakes Navigational System, including the St. Lawrence Seaway, and in making such determination may partner with the St. Lawrence Seaway Development Corporation and Transport Canada or another designated representative of the Government of Canada and may accept from such partners cash, in-kind services, to be expended or used by the Secretary in addition to the funds identified herein for the purpose of making such determination.

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[1] See also the requirement for a "privately owned United States-flag commercial vessel" under the Cargo Preference Act of 1954 (Section 901(b) of the Merchant Marine Act, 1936), and the vessel requirements set forth in Section 901k of the Merchant Marine Act, 1936, for cargoes transported under sections 901b through 901d of that Act.

MERCHANT MARINE DECORATIONS AND MEDALS ACT

SEC. 1. TITLE (46 APP. U.S.C. 2001, Note (2004)). This Act may be cited as the "Merchant Marine Decorations and Medals Act".

SEC. 2. AUTHORIZATION OF DECORATIONS, MEDALS, AND OTHER RECOGNITION FOR MERCHANT MARINE SERVICE (46 App. U.S.C. 2001 (2004)). The Secretary of Transportation may award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the United States merchant marine.

SEC. 3. DISTINGUISHED SERVICE MEDAL, MERITORIOUS SERVICE MEDAL, DECORATIONS OR MEDALS FOR WAR OR NATIONAL EMERGENCY, OR CONSPICUOUS GALLANTRY, ETC. (46 App. U.S.C. 2002 (2004)). The Secretary of Transportation may award—

(1) a Merchant Marine Distinguished Service Medal to an individual for outstanding acts, conduct, or valor beyond the line of duty;

(2) a Merchant Marine Meritorious Service Medal to an individual for meritorious acts, conduct, or valor in the line of duty, but not of the outstanding character as would warrant the award of the Merchant Marine Distinguished Service Medal;

(3) a decoration or medal to an individual for service in time of war or national emergency proclaimed by the President or Congress, or during operations by the Armed Forces of the United States outside the continental United States under conditions of danger to life and property; and

(4) a decoration or medal to an individual for other acts or service of conspicuous gallantry, intrepidity, and extraordinary heroism under conditions of danger to life and property that would warrant a similar decoration or medal for a member of the Armed Forces of the United States.

SEC. 4. GALLANT SHIP AWARD AND CITATION (46 App. U.S.C. 2003 (2004)). The Secretary of Transportation may issue a Gallant Ship Award and a citation to a United States vessel or to a foreign-flag vessel participating in outstanding or gallant action in marine disasters or other emergencies for the purpose of saving life or property at sea. The Secretary may award a plaque to a vessel so cited, and a replica of the plaque may be preserved as a permanent historical record. The Secretary may also award an appropriate citation

ribbon bar to the master and each individual serving on board the vessel at the time of the action for which the citation is made. The Secretary shall consult with the Secretary of State before giving an award or citation to a foreign-flag vessel or its crew under this section.

SEC. 5. INDIVIDUALS NOT TO RECEIVE MORE THAN ONE OF ANY TYPE OF DECORATION; ACCEPTANCE BY PERSON REPRESENTATIVE; REPLACEMENTS (46 App. U.S.C. 2004 (2004)).

(a) The Secretary of Transportation may not award more than one of any type of decoration or medal to an individual. For each succeeding act or service justifying the same decoration or medal, a suitable device may be awarded to be worn with the decoration or medal.

(b) When an individual scheduled to receive a decoration or medal under this Act is unable to accept it, the Secretary may make the award to an appropriate personal representative.

(c) The Secretary may provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—

(1) the decorations and medals authorized under section 2 of this Act and replacements for those decorations and medals; and

(2) replacements for decorations and medals issued under a prior law.

(d) Decorations and medals authorized under section 2 of this Act may be of similar design as are authorized for members of the Armed Forces of the United States for similar acts or service.

SEC. 6. AUTHORIZATION FOR FLAG AND GRAVE MARKER FOR DECEASED MERCHANT MARINE MEMBER. (46 App. U.S.C. 2005 (2004)). Except as authorized under another law, the Secretary of Transportation may issue at no cost a flag of the United States and a grave marker to the family or personal representative of a deceased individual, who served in the United States merchant marine in support of the Armed Forces of the United States or its allies in periods of war or national emergency.

SEC. 7. CERTIFICATE OF RECOGNITION FOR SERVICE OF CERTAIN OTHER INDIVIDUALS (46 App. U.S.C. 2006 (2004)).

(a) The Maritime Administrator may issue a special certificate in recognition of service to an individual, or the personal representative of an individual, whose service in the United States merchant marine has been determined to be active duty under section 401 of Public Law 95-202 (38 U.S.C. 106, Note).

(b) Issuance of a certificate to any individual under subsection (a) of this section does not entitle that individual to any rights, privileges, or benefits under any law of the United States.

SEC. 8. EXCLUSIVENESS OF RIGHT TO DECORATION OR MEDAL; CIVIL PENALTY FOR VIOLATION (46 App. U.S.C. 2007 (2004)). Except as authorized by this Act, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this Act. A person violating this section is liable to the United States Government for a civil penalty of $2,000.[2]

MERCHANT MARINER BURIAL AND CEMETERY BENEFITS[3]

CHAPTER 112–MERCHANT MARINER BENEFITS

46 U.S.C. 11201 (2004). ELIGIBILITY FOR VETERANS' BURIAL AND CEMETERY BENEFITS

(a) **Eligibility.**—

(1) *In general.*— The qualified service of a person referred to in paragraph (2) shall be considered to be active duty in the Armed Forces during a period of war for purposes of eligibility for benefits under the following provisions of title 38:

(A) Chapter 23 (relating to burial benefits).

(B) Chapter 24 (relating to interment in national cemeteries).

(2) *Covered individuals.*— Paragraph (1) applies to a person who—

(A) receives an honorable service certificate under section 11203 of this title; and

(B) is not eligible under any other provision of law for benefits under laws administered by the Secretary of Veterans Affairs.

(b) **Reimbursement for Benefits Provided.**—The Secretary shall reimburse the Secretary of Veterans Affairs for the value of benefits that the Secretary of Veterans Affairs provides for a person by reason of eligibility under this section.

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[2] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

[3] Section 402 of Public Law 105–368, approved November 11, 1998 (112 STAT. 3315, 3335), the Veterans Programs Enhancement Act of 1998, added Chapter 112 to Part G of subtitle II of title 46, United States Code. NOTE that these benefits were improved by section 501 of Public Law 107-103, approved December 27, 2001 (115 STAT. 994), the Veterans Education and Benefits Expansion Act of 2001. See also Section 501 of Public Law 108-183, approved December 16, 2003 (117 STAT. 2666), the Veterans Benefits Act of 2003.

(c) **Applicability.**—

(1) *General rule.*— Benefits may be provided under the provisions of law referred to in subsection (a)(1) by reason of this chapter only for deaths occurring after the date of the enactment of this chapter.

(2) *Burials, etc. in national cemeteries.*— Notwithstanding paragraph (1), in the case of an initial burial or columbarium placement after the date of the enactment of this chapter, benefits may be provided under chapter 24 of title 38 by reason of this chapter (regardless of the date of death), and in such a case benefits may be provided under section 2306 of such title.

46 U.S.C. 11202 (2004). QUALIFIED SERVICE

For purposes of this chapter, a person shall be considered to have engaged in qualified service if, between August 16, 1945, and December 31, 1946, the person—

(1) was a member of the United States merchant marine (including the Army Transport Service and the Naval Transport Service) serving as a crewmember of a vessel that was—

(A) operated by the War Shipping Administration or the Office of Defense Transportation (or an agent of the Administration or Office);

(B) operated in waters other than inland waters, the Great Lakes, and other lakes, bays, and harbors of the United States;

(C) under contract or charter to, or property of, the Government of the United States; and

(D) serving the Armed Forces; and

(2) while so serving, was licensed or otherwise documented for service as a crewmember of such a vessel by an officer or employee of the United States authorized to license or document the person for such service.

46 U.S.C. 11203 (2004). DOCUMENTATION OF QUALIFIED SERVICE

(a) **Record of Service.**—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall, upon application—

(1) issue a certificate of honorable service to a person who, as determined by that Secretary, engaged in qualified service of a nature and duration that warrants issuance of the certificate; and

(2) correct, or request the appropriate official of the Federal Government to correct, the service records of that person to the extent necessary to reflect the qualified service and the issuance of the certificate of honorable service.

(b) **Timing of Documentation.**—A Secretary receiving an application under subsection (a) shall act on the application not later than 1 year after the date of that receipt.

(c) **Standards Relating to Service.**—In making a determination under subsection (a)(1), the Secretary acting on the application shall apply the same standards relating to the nature and duration of service that apply to the issuance of honorable discharges under section 401(a)(1)(B) of the GI Bill Improvement Act of 1977 (38 U.S.C. 106 note).

(d) **Correction of Records.**—An official who is requested under subsection (a)(2) to correct the service records of a person shall make such correction.

46 U.S.C. 11204 (2004). PROCESSING FEES

(a) **Collection of Fees.**—The Secretary, or in the case of personnel of the Army Transport Service or the Naval Transport Service, the Secretary of Defense, shall collect a fee of $30 from each applicant for processing an application submitted under section 11203(a) of this title.

(b) **Treatment of Fees Collected.**—Amounts received by the Secretary under this section shall be deposited in the General Fund of the Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities. Amounts received by the Secretary of Defense under this section shall be deposited in the General Fund of the Treasury as offsetting receipts of the Department of Defense. In either case, such amounts shall be available, subject to appropriation, for the administrative costs of processing applications under section 11203 of this title.

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NATIONAL MARITIME MUSEUM

16 U.S.C. 5409 (2004). DESIGNATION OF AMERICA'S NATIONAL MARITIME MUSEUM.

(a) **In General.**—America's National Maritime Museum is comprised of those museums designated by law to be museums of America's National Maritime Museum on the basis that they—

(1) house a collection of maritime artifacts clearly representing the Nation's maritime heritage; and

(2) provide outreach programs to educate the public about the Nation's maritime heritage.

(b) **Initial Designation of Museums.**—The following museums (meeting the criteria specified in subsection (a)) are hereby designated as museums of America's National Maritime Museum:

(1) The Mariners' Museum, located at 100 Museum Drive, Newport News, Virginia.

(2) The South Street Seaport Museum, located at 207 Front Street, New York, New York.

(c) **Future Designation of Other Museums Not Precluded.**—The designation of the museums referred to in subsection (b) as museums of America's National Maritime Museum does not preclude the designation by law after the date of the enactment of this Act of any other museum that meets the criteria specified in subsection (a) as a museum of America's National Maritime Museum.

(d) **Reference to Museums.**—Any reference in any law, map, regulation, document, paper, or other record of the United States to a museum designated by law to be a museum of America's National Maritime Museum shall be deemed to be a reference to that museum as a museum of America's National Maritime Museum.

CUSTOMS DUTY ON VESSEL EQUIPMENT AND REPAIRS

19 U.S.C. 1466 (2004). EQUIPMENT AND REPAIR OF VESSELS.

(a) **Vessels subject to duty; penalties.** The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country. If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture[.] For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) **Notice.** If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—

(1) describe the circumstances of the alleged violation;

(2) specify all laws and regulations allegedly violated;

(3) disclose all the material facts which establish the alleged violation;

(4) state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and

(5) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

(c) **Violation.** After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b).

(d) **Remission for necessary repairs.** If the owner or master of such vessel furnishes good and sufficient evidence that--

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;

(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo; then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

(e) **Vessels used primarily for purposes other than transporting passengers or property.**

(1) In the case of any vessel referred to in subsection (a) that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to--

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

(f) **Civil aircraft exception.** The duty imposed under subsection (a) shall not apply to the cost of equipments, or any part thereof, purchased, of repair parts or materials used, or of repairs made in a foreign country with respect to a United States civil aircraft, within the meaning of general note 3(c)(iv) of the Harmonized Tariff Schedule of the United States.

(g) **Fish net and netting purchases and repairs.** The duty imposed by subsection (a) shall not apply to entries on and after October 1, 1979, and before January 1, 1982, of--

(1) tuna purse seine nets and netting which are equipments or parts thereof,

(2) repair parts for such nets and netting, or materials used in repairing such nets and netting, or

(3) the expenses of repairs of such nets and netting,

for any United States documented tuna purse seine vessel of greater than 500 tons carrying capacity or any United States tuna purse seine vessel required to carry a certificate of inclusion under the general permit issued to the American Tunaboat Association pursuant to section 104 of the Marine Mammal Protection Act of 1972.

(h) **Foreign repair of vessels.** The duty imposed by subsection (a) of this section shall not apply to--

(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to, LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers;

(2) the cost of spare repair parts or materials (other than nets or nettings) which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a for-

eign country, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country;

(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country or

(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas. Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).[4]

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[4] As amended by Section 1554(a) of Public Law 108-429, approved December 3, 2004 (118 STAT. 2578), the Miscellaneous Trade & Technical Corrections Act of 2004. Section 1544(b) and (c) of Public Law 108-429, provide: "(b) AMENDMENT TO HTS.—Subchapter XVIII of chapter 98 of the Harmonized Tariff Schedule of the United States is amended by striking 'U.S. Note' and inserting 'U.S. Notes' and by adding after U.S. note 1 the following new note: '2. Notwithstanding the provisions of subheadings 9818.00.03 through 9818.00.07, no duty shall apply to the cost of equipment, repair parts, and materials that are installed in a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, and declaration and entry shall not be required with respect to such installation, equipment, parts, and materials.'

"(c) EFFECTIVE DATE.—The amendments made by this section apply to vessel equipment, repair parts, and materials installed on or after April 25, 2001."

The Conference Report (108-771), makes reference to Senate Report (108-28), that provides at page 168: "Present law. Under current law, Section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h)), non-emergency repairs and maintenance by U.S. crew members performed in a foreign shipyard are subject to a 50% ad valorem duty. Explanation of provision This provision would void U.S. Customs' March 26, 2001, Final Rule (Foreign Repairs to American Vessels, 66 FR 16392, effective April 25, 2001), and U.S. Customs' concurrent interpretation of Mount Washington Tanker Company v. United States (1 CIT 32, 505.F.Supp.209 (1980), aff(d) 69 CCPA 23, 605 F. 2nd 340). This final rule makes repairs and maintenance by U.S. crew members on U.S.-flag vessels while in transit on the high seas subject to the 50% ad valorem duty. Reason for change. The Committee believes U.S. Customs erred in its interpretation of The Tariff Act of 1930 (19 U.S.C. 1466) in drafting the March 26, 2001, Final Rule and subsequent misreading of Mount Washington Tanker Company v. United States (supra). That statute requires the ad valorem duty to be paid on U.S.-flag ship repairs performed in foreign countries. However, U.S. Customs interpreted 19 U.S.C. 1466 to require that repairs and maintenance by U.S. crew members on U.S.-flag vessels while in transit also be subject to the 50% ad valorem duties. The provision would void the March 26, 2001, Final Rule on Ship Repair and U.S. Customs' recent interpretation of the Mount Washington Tanker Company case (supra). This would return the ad valorem ship repair duty rules to the pre-March 26, 2001, effective date."

NATIONAL MARITIME ENHANCEMENT INSTITUTES

NATIONAL MARITIME ENHANCEMENT INSTITUTES (46 App. U.S.C. 1121-2 (2004)).

(a) **Designation by Secretary of Transportation.** The Secretary of Transportation may designate National Maritime Enhancement Institutes.

(b) **Activities.** Activities undertaken by such an Institute may include—

(1) conducting research concerning methods for improving the performance of maritime industries;

(2) enhancing the competitiveness of domestic maritime industries in international trade;

(3) forecasting trends in maritime trade;

(4) assessing technological advancements;

(5) developing management initiatives and training;

(6) analyzing economic and operational impacts of regulatory policies and international negotiations or agreements pending before international bodies;

(7) assessing the compatibility of domestic maritime infrastructure systems with overseas transport systems;

(8) fostering innovations in maritime transportation pricing; and

(9) improving maritime economics and finance.

(c) **Submission of Application.** An institution seeking designation as a National Maritime Enhancement Institute shall submit an application under regulations prescribed by the Secretary.

(d) **Designation Criteria.** The Secretary shall designate an Institute under this section on the basis of the following criteria:

(1) the demonstrated research and extension resources available to the designee for carrying out the activities specified in subsection (b);

(2) the capability of the designee to provide leadership in making national and regional contributions to the solution of both long-range and immediate problems of the domestic maritime industry;

(3) the existence of an established program of the designee encompassing research and training directed to enhancing maritime industries;

(4) the demonstrated ability of the designee to assemble and evaluate pertinent information from national and international sources and to disseminate results of maritime industry research and educational programs through a continuing education program; and

(5) the qualification of the designee as a nonprofit institution of higher learning.

(e) **Awards**. The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) from amounts appropriated. The aggregate annual amount of the Federal share of the awards by the Secretary shall not exceed $500,000.

(f) **University Transportation Research Funds**.—

(1) IN GENERAL.—The Secretary may make a grant under section 5505 of title 49, United States Code, to an institute designated under subsection (a) for maritime and maritime intermodal research under that section as if the institute were a university transportation center.

(2) ADVICE AND CONSULTATION OF MARAD.—In making a grant under authority of paragraph (1), the Secretary, through the Research and Innovative Technology Administration, shall advise the Maritime Administration concerning the availability of funds for the grants, and consult with the Administration on the making of the grants.

GREAT LAKES NATIONAL MARITIME ENHANCEMENT INSTITUTE.

Section 605 of Public Law 108-293, approved August 9, 2004 (118 STAT. 1052), provides:

"SEC. 605. GREAT LAKES NATIONAL MARITIME ENHANCEMENT INSTITUTE.

"(a) Authority to Designate Institute.—The Secretary of Transportation may designate a National Maritime Enhancement Institute for the Great Lakes region under section 8 of the Act of October 13, 1989 (103 Stat. 694; 46 U.S.C. App. 1121–2). In making any decision on the designation of such an institute, the Secretary shall consider the unique characteristics of Great Lakes maritime industry and trade.

"(b) Study and Report.—

"(1) In General.—The Secretary of Transportation shall conduct a study that—

"(A) evaluates short sea shipping market opportunities on the Great Lakes, including the expanded use of freight ferries, improved mobility, and regional supply chain efficiency;

"(B) evaluates markets for foreign trade between ports on the Great Lakes and draft-limited ports in Europe and Africa;

"(C) evaluates the environmental benefits of waterborne transportation in the Great Lakes region;

"(D) analyzes the effect on Great Lakes shipping of the tax imposed by section 4461(a) of the Internal Revenue Code of 1986;

"(E) evaluates the state of shipbuilding and ship repair bases on the Great Lakes;
"(F) evaluates opportunities for passenger vessel services on the Great Lakes;
"(G) analyzes the origin-to-destination flow of freight cargo in the Great Lakes region that may be transported on vessels to relieve congestion in other modes of transportation;
"(H) evaluates the economic viability of establishing transshipment facilities for oceangoing cargoes on the Great Lakes;
"(I) evaluates the adequacy of the infrastructure in Great Lakes ports to meet the needs of marine commerce; and
"(J) evaluates new vessel designs for domestic and international shipping on the Great Lakes.
"**(2) Use of National Maritime Enhancement Institutes.**—In conducting the study required by paragraph (1), the Secretary may utilize the services of any recognized National Maritime Enhancement Institute.
"**(3) Reports.**—The Secretary shall submit an annual report on the findings and conclusions of the study under this section to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—
"(A) by not later than 1 year after the date of the enactment of this Act; and
"(B) by not later than 1 year after the date of submission of the report under subparagraph (A).
"**(4) Authorization of Appropriations.**—There is authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2005 and 2006 to carry out paragraph (1)."

MARITIME RESEARCH AND TECHNOLOGY DEVELOPMENT

Section 3505 of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-493), the Department of Defense Authorization Act for FY 2001, provides:

"SEC. 3505. MARITIME RESEARCH AND TECHNOLOGY DEVELOPMENT.

(a) IN GENERAL.—The Secretary of Transportation shall conduct a study of maritime research and technology development, and report its findings and conclusions, together with any recommendations it

finds appropriate, to the Congress within 9 months after the date of the enactment of this Act.

(b) REQUIREMENT AREAS OF STUDY.—The Secretary shall include the following items in the report required by subsection (a):

(1) The approximate dollar values appropriated by the Congress for each of the 5 fiscal years ending before the study is commenced for each of the following modes of transportation:

(A) Highway.
(B) Rail.
(C) Aviation.
(D) Public transit.
(E) Maritime.

(2) A description of how Federal funds appropriated for research in the different transportation modes are utilized.

(3) A summary of description of current research and technology development funds appropriated for each of those fiscal years for maritime research initiatives, with separate categories for funds provided to the Coast Guard for marine safety research purposes.

(4) A description of cooperation mechanisms that could be used to attract and leverage non-federal investments in United States maritime research and technology development and application programs, including the potential for the creation of maritime transportation research centers and the benefits of cooperating with existing surface transportation research centers.

(5) Proposals for research and technology development funding to facilitate the evolution of Maritime Transportation System.

(c) **Authorization of Appropriations**.—Of the amounts authorized to be appropriated under section 3401 for operations and training, $100,000 is authorized to carry out this section."

INSPECTION EXEMPTION FOR VICTORY SHIPS

Section 208 of Public Law 107-295 (116 STAT. 2098), amended 46 U.S.C. 3302(l)(1), by the addition of the SS RED OAK VICTORY, SS AMERICAN VICTORY, and LST-325, to the vessels the Secretary is authorized to exempt from the inspection requirements of Chapter 33 of title 46.

46 U.S.C. 3302 (2004). Exemptions

* * * * * *

(l)(1)The Secretary may issue a permit exempting the following vessels from the requirements of this part for passenger vessels so long as

the vessels are owned by nonprofit organizations and operated as nonprofit memorials to merchant mariners:

(A) The steamship John W. Brown (United States official number 242209), owned by Project Liberty Ship Baltimore, Incorporated, located in Baltimore, Maryland.

(B) The steamship Lane Victory (United States official number 248094), owned by the United States Merchant Marine Veterans of World War II, located in San Pedro, California.

(C) The steamship Jeremiah O'Brien (United States official number 243622), owned by the National Liberty Ship Memorial, Inc.[.]

(D) The SS Red Oak Victory (United States official number 249410), owned by the Richmond Museum Association, located in Richmond, California.

(E) The SS American Victory (United States official number 248005), owned by Victory Ship, Inc., of Tampa, Florida.

(F) The LST-325, owned by USS LST Ship Memorial, Incorporated, located in Mobile, Alabama.

(2) The Secretary may issue a permit for a specific voyage or for not more than one year. The Secretary may impose specific requirements about the number of passengers to be carried, manning, the areas or specific routes over which the vessel may operate, or other similar matters.

(3) A designated Coast Guard official who has reason to believe that a vessel operating under this subsection is in a condition or is operated in a manner that creates an immediate threat to life or the environment or is operated in a manner that is inconsistent with this section, may direct the master or individual in charge to take immediate and reasonable steps to safeguard life and the environment, including directing the vessel to a port or other refuge.

AMERICAN MERCHANT MARINE MEMORIAL WALL OF HONOR

Section 203 of Public Law 107-295 (116 STAT. 2093), provides:

"Sec. 203. Expansion of American Merchant Marine Memorial Wall of Honor.

(a) **Findings.**—The Congress finds that—

(1) the United States Merchant Marine has served the people of the United States in all wars since 1775;

(2) the United States Merchant Marine served as the Nation's first navy and defeated the British Navy to help gain the Nation's independence;

(3) the United States Merchant Marine kept the lifeline of freedom

open to the allies of the United States during the Second World War, making one of the most significant contributions made by any nation to the victory of the allies in that war;

(4) President Franklin D. Roosevelt and many military leaders praised the role of the United States Merchant Marine as the "Fourth Arm of Defense" during the Second World War;

(5) more than 250,000 men and women served in the United States Merchant Marine during the Second World War;

6) during the Second World War, members of the United States Merchant Marine faced dangers from the elements and from submarines, mines, armed raiders, destroyers, aircraft, and "kamikaze" pilots;

7) during the Second World War, at least 6,830 members of the United States Merchant Marine were killed at sea;

(8) during the Second World War, 11,000 members of the United States Merchant Marine were wounded, at least 1,100 of whom later died from their wounds;

(9) during the Second World War, 604 members of the United States Merchant Marine were taken prisoner;

(10) one in 32 members of the United States Merchant Marine serving in the Second World War died in the line of duty, suffering a higher percentage of war-related deaths than any of the other armed services of the United States; and

(11) the United States Merchant Marine continues to serve the United States, promoting freedom and meeting the high ideals of its former members.

(b) **Grants to Construct Addition to American Merchant Marine Memorial Wall of Honor**.—

(1) *In General* -The Secretary of Transportation may make grants to the American Merchant Marine Veterans Memorial Committee, Inc., to construct an addition to the American Merchant Marine Memorial Wall of Honor located at the Los Angeles Maritime Museum in San Pedro, California.

(2) *Federal Share.*—The Federal share of the cost of activities carried out with a grant made under this section shall be 50 percent.

(3) *Authorization of Appropriations.*—There is authorized to be appropriated to carry out this section $500,000 for fiscal year 2003."

INVENTORY OF SUBMARINE CABLE VESSELS

Section 403 of Public Law 107-295 (116 STAT. 2114), requires the Secretary of Transportation, within 60 days after enactment and every six months thereafter, to publish in the Federal Register an up to date inventory of U.S. documented vessels, 200 feet or over, that have the capability to lay, maintain, or repair submarine cable. Section 403 provides:

Sec. 403. Inventory of Vessels for Cable Laying, Maintenance, and Repair.

(a) **Inventory.**—The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under chapter 121 of title 46, United States Code, are 200 feet or more in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classified as a cable ship or cable vessel.

(b) **Vessel Information.**—For each vessel listed in the inventory, the Secretary shall include in the inventory—

(1) the name, length, beam, depth, and other distinguishing characteristics of the vessel;

(2) the abilities and limitations of the vessel with respect to the laying, maintaining, and repairing of a submarine cable; and

(3) the name and address of the person to whom inquiries regarding the vessel may be made.

(c) **Publication.**—The Secretary shall—

(1) not later than 60 days after the date of enactment of this Act, publish in the Federal Register a current inventory developed under subsection (a); and

(2) every 6 months thereafter, publish in the Federal Register an updated inventory.

NATIONAL EMERGENCIES ACT[1]

TERMINATION OF EXISTING DECLARED EMERGENCIES (50 U.S.C. 1601 (2004)).

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act[1] are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words "any national emergency in effect" means a general declaration of emergency made by the President.

DECLARATION OF NATIONAL EMERGENCY BY PRESIDENT; PUBLICATION IN FEDERAL REGISTER; EFFECT ON OTHER LAWS; SUPERSEDING LEGISLATION (50 U.S.C. 1621 (2004)).

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

NATIONAL EMERGENCIES (50 U.S.C. 1622 (2004)).

(a) **Termination Methods.** Any national emergency declared by the President in accordance with this title shall terminate if—

[1] The National Emergencies Act was enacted on September 14, 1976.

(1) there is enacted into law a joint resolution terminating the emergency; or

(2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) **Termination Review of National Emergencies by Congress.** Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c) **Joint Resolution; Referral to Congressional Committees; Conference Committee in Event of Disagreement; Filing of Report; Termination Procedure Deemed Part of Rules of House and Senate.**

(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen

calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)—(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) **Automatic Termination of National Emergency; Continuation Notice from President to Congress; Publication in Federal Register.** Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

DECLARATION OF NATIONAL EMERGENCY BY EXECUTIVE ORDER, AUTHORITY; PUBLICATION IN FEDERAL REGISTER, TRANSMITTAL TO A CONGRESS (50 U.S.C. 1631 (2004)). When the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the

President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT (50 U.S.C. 1641 (2004)).

(a) **Maintenance of File and Index of Presidential Orders, Rules, and Regulations During National Emergency.** When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) **Presidential Orders, Rules and Regulations; Transmittal to Congress.** All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) **Expenditures During National Emergency; Presidential Reports to Congress.** When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

OTHER LAWS, POWERS AND AUTHORITIES CONFERRED THEREBY, AND ACTIONS TAKEN THEREUNDER; CONGRESSIONAL STUDIES (50 U.S.C. 1651 (2004)).

(a) The provisions of this act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Act of June 30, 1949 (41 U.S.C. 252);

(2) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(3) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(4) Public Law 85-804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);

(5) Section 2304(a)(1) of title 10;

(6) & (7) (redesignated.)

(8) [Repealed]

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this act.

PASSENGER/CRUISE VESSELS

HAWAIIAN CRUISE TRADE

PUBLIC LAW 108-7.

Section 211 of Public Law 108-7, approved February 20, 2003 (117 STAT. 11, 79), the Consolidated Appropriations Resolution, 2003, provides:

"**SEC. 211**. From funds made available from the 'Operations and Training' account, not more than $50,000 shall be made available to the Maritime Administration for administrative expenses to oversee the implementation of this section for the purpose of recovering economic and national security benefits to the United States following the default under the construction contract described in section 8109 of the Department of Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56): Provided, That the owner of any ship documented under the authority of this section shall offset such appropriation through the payment of fees to the Maritime Administration not to exceed the appropriation and that such fees be deposited as an offsetting collection to this appropriation: Provided further, That notwithstanding any other provision of law, one or both ships originally contracted under section 8109 of Public Law 105–56 may be constructed to completion in a shipyard located outside of the United States and the owner thereof (or a related person with respect to that owner) may document 1 or both ships under United States flag with a coastwise endorsement, and notwithstanding any other provision of law, and not later than 2 years after entry into service of the first ship contracted for under section 8109 of Public Law 105–56, that owner (or a related person with respect to that owner) may re-documented under United States flag with a coastwise endorsement 1 additional foreign-built cruise ship: Provided further, That: (1) the owner of any cruise ship documented under the authority of this section is a citizen of the United States within the meaning of 46 U.S.C. 12102(a),[1] (2) the foreign-built cruise ship re-documented under the authority of this section meets the eligibility requirements for a certificate of inspection under section 1137(a) of Public Law 104–324 and applicable international agreements and guidelines referred to in section 1137(a)(2) thereof[2] and the 1992 Amendments to the Safety of Life at Sea

[1] Set forth at page 245.

[2] Section 1137(a) of Public Law 104-324 provides: "(a) Certificate of Inspection. A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 651(b) of the Merchant Marine Act, 1936, but which on the date of enactment of this Act is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that-

Convention of 1974, and that with respect to the re-documented foreign-built cruise ship, any repair, maintenance, alteration, or other preparation necessary to meet such requirements be performed in a United States shipyard, (3) any non-warranty repair, maintenance, or alteration work performed on any ship documented under the authority of this section shall be performed in a United States shipyard unless the Administrator of the Maritime Administration finds that such services are not available in the United States or if an emergency dictates that the ship proceed to a foreign port for such work, (4) any ship documented under the authority of this section shall operate in regular service transporting passengers between or among the islands of Hawaii and shall not transport passengers in revenue service to ports in Alaska, the Gulf of Mexico, or the Caribbean Sea, except as part of a voyage to or from a shipyard for ship construction, repair, maintenance, or alteration work, (5) no person, nor any ship operating between or among the islands of Hawaii, shall be entitled to the preference contained in the second proviso of section 8109 of Public Law 105–56, and (6) no cruise ship operating in coastwise trade under the authority of this section or constructed under the authority of this section shall be eligible for a guarantee of financing under title XI of the Merchant Marine Act 1936: Provided further, That any cruise ship to be documented under the authority of this section shall be immediately eligible before documentation of the vessel for the approval contained in section 1136(b) of Public Law 104–324:[3] Provided further, That for purposes of this section the term 'cruise ship' means a vessel that is at least 60,000 gross tons and not more than 120,000 gross tons (as measured under chapter 143 of title 46, United States Code) and has berth or stateroom accommodations for at least 1,600 passengers, the term 'one or both ships' means collectively the partially completed hull and related components, equipment, and parts of whatever kind acquired pursuant to the construction contract described in section 8109 of Public Law 105–56 and intended to be incorporated into the ships constructed thereto, the term 'related person' means with respect to a person: a hold-

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" (1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

"(2) the vessel complies with the applicable international agreements and associated guidelines, as determined by the country in which in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

"(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel."

[3] Section 1136(b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987), provides: "(b) Approval of Certain Vessel Transaction Before Documentation of the Vessel. Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended by adding at the end the following new subsection: (e) To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code, the Secretary may grant approval under subsection (c) before the date the vessel is documented."

ing company, subsidiary, or affiliate of such person meeting the citizenship requirements of section 12102(a) of title 46, United States Code,[4] and the term 'regular service' means the primary service in which the ship is engaged on an annual basis."[5]

FINANCIAL RESPONSIBILITY

FINANCIAL RESPONSIBILITY OF OWNERS AND CHARTERERS FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS (46 App. U.S.C. 817d (2004)).

(a) **Amount; Method of Establishment.** Each owner or charterer of an American or foreign vessel having berth or stateroom accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the Federal Maritime Commission, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports, in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

$20,000 for each passenger accommodation up to and including five hundred; plus

$15,000 for each additional passenger accommodation between five hundred and one and one thousand; plus

$10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus

$5,000 for each passenger accommodation in excess of one thousand five hundred:

Provided, however, That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations. This amount shall be available to pay any judgment for damages, whether in amount less than or more than $20,000 for death or injury occurring on such voyages to any passenger or other person. Such financial responsibility may be established by any one of, or a combination of, the following methods which is acceptable to the Commission: (1) policies of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility.

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[4] Set forth at page 245.

[5] The Conference Report (H. Rpt. 108-10), provides at page 733: "Section 211 - The conference agreement includes section 211, included in the Senate, to exempt two foreign-built cruise ships to engage in service between and among the islands of Hawaii. The section is modified to prohibit vessels access."

(b) **Issuance of Bond when Filed with Commission.** If a bond is filed with the Commission, then such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of Penalties.**[6] Any person who shall violate this section shall be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its discretion shall deem proper.

(d) **Rules and Regulations**. The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984, shall apply with respect to proceedings conducted by the Commission under this section.

(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

FINANCIAL RESPONSIBILITY FOR INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION (46 App. U.S.C. 817e (2004)).

(a) **Filing of Information or Bond with Commission.** No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

(b) **Issuance of Bond when Filed with Commission; Amount of Bond.** If a bond is filed with the Commission, such bond shall be

[6] Note that these amounts may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

issued by a bonding company authorized to do business in the United States or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of Penalties.** Any person who shall violate this section shall be subject to a civil penalty of not more than $5,000 in addition to a civil penalty of $200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as it in its discretion shall deem proper.

(d) **Rules and Regulations.** The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984, shall apply with respect to proceedings conducted by the Commission under this section.

(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

LIMITATION OF VESSEL OWNER'S LIABILITY

AMOUNT OF LIABILITY (46 App. U.S.C. 183 (2004)).

(a) **Privity or Knowledge of Owner; Limitation.** The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) **Seagoing Vessels; Losses Not Covered in Full.** In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay

such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) **Tonnage of Seagoing Vessels.** For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) **Loss of Life or Bodily Injury Arising on Distinct Occasions.** The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) **Privity Imputed to Owner.** In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) "**Seagoing Vessel" Defined.** As used in subsections (b), (c), (d), and (e) of this section and in section 4283A, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended.

(g) **Applicability of Statutory Limitations.** In a suit by any person in which the operator or owner of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, such operator, owner, or employer shall be entitled to rely upon any and all statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

STIPULATIONS LIMITING TIME FOR FILING CLAIMS AND COMMENCING SUIT (46 App. U.S.C. 183b (2004)).

(a) **Time Periods.** It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six

months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) **Claims Not Barred for Failure to Give Notice.** Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) **Mental Incompetents; Minors; Wrongful Death Actions.** If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: Provided, however, That such appointment be made within three years after the date of such death or injury.

STIPULATIONS LIMITING LIABILITY FOR NEGLIGENCE INVALID (46 App. U.S.C. 183c (2004)).

(a) **Unlawful Stipulations.** It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect.

(b)(1) **Contract Limitations Allowed.** Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a crewmember, manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit such liability if the emo-

tional distress, mental suffering, or psychological injury was—

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and such risk was caused by the negligence or fault of a crewmember or the manager, agent, master, owner, or operator; or

(C) intentionally inflicted by a crewmember or the manager, agent, master, owner, or operator.

(2) Nothing in this subsection is intended to limit the liability of a crewmember or the manager, agent, master, owner, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

46 U.S.C. 3505 (2004). Prevention of departure

Notwithstanding section 3303 of this title, a foreign vessel carrying a citizen of the United States as a passenger or embarking passengers from a United States port may not depart from a United States port if the Secretary finds that the vessel does not comply with the standards stated in the International Convention for the Safety of Life at Sea to which the United States Government is currently a party.

PUBLIC VESSELS ACT

SEC. 1. LIBEL IN ADMIRALTY AGAINST OR IMPLEADER OF UNITED STATES (46 App. U.S.C. 781 (2004)). A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: Provided, That the cause of action arose after the 6th day of April, 1920.

SEC. 2. VENUE OF SUIT; APPLICATION OF PROVISIONS OF THE SUITS IN ADMIRALTY ACT (46 App. U.S.C. 782 (2004)). Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

SEC. 3. CROSS LIBEL, SET-OFF, OR COUNTERCLAIM (46 App. U.S.C. 783 (2004)). In the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: Provided, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

SEC. 4. SUBPOENAS TO OFFICERS OR MEMBERS OF CREWS (46 App. U.S.C. 784 (2004)). No officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the Secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

SEC. 5. SUITS BY NATIONALS OF FOREIGN GOVERNMENTS (46 App. U.S.C. 785 (2004)). No suit may be brought under this Act by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

SEC. 6. ARBITRATION, COMPROMISE, OR SETTLEMENT (46 App. U.S.C. 786 (2004)). The Attorney General of the United States is authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

SEC. 7. PAYMENT OF JUDGMENTS OR SETTLEMENTS (46 App. U.S.C. 787 (2004)). Any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 6 of this Act, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

SEC. 8. LIEN NOT CREATED AGAINST PUBLIC VESSELS (46 App. U.S.C. 788 (2004)). Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

SEC. 9. EXEMPTIONS AND LIMITATIONS OF LIABILITY (46 App. U.S.C. 789 (2004)). The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators or agents of vessels.

SEC. 10. REPORTS BY ATTORNEY GENERAL (46 App. U.S.C. 790 (2004)). The Attorney General of the United States shall report to the Congress at each session thereof all claims which shall have been settled under this act.

RECENT TAX PROVISIONS

REDUCED TAXES FOR CERTAIN INLAND WATERWAYS FUEL.

Section 241(b) of Public Law 108-357, approved October 22, 2004 (118 STAT. 1438), the American Jobs Creations Act of 2004, amended 26 U.S.C. 4042(b)(2), effective January 1, 2005, to phase out the 4.3 cents-per-gallon tax on diesel fuel used in trains and barges operating on designated inland waters. As so amended, 26 U.S.C. 4042 provides:

26 U.S.C. 4042 (2004). Tax on fuel used in commercial transportation on inland waterways.

(a) In general. There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

(b) Amount of tax.

(1) In general. The rate of the tax imposed by subsection (a) is the sum of--

(A) the Inland Waterways Trust Fund financing rate,

(B) the Leaking Underground Storage Tank Trust Fund financing rate, and

(C) the deficit reduction rate.

(2) Rates. For purposes of paragraph (1)--

(A) The Inland Waterways Trust Fund financing rate is the rate determined in accordance with the following table:

If the use occurs:	The tax per gallon is:
Before 1990	10 cents
During 1990	11 cents
During 1991	13 cents
During 1992	15 cents
During 1993	17 cents
During 1994	19 cents
After 1994	20 cents

(B) The Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

(C) The deficit reduction rate is--

(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

(iii) 0 after December 31, 2006.

* * *

INTERNATIONAL SHIPPING TONNAGE TAX

Section 248(a) of Public Law 108-357, approved October 22, 2004 (118 STAT. 1449), the American Jobs Creations Act of 2004, amended Chapter 1 of the Internal Revenue Code to give U.S.-flag operators the option of being assessed a tonnage tax rather than the traditional income tax on corporate profits. Section 248(a) inserted after Subchapter Q a new Subchapter R - Election to Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate, consisting of 26 U.S.C. 1352 - 1359. The new Subchapter R provides:

SUBCHAPTER R ELECTION TO DETERMINE CORPORATE TAX ON CERTAIN INTERNATIONAL SHIPPING ACTIVITIES USING PER TON RATE.

Sec. 1352. Alternative tax on qualifying shipping activities.
Sec. 1353. Notional shipping income.
Sec. 1354. Alternative tax election; revocation; termination.
Sec. 1355. Definitions and special rules.
Sec. 1356. Qualifying shipping activities.
Sec. 1357. Items not subject to regular tax; depreciation; interest.
Sec. 1358. Allocation of credits, income, and deductions.
Sec. 1359. Disposition of qualifying vessels.

SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING ACTIVITIES. In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of--

(1) the tax imposed by section 11 determined after the application of this subchapter, and

(2) a tax equal to--

(A) the highest rate of tax specified in section 11, multiplied by

(B) the notional shipping income for the taxable year.

SEC. 1353. NATIONAL SHIPPING INCOME.

(a) In General.-- For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

(b) Amounts.--

(1) In general.-- For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of--

(A) the daily notional shipping income, and

(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

(2) Treatment of vessels the income from which is not otherwise subject to tax.-- In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

(c) Daily Notional Shipping Income.-- For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is--

(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

(d) Multiple Operators of Vessel.-- If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership and charter interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

SEC. 1354. ALTERNATIVE TAX ELECTION, REVOCATION, TERMINATION.

(a) In General.-- A qualifying vessel operator may elect the application of this subchapter.

(b) Time and Manner; Years for Which Effective.-- An election under this subchapter--

(1) shall be made in such form as prescribed by the Secretary, and

(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made before the due date (including extensions) for filing the corporation's return for such taxable year.

(c) Consistent Elections By Members of Controlled Groups.--An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

(d) Termination.--

(1) By revocation.----

(A) In general.--An election under subsection (a) may be terminated by revocation.

(B) When effective.--Except as provided in subparagraph (C)--

(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

(C) Revocation may specify prospective date.--If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

(2) By person ceasing to be qualifying vessel operator.----

(A) In general.--An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

(B) When effective.--Any termination under this paragraph shall be effective on and after the date of cessation.

(C) Annualization.--The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

(e) Election After Termination.--If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

SEC. 1355. DEFINITIONS AND SPECIAL RULES..

(a) Definitions.--For purposes of this subchapter--

(1) Electing corporation.-- The term "electing corporation" means any corporation for which an election is in effect under this subchapter.

(2) Electing group; controlled group.----

(A) Electing group.--The term "electing group" means a controlled group of which one or more members is an electing corporation.

(B) Controlled group.--The term "controlled group" means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

(3) Qualifying vessel operator.-- The term "qualifying vessel operator" means any corporation--

(A) who operates one or more qualifying vessels, and

(B) who meets the shipping activity requirement in subsection (c).

(4) Qualifying vessel.-- The term "qualifying vessel" means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 10,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

(5) United states flag vessel.-- The term "United States flag vessel"

means any vessel documented under the laws of the United States.

(6) United states domestic trade.-- The term "United States domestic trade" means the transportation of goods or passengers between places in the United States.

(7) United states foreign trade.-- The term "United States foreign trade" means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

(8) Charter.-- The term "charter" includes an operating agreement.

(b) Operating a Vessel.-- For purposes of this subchapter--

(1) In general.-- Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is--

(A) owned by, or chartered (including a time charter) to, the person, and

(B) is in use as a qualifying vessel during such period.

(2) Bareboat charters.-- A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if--

(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

(c) Shipping Activity Requirement.-- For purposes of this section--

(1) In general.-- Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

(2) Special rule for 1st year of election.-- A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

(3) Controlled groups.-- A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined--

(A) by treating all members of such group as 1 person, and

(B) by disregarding vessel charters between members of such group.

(4) Requirement.-- The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

(d) Activities Carried on Partnerships, Etc.-- In applying this subchapter to a partner in a partnership--

(1) each partner shall be treated as operating vessels operated by the partnership,

(2) each partner shall be treated as conducting the activities conducted by the partnership, and

(3) the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

(e) Effect of Temporarily Ceasing To Operate a Qualifying Vessel.--

(1) In general.-- For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating--

(A) that it has temporarily ceased to operate the qualifying vessel, and

(B) its intention to resume operating the qualifying vessel.

(2) Notice.-- Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect.-- The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which--

(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

(B) the electing corporation resumes operation of the qualifying vessel.

(f) Effect of Temporarily Operating a Qualifying Vessel in the United States Domestic Trade.--

(1) In general.-- For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating--

(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

(B) its intention to resume operation of the vessel in the United States foreign trade.

(2) Notice.-- Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

(3) Period disregard in effect.-- The period of temporary use under paragraph (1) continues until the earlier of the date of which--

(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

(B) the electing corporation resumes operation of the vessel in the

United States foreign trade.

(4) No disregard if domestic trade use exceeds 30 days.-- Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

(g) Regulations.-- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.

(a) Qualifying Shipping Activities.--For purposes of this subchapter, the term "qualifying shipping activities" means--

(1) core qualifying activities,

(2) qualifying secondary activities, and

(3) qualifying incidental activities.

(b) Core Qualifying Activities.--For purposes of this subchapter, the term "core qualifying activities" means activities in operating qualifying vessels in United States foreign trade.

(c) Qualifying Secondary Activities.--For purposes of this section--

(1) In general.-- The term "qualifying secondary activities" means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

(2) Secondary activities.-- The term "secondary activities" means--

(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including--

(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

(3) Coordination with core activities.----

(A) In general.--Such term shall not include any core qualifying activities.

(B) Nonelecting corporations.--In the case of a corporation (other

than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).

(d) Qualifying Incidental Activities.--For purposes of this section, the term "qualified incidental activities" means shipping-related activities if--

(1) they are incidental to the corporation's core qualifying activities,

(2) they are not qualifying secondary activities, and

(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation's gross income from its core qualifying activities.

(e) Application of Gross Income Tests in Case of Electing Group.-- In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

SEC. 1357. ITEMS NOT SUBJECT TO REGULATION, TAX DEPRECIATION, INTEREST.

(a) Exclusion From Gross Income.-- Gross income of an electing corporation shall not include its income from qualifying shipping activities.

(b) Electing Group Member.-- Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

(c) Denial of Losses, Deductions, and Credits.--

(1) General rule.-- Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

(2) Depreciation.----

(A) In general.--Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

(B) Method.--

(i) In general.--Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

(ii) Exception.--Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

(3) Interest.----

(A) In general.--Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

(B) Electing group.--In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DEDUCTIONS.

(a) Qualifying Shipping Activities. For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

(b) Exclusion of Credits or Deductions.

(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).

(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

(c) Transactions Not at Arm's Length. Section 482 applies in accordance with this subsection to a transaction or series of transactions--

(1) as between an electing corporation and another person, or

(2) as between an person's qualifying shipping activities and other activities carried on by it.

SEC. 1359. DISPOSITION OF QUALIFYING VESSELS.

(a) In General. If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

(b) Period Within Which Property Must Be Replaced The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending--

(1) 3 years after the close of the first taxable year in which the gain is realized, or

(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(c) Application of Section to Noncorporate Operators.-- For purposes of this section, the term "qualifying vessel operator" includes any per-

son who would be a qualifying vessel operator were such person a corporation.

(d) Time for Assessment of Deficiency Attributable to Gain. If a qualifying vessel operator has made the election provided in subsection (a), then--

(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

(e) Basis of Replacement Qualifying Vessel. In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.".

Section 248(b) of Public Law 108-357, approved October 22, 2004 (118 STAT. 1457), the American Jobs Creations Act of 2004, generally made a technical amendment to 26 U.S.C. 56. Adjustments in computing alternative minimum taxable income. Section 248(b) & (c) provide:

Section 248(b) Technical Amendments-

(1) The second sentence of section 56(g)(4)(B)(i), as amended by this Act, is further amended by inserting "or 1357" after "section 139A".

(2) The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter S the following new item:

"Subchapter R. Election to determine corporate tax on certain international shipping activities using per ton rate.".

Section 248(c). Effective Date.--The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

CONTROLLED FOREIGN SHIPPING CORPORATIONS SUBPART F INCOME

Very generally, Section 415 of Public Law 108-357, approved October 22, 2004 (118 STAT. 1511), the American Jobs Creation Act of 2004, in part repeals the Subpart F rules relating to foreign base company shipping income by amending 26 U.S.C. 954 and 952. Section 415 of Public Law 108-357, and 26 U.S.C. 952 and 954, as so amended, provide:

"Sec. 415. Modifications to treatment of aircraft leasing and shipping income.

"(a) Elimination of Foreign Base Company Shipping Income.-- Section 954 (relating to foreign base company income) is amended--
(1) by striking paragraph (4) of subsection (a) (relating to foreign base company shipping income), and
(2) by striking subsection (f) (relating to foreign base company shipping income).
"(b) Safe Harbor for Certain Leasing Activities.-- Subparagraph (A) of section 954(c)(2) is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.".
"(c) Conforming Amendments.--
"(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and redesignating subclauses (II) through (VI) as subclauses (I) through (V), respectively.
"(2) Subsection (b) of section 954 is amended--
"(A) by striking "the foreign base company shipping income," in paragraph (5),
"(B) by striking paragraphs (6) and (7), and
"(C) by redesignating paragraph (8) as paragraph (6).
"(d) Effective Date.-- The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end."

As so amended 26 U.S.C. 952 and 954 provide:
26 U.S.C. 952 (2004). Subpart F income defined.
(a) In general. For purposes of this subpart, the term "subpart F income" means, in the case of any controlled foreign corporation, the sum of--
(1) insurance income (as defined under section 953 ,
(2) the foreign base company income (as determined under section 954,
(3) an amount equal to the product of--

(A) the income of such corporation other than income which--

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b), multiplied by

(B) the international boycott factor (as determined under section 999,

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country. The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income. In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation.

(1) In general.

(A) Subpart F income limited to current earnings and profits. For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such
corporation for such taxable year.

(B) Certain prior year deficits may be taken into account.

(i) In general. The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit. The term "qualified deficit" means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation;

but only to the extent such deficit--

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that "1982" shall be substituted for "1962".

(iii) Qualified activity. For purposes of this paragraph, the term "qualified activity" means any activity giving rise to--

(I) foreign base company oil related income,

(II) foreign base company sales income,

(III) foreign base company services income,

(IV) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or

(V) in the case of a qualified financial institution, foreign personal holding company income.

* * *

26 U.S.C. 954. Foreign base company income.

(a) Foreign base company income. For purposes of section 952(a)(2), the term "foreign base company income" means for any taxable year the sum of--

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)),

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)),

(4) [Deleted]

(5) the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).

(b) Exclusions and special rules.

* * *

(5) Deductions to be taken into account. For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, the foreign base company services income, and the foreign base company oil related income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

* * *

SHIPYARD ACCOUNTING CHANGE.

Section 708 of Public Law 108-357, approved October 22, 2004 (118 STAT. 1550), the American Jobs Creation Act of 2004, generally permits U.S. shipyards with naval shipbuilding contracts to institute a tax accounting rule change that will further reduce costs. Section 708 provides:

"SEC. 708. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS.

"(a) In General.--In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

"(b) Recapture of Tax Benefit.--In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of--

"(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

"(2) the amount of tax so imposed during such period.

"(c) Qualified Naval Ship Contract.--For purposes of this section:

"(1) In general.-- The term "qualified naval ship contract" means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9

years after the construction commencement date.

"(2) Acceptance date.-- The term "acceptance date" means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

"(3) Construction commencement date.-- The term "construction commencement date" means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

"(d) Effective Date.--This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act."

GENERAL PORT MATTERS

DUTIES OF THE SECRETARY OF TRANSPORTATION.

49 U.S.C. 308. Reports (2004).

* * *

(c) The Secretary [of Transportation] shall submit to Congress each year a report on the conditions of the public ports of the United States, including the--

(1) economic and technological development of the ports;

(2) extent to which the ports contribute to the national welfare and security; and

(3) factors that may impede the continued development of the ports.

DEEPWATER PORT ACT

33 U.S.C. 1501 (2004). Congressional declaration of policy

(a) It is declared to be the purposes of the Congress in this Act to--

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports;

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law;

(5) promote the construction and operation of deepwater ports as a safe and effective means of importing oil or natural gas into the United States and transporting oil or natural gas from the outer continental shelf while minimizing tanker traffic and the risks attendant thereto; and

(6) promote oil or natural gas production on the outer continental shelf by affording an economic and safe means of transportation of outer continental shelf oil or natural gas to the United States mainland.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

33 U.S.C. 1502 (2004). Definitions

As used in this Act, unless the context otherwise requires, the term--

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9(a)(2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5(c)(2)(A) or (B);

(3) "application" means an application submitted under this Act for a license for the ownership, construction, and operation of a deepwater port;

(4) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(5) "coastal environment" means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines[(]including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(6) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(7) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(8) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(9) "deepwater port"--

(A) means any fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or termi-

nal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23 [33 USCS § 1522], and for other uses not inconsistent with the purposes of this Act, including transportation of oil or natural gas from the United States outer continental shelf;

(B) includes all components and equipment, including pipelines, pumping stations, service platforms, buoys, mooring lines, and similar facilities to the extent they are located seaward of the high water mark;

(C) in the case of a structure used or intended for such use with respect to natural gas, includes all components and equipment, including pipelines, pumping or compressor stations, service platforms, buoys, mooring lines, and similar facilities that are proposed or approved for construction and operation as part of a deepwater port, to the extent that they are located seaward of the high water mark and do not include interconnecting facilities; and

(D) shall be considered a "new source" for purposes of the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(10) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this Act;

(11) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this Act;

(12) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(13) "natural gas" means either natural gas unmixed, or any mixture of natural or artificial gas, including compressed or liquefied natural gas;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 10(d) of this Act;

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

33 U.S.C. 1503 (2004). License for ownership, construction, and operation of deepwater port

(a) Requirement; restrictions on utilization of deepwater port. No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this Act. No person may transport or otherwise transfer any oil or natural gas between a deepwater port and the United States unless such port has been so licensed and the license is in force.

(b) Issuance, transfer, amendment, or reinstatement. The Secretary may--

(1) on application, issue a license for the ownership, construction, and operation of a deepwater port; and

(2) on petition of the licensee, amend, transfer, or reinstate a license issued under this Act.

(c) Conditions for issuance. The Secretary may issue a license in accordance with the provisions of this Act if--

(1) he determines that the applicant is financially responsible and will meet the requirements of section 1016 of the Oil Pollution Act of 1990[;]

(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(3) he determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(4) he determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 6 of this Act, that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(6) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(7) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(8) the Governor of the adjacent coastal State or States, pursuant to section 9 of this Act, approves, or is presumed to approve, issuance of the license; and

(9) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 9(c) of this Act, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

(10) [Redesignated]

(d) Application for license subject to examination and comparison of economic, social, and environmental effects of deepwater port facility and deep draft channel and harbor; finality of determination. If an application is made under this Act for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application--

(1) has existing plans for construction of a deep draft channel and harbor; and

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 10 of the Act of March 3, 1899 (30 Stat. 1121), for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not issue a license under this Act until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and nonreviewable.

(e) Additional conditions; removal requirements, waiver; Outer Continental Shelf Lands Act applicable to utilization of components upon waiver of removal requirements.

(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe those conditions which the Secretary deems necessary to carry out the provisions and requirements of this title or which are otherwise required by any Federal department or agency pursuant to the terms of this title. To the extent practicable, conditions required to carry out the provisions and requirements of this title shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port's operating procedures to be stated in an operations manual, approved by the Coast Guard, in accordance with section 10(a) of this title, rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in

regulations. On petition of a licensee, the Secretary shall review any condition of a license issued under this Act to determine if that condition is uniform, insofar as practicable, with the conditions of other licenses issued under this Act, reasonable, and necessary to meet the objectives of this Act. The Secretary shall amend or rescind any condition that is no longer necessary or otherwise required by any Federal department or agency under this Act.

(2) No license shall be issued, transferred, or renewed under this Act unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational system, and methods, procedures, and safeguards set forth in his license, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this Act.

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act (67 Stat. 462), after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) Amendments, transfers, and reinstatements. The Secretary may amend, transfer, or reinstate a license issued under this title if the Secretary finds that the amendment, transfer, or reinstatement is consistent with the requirements of this Act.

(g) Eligible citizens. Any citizen of the United States who otherwise qualifies under the terms of this Act shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

(h) Term of license. A license issued under this Act remains in effect unless suspended or revoked by the Secretary or until surrendered by the licensee.

33 U.S.C. 1504 (2004). Procedure

(a) Regulations; issuance, amendment, or rescission; scope. The Secretary shall, as soon as practicable after the date of enactment of this Act [enacted Jan. 3, 1975], and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of

this Act, in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this Act, to amend or rescind any such regulation.

(b) Additional regulations; criteria for site evaluation and preconstruction testing. The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after the date of enactment of this Act [enacted Jan. 3, 1975], prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this Act.

(c) Plans; submittal to Secretary of Transportation; publication in Federal Register; application contents.

(1) Any person making an application under this Act shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to--

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of

the deepwater port, and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the specific components thereof;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this Act;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

(3) Upon written request of any person subject to this subsection, the Secretary may make a determination in writing to exempt such person from any of the informational filing provisions enumerated in this subsection or the regulations implementing this section if the Secretary determines that such information is not necessary to facilitate the Secretary's determinations under section 4 of this Act and that such exemption will not limit public review and evaluation of the deepwater port project.

(d) Application area; publication in Federal Register; "application area" defined; submission of other applications; notice of intent and submission of completed applications; denial of pending application prior to consideration of other untimely applications.

(1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending to file applications for such license shall submit a notice of intent to file and application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the application pending with respect to such application area have been denied pursuant to this Act.

(4) This subsection shall not apply to deepwater ports for natural gas.

(e) Recommendations to Secretary of Transportation; application for all Federal authorizations; copies of application to Federal agencies and departments with jurisdiction; recommendation of approval or disapproval and of manner of amendment to comply with laws or regulations.

(1) Not later than 30 days after the date of enactment of this Act [enacted Jan. 3, 1975], the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal departments or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this Act or any other Federal law.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction,

and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) NEPA compliance. For all applications, the Secretary, in cooperation with other involved Federal agencies and departments, shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Such compliance shall fulfill the requirement of all Federal agencies in carrying out their responsibilities under the National Environmental Policy Act of 1969 pursuant to this Act.

(g) Public notice and hearings; evidentiary hearing in District of Columbia; decision of Secretary based on evidentiary record; consolidation of hearings. A license may be issued only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded, if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to section 5(c) of this Act [subsection (c) of this section].

(h) Nonrefundable application fee; processing costs; State fees; "land-based facilities directly related to a deepwater port facility" defined; fair market rental value, advance payment.

(1) Each person applying for a license pursuant to this Act shall remit

to the Secretary at the time the application is filed a nonrefundable application fee established by regulation by the Secretary. In addition, an applicant shall also reimburse the United States and the appropriate adjacent coastal State for any additional costs incurred in processing an application.

(2) Notwithstanding any other provision of this Act, and unless prohibited by law, an adjacent coastal State may fix reasonable fees for the use of a deepwater port facility, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of such land-based facilities. Fees may be fixed under authority of this paragraph as compensation for any economic cost attributable to the construction and operation of such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental and administrative costs attributable to the construction and operation of such deepwater port and such land-based facilities. Fees under this paragraph shall not exceed such economic, environmental, and administrative costs of such State. Such fees shall be subject to the approval of the Secretary. As used in this paragraph, the term "land-based facilities directly related to a deepwater port facility" means the onshore tank farm and pipelines connecting such tank farm to the deepwater port facility.

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed.

(i) Application approval; period for determination; priorities; criteria for determination of application best serving national interest.

(1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license for that area.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate to any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 6 of this Act;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

(4) The Secretary shall approve or deny any application for a deepwater port for natural gas submitted pursuant to this Act not later than 90 days after the last public hearing on a proposed license. Paragraphs (1), (2), and (3) of this subsection shall not apply to an application for a deepwater port for natural gas.

33 U.S.C. 1505 (2004). Environmental review criteria

(a) Establishment; evaluation of proposed deepwater ports. The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after the date of enactment of this Act [enacted Jan. 3, 1975], environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including--

(1) the effect on the marine environment;

(2) the effect on oceanographic currents and wave patterns;

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effect on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

(b) Review and revision. The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Concurrent development of criteria and regulations. Criteria

established pursuant to this section shall be developed concurrently with the regulations in section 5(a) of this Act and in accordance with the provisions of that subsection.

33 U.S.C. 1506. [Repealed]

33 U.S.C. 1507 (2004). Common carrier status

(a) Status of deepwater ports and storage facilities. A deepwater port and a storage facility serviced directly by that deepwater port shall operate as a common carrier under applicable provisions of part I of the Interstate Commerce Act and subtitle IV of title 49, United States Code, and shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued, except as provided by subsection (b) of this section.

(b) Discrimination prohibition; exceptions. A licensee is not discriminating under this section and is not subject to common carrier regulations under subsection (a) of this section when that licensee--

(1) is subject to effective competition for the transportation of oil from alternative transportation systems; and

(2) sets its rates, fees, charges, and conditions of service on the basis of competition, giving consideration to other relevant business factors such as the market value of services provided, licensee's cost of operation, and the licensee's investment in the deepwater port and a storage facility, and components thereof, serviced directly by that deepwater port.

(c) Enforcement, suspension, or termination proceedings. When the Secretary has reason to believe that a licensee is not in compliance with this section, the Secretary shall commence an appropriate proceeding before the Federal Energy Regulatory Commission or request the Attorney General to take appropriate steps to enforce compliance with this section and, when appropriate, to secure the imposition of appropriate sanctions. In addition, the Secretary may suspend or revoke the license of a licensee not complying with its obligations under this section.

(d) Managed access. Subsections (a) and (b) shall not apply to deepwater ports for natural gas. A licensee of a deepwater port for natural gas, or an affiliate thereof, may exclusively utilize the entire capacity of the deepwater port and storage facilities for the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates. The licensee may make unused capacity of the deepwater port and storage facilities available to other persons, pursuant to reasonable terms and conditions imposed by the licensee, if such use does not otherwise interfere in any way with the acceptance, transport, storage, regasification, or conveyance of natural gas produced, processed, marketed, or otherwise obtained by agreement by such licensee or its affiliates.

(e) Jurisdiction. Notwithstanding any provision of the Natural Gas Act (15 U.S.C. 717 et seq.), any regulation or rule issued thereunder, or section 19 as it pertains to such Act, this Act shall apply with respect to the licensing, siting, construction, or operation of a deepwater natural gas port or the acceptance, transport, storage, regasification, or conveyance of natural gas at or through a deepwater port, to the exclusion of the Natural Gas Act or any regulation or rule issued thereunder.

33 U.S.C. 1508 (2004). Adjacent coastal States

(a) Designation; direct pipeline connections; mileage; risk of damage to coastal environment, time for designation.

(1) The Secretary, in issuing notice of application pursuant to section 5(c) of this Act , shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 5(c) of this Act. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) Applications; submittal to Governors for approval or disapproval; consistency of Federal licenses and State programs; views of other interested States.

(1) Not later than 10 days after the designation of adjacent coastal States pursuant to this Act, the Secretary shall transmit a complete copy of the application to the Governor of each adjacent coastal State. The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing on applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(2) Any other interested State shall have the opportunity to make its

views known to, and shall be given full consideration by, the Secretary regarding the location, construction, and operation of a deepwater port.

(c) Reasonable progress toward development of coastal zone management program; planning grants. The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from such deepwater port. For the purposes of this Act, a State shall be considered to be making reasonable progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.

(d) State agreements or compacts. The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress.

33 U.S.C. 1509 (2004). Marine environmental protection and navigational safety

(a) Regulations and procedures. Subject to recognized principles of international law and the provision of adequate opportunities for public involvement, the Secretary shall prescribe and enforce procedures, either by regulation (for basic standards and conditions) or by the licensee's operations manual, with respect to rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) Safety of property and life; regulations. The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) Marking of components; payment of cost. The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d) Safety zones; designation; construction period; permitted activities.

(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 5(c) of this Act, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto.

33 U.S.C. 1510 (2004). International agreements

The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this Act and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof.

33 U.S.C. 1511 (2004). Suspension or termination of licenses

(a) Proceedings by Attorney General; venue; conditions subsequent.

Whenever a licensee fails to comply with any applicable provision of this title or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this title, the Attorney General, at the request of the Secretary, may file an appropriate action in the United States district court nearest to the location of the proposed or actual deepwater port, as the case may be, or in the district in which the licensee resides or may be found, to--

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Secretary mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this subsection is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Public health or safety; danger to environment; completion of proceedings. If the Secretary determines that immediate suspension of the construction or operation of a deepwater port or any component thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section.

33 U.S.C. 1512 (2004). Recordkeeping and inspection

(a) Regulations; regulations under other provisions unaffected. Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provision of this Act. Such regulations shall not amend, contradict or duplicate regulations established pursuant to part I of the Interstate Commerce Act or any other law. Each licensee shall submit such reports and shall make such records and information available as the Secretary may request.

(b) Access to deepwater ports in enforcement proceedings and execution of official duties; inspections and tests; notification of results. All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this Act for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature of a deepwater port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection.

33 U.S.C. 1513 (2004). Public access to information

(a) Inspection of copies; reproduction costs; protected information. Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 5(c)(2)(B) of this Act) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) Information disclosure prohibition; confidentiality of certain disclosures. The Secretary shall not disclose information obtained by him under this Act that concerns or relates to a trade secret, referred to in section 1905 of title 18, United States Code, or to a contract referred to in section 5(c)(2)(B), of this Act, except that such information may be disclosed, in a manner which is designed to maintain confidentiality--

(1) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;

(2) to any committee of Congress having jurisdiction over the subject matter to which the information relates, upon request;

(3) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

33 U.S.C. 1514 (2004). Remedies

(a) Criminal penalties. Any person who willfully violates any provision of this Act or any rule, order, or regulation issued pursuant thereto commits a class A misdemeanor for each day of violation.

(b) Orders of compliance; Attorney General's civil action; jurisdiction and venue.

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this Act or any rule, regulation, order, license, or condition thereof, or other requirements under this Act, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(c) Attorney General's action for equitable relief; scope of relief. Upon a request by the Secretary, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this Act, any regulation under this Act, or any license condition. The district courts of the United States shall have jurisdiction to grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

(d) Vessels; liability in rem; exempt vessels; consent or privy of owners or bareboat charterers. Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this Act or of any rule or regulation issued pursuant to this Act, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation.

33 U.S.C. 1515 (2004). Citizen civil action

(a) Equitable relief; case or controversy; district court jurisdiction. Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy--

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this Act or any condition of a license issued pursuant to this Act; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this Act, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this Act or any condition of a license issued pursuant to this Act or to order the Secretary to perform such act or duty, as the case may be.

(b) Notice; intervention of right by person. No civil action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator; or

(B) if the Secretary or the Attorney General has commenced and is

diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) Intervention of right by Secretary or Attorney General. In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs of litigation; attorney and witness fees. The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Statutory or common law rights unaffected. Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief.

33 U.S.C. 1516 (2004). Judicial review; persons aggrieved; jurisdiction of courts of appeal

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license may, not later than 60 days after any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this Act if he--

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

33 U.S.C. 1517. [Repealed]

33 U.S.C. 1517a (2004). Deepwater Port Liability Fund; notes and other obligations; issuance and purchase authority

The Secretary of Transportation is authorized to issue, and the Secretary of the Treasury is authorized to purchase, without fiscal year limitation, notes or other obligations in such amounts and at such times as may be necessary to the extent that available appropriations are not adequate to meet the obligations of the Fund.

33 U.S.C. 1518 (2004). Relationship to other laws

(a) Federal Constitution, laws, and treaties applicable; other Federal requirements applicable; status of deepwater port; Federal or State authorities and responsibilities within territorial seas unaffected; notification by Secretary of State of intent to exercise jurisdiction; objections by foreign governments.

(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this Act and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this Act shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this Act do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this Act, nothing in this Act shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(3) The Secretary of State shall notify the government of each foreign state having vessels registered under its authority or flying its flag which may call at or otherwise utilize a deepwater port but which do not currently have an agreement in effect as provided in subsection (c)(2)(A)(i) of this section that the United States intends to exercise jurisdiction over vessels calling at or otherwise utilizing a deepwater port and the persons on board such vessels. The Secretary of State shall notify the government of each such state that, absent its objection, its vessels will be subject to the jurisdiction of the United States whenever they--

(A) are calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The Secretary of State shall promptly inform licensees of deepwater ports of all objections received from governments of foreign states in response to notifications made under this paragraph.

(b) Law of nearest adjacent coastal State as applicable Federal law; Federal administration and enforcement of such law; nearest adjacent coastal State defined. The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this Act, to the extent applicable and not inconsistent with any provision or regulation under this Act or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For

purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Vessels of United States and foreign states subject to Federal jurisdiction; objections to jurisdiction; designation of agent for service of process; duty of licensee.

(1) The jurisdiction of the United States shall apply to vessels of the United States and persons on board such vessels. The jurisdiction of the United States shall also apply to vessels, and persons on board such vessels, registered in or flying the flags of foreign states, whenever such vessels are--

(A) calling at or otherwise utilizing a deepwater port; and

(B) are within the safety zone of such a deepwater port, and are engaged in activities connected, associated, or potentially interfering with the use and operation of the deepwater port.

The jurisdiction of the United States under this paragraph shall not, however, apply to vessels registered in or flying the flag of any foreign state that has objected to the application of such jurisdiction.

(2) Except in a situation involving force majeure, a licensee shall not permit a vessel registered in or flying the flag of a foreign state to call at or otherwise utilize a deepwater port licensed under this Act unless--

(A) (i) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessels registered in or flying the flag of that state and persons on board such vessels in accordance with the provisions of paragraph (1) of this subsection, while the vessel is located within the safety zone, or

(ii) the foreign state has not objected to the application of the jurisdiction of the United States to any vessel, or persons on board such vessel, while the vessel is located within the safety zone; and

(B) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(3) For purposes of paragraph (2)(A)(ii) of this subsection, a licensee shall not be obliged to prohibit a call at or use of a deepwater port by a vessel registered in or flying the flag of an objecting state unless the licensee has been informed by the Secretary of State as required by subsection (a)(3) of this section.

(d) Customs laws inapplicable to deepwater port; duties and taxes on foreign articles imported into customs territory of United States. The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this Act, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all

applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(e) Federal district courts; original jurisdiction; venue. The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose.

33 U.S.C. 1519. [Repealed]

33 U.S.C. 1520 (2004). Pipeline safety and operation

(a) Standards and regulations for Outer Continental Shelf. The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil or natural gas pipelines on the Outer Continental Shelf.

(b), (c) [Omitted]

33 U.S.C. 1521 (2004). Negotiations with Canada and Mexico; report to Congress

The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action.

33 U.S.C. 1522 (2004). Limitations on export provisions of 30 USCS § 185(u) unaffected.

Nothing in this Act shall be construed to amend, restrict, or otherwise limit the application of section 28(u) of the Mineral Leasing Act of 1920, as amended by Public Law 93-153.

33 U.S.C. 1523 (2004). General procedures; issuance and enforcement of orders; scope of authority; evidentiary matters
The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this Act. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses.

33 U.S.C. 1524 (2004). Authorization for appropriations
There is authorized to be appropriated for administration of this Act, not to exceed $2,500,000 per fiscal year for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980.

PHILADELPHIA MILITARY CARGO TERMINAL

Section 115 of Public Law 108-199 (118 STAT. 439), the Consolidated Appropriations Act, 2004, provides:

> "SEC. 115. Of the amounts provided in Public Laws 107–117, 107–248, and 108–87 under the heading ‘National Defense Sealift Fund’ for construction of additional sealift capacity, $40,000,000 shall be made available for the construction of a Port of Philadelphia marine cargo terminal for high-speed military sealift and other military purposes."

PORT SECURITY MATTERS

8 U.S.C. 1221. (2004) Lists of alien and citizen passengers arriving and departing

(a) **Arrival manifests.** For each commercial vessel or aircraft transporting any person to any seaport or airport of the United States from any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide to any United States border officer (as defined in subsection (i)) at that port manifest information about each passenger, crew member, and other occupant transported on such vessel or aircraft prior to arrival at that port.

(b) **Departure manifests.** For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) to provide any United States border officer (as defined in subsection (i)) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

(c) **Contents of manifest.** The information to be provided with respect to each person listed on a manifest required to be provided under subsection (a) or (b) shall include—

(1) complete name;

(2) date of birth;

(3) citizenship;

(4) sex;

(5) passport number and country of issuance;

(6) country of residence;

(7) United States visa number, date, and place of issuance, where applicable;

(8) alien registration number, where applicable;

(9) United States address while in the United States; and

(10) such other information the Attorney General, in consultation with the Secretary of State, and the Secretary of Treasury determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

(d) **Appropriate officials specified.** An appropriate official specified in this subsection is the master or commanding officer, or authorized agent, owner, or consignee, of the commercial vessel or aircraft concerned.

(e) **Deadline for requirement of electronic transmission of mani-**

fest information. Not later than January 1, 2003, manifest information required to be provided under subsection (a) or (b) shall be transmitted electronically by the appropriate official specified in subsection (d) to an immigration officer.

(f) **Prohibition.** No operator of any private or public carrier that is under a duty to provide manifest information under this section shall be granted clearance papers until the appropriate official specified in subsection (d) has complied with the requirements of this subsection, except that, in the case of commercial vessels or aircraft that the Attorney General determines are making regular trips to the United States, the Attorney General may, when expedient, arrange for the provision of manifest information of persons departing the United States at a later date.

(g) **Penalties against noncomplying shipments, aircraft, or carriers.** If it shall appear to the satisfaction of the Attorney General that an appropriate official specified in subsection (d), any public or private carrier, or the agent of any transportation line, as the case may be, has refused or failed to provide manifest information required by subsection (a) or (b), or that the manifest information provided is not accurate and full based on information provided to the carrier, such official, carrier, or agent, as the case may be, shall pay to the Commissioner the sum of $1,000[1] for each person with respect to whom such accurate and full manifest information is not provided, or with respect to whom the manifest information is not prepared as prescribed by this section or by regulations issued pursuant thereto. No commercial vessel or aircraft shall be granted clearance pending determination of the question of the liability to the payment of such penalty, or while it remains unpaid, and no such penalty shall be remitted or refunded, except that clearance may be granted prior to the determination of such question upon the deposit with the Commissioner of a bond or undertaking approved by the Attorney General or a sum sufficient to cover such penalty.

(h) **Waiver.** The Attorney General may waive the requirements of subsection (a) or (b) upon such circumstances and conditions as the Attorney General may by regulation prescribe.

(i) **United States border officer defined.** In this section, the term "United States border officer" means, with respect to a particular port of entry into the United States, any United States official who is performing duties at that port of entry.

(j) **Record of citizens and resident aliens leaving permanently for foreign countries.** The Attorney General may authorize immigration

[1] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

officers to record the following information regarding every resident person leaving the United States by way of the Canadian or Mexican borders for permanent residence in a foreign country: Names, age, and sex; whether married or single; calling or occupation; whether able to read or write; nationality; country of birth; country of which citizen or subject; race; last permanent residence in the United States; intended future permanent residence; and time and port of last arrival in the United States; and if a United States citizen or national, the facts on which claim to that status is based.

Section 402(b) and (c) of Public Law 107-103, approved May 14, 2002 (116 STAT. 559), the Enhanced Border Security and Visa Entry Reform Act of 2002, provide:

(b) EXTENSION TO LAND CARRIERS.—

(1) STUDY.—The President shall conduct a study regarding the feasibility of extending the requirements of subsections (a) and (b) of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221), as amended by subsection (a), to any commercial carrier transporting persons by land to or from the United States. The study shall focus on the manner in which such requirement would be implemented to enhance the national security of the United States and the efficient cross-border flow of commerce and persons.

(2) REPORT.—Not later than two years after the date of enactment of this Act, the President shall submit to Congress a report setting forth the findings of the study conducted under paragraph (1).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to persons arriving in, or departing from, the United States on or after the date of enactment of this Act.

PORT SECURITY ENHANCEMENTS

Title VIII of Public Law 108-293, approved August 9, 2004 (118 STAT. 1078-1088), The Coast Guard and Maritime Transportation Act of 2004, made substantial amendments to **Chapter 701 - Port Security**, consisting of 46 U.S.C. 70101 - 70119. These amendments, made by Section 802 (118 STAT. 1078), Section 803 (118 STAT. 1080), Section 804 (118 STAT. 1081), Section 806 (118 STAT. 1082), and Section 808 (118 STAT. 1083), are set forth below. Section 803(c) & (d), 804(d), 805, 807 and 809 of Title VIII of Public Law 108-293, require the certain plans and reports. These provisions are set forth following 46 U.S.C. 70119, at page 620.

Additional information was required by Section 4072(c) and (d) of Public Law 108-458, approved December 17, 2004 (118 STAT. 3638, 3730), the Intelligence Reform and Terrorism Prevention Act of 2004. These requirements are set forth following 46 U.S.C. 70177 at page 627.

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46 U.S.C. 70101. (2004) Definitions

For the purpose of this chapter:

(1) The term "Area Maritime Transportation Security Plan" means an Area Maritime Transportation Security Plan prepared under section 70103(b).

(2) The term "facility" means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.

(3) The term "National Maritime Transportation Security Plan" means the National Maritime Transportation Security Plan prepared and published under section 70103(a).

(4) The term "owner or operator" means—

(A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel; and

(B) in the case of a facility, any person owning, leasing, or operating such facility.

(5) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating.

(6) The term "transportation security incident" means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

46 U.S.C. 70102. (2004) United States facility and vessel vulnerability assessments

(a) **Initial assessments.** The Secretary shall conduct an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that pose a high risk of being involved in a transportation security incident.

(b) **Facility and vessel assessments.**

(1) Based on the information gathered under subsection (a) of this section, and not later than December 31, 2004, the Secretary shall conduct a detailed vulnerability assessment of the facilities and vessels that

may be involved in a transportation security incident. The vulnerability assessment shall include the following:

(A) Identification and evaluation of critical assets and infrastructures.

(B) Identification of the threats to those assets and infrastructures.

(C) Identification of weaknesses in physical security, passenger and cargo security, structural integrity, protection systems, procedural policies, communications systems, transportation infrastructure, utilities, contingency response, and other areas as determined by the Secretary.

(2) Upon completion of an assessment under this subsection for a facility or vessel, the Secretary shall provide the owner or operator with a copy of the vulnerability assessment for that facility or vessel.

(3) The Secretary shall update each vulnerability assessment conducted under this section at least every 5 years.

(4) In lieu of conducting a facility or vessel vulnerability assessment under paragraph (1), the Secretary may accept an alternative assessment conducted by or on behalf of the owner or operator of the facility or vessel if the Secretary determines that the alternative assessment includes the matters required under paragraph (1).

46 U.S.C. 70103. (2004) Maritime transportation security plans

(a) **National Maritime Transportation Security Plan.**

(1) Not later than April 1, 2005, the Secretary shall prepare a National Maritime Transportation Security Plan for deterring and responding to a transportation security incident.

(2) The National Maritime Transportation Security Plan shall provide for efficient, coordinated, and effective action to deter and minimize damage from a transportation security incident, and shall include the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies and coordination with State and local governmental agencies.

(B) Identification of security resources.

(C) Procedures and techniques to be employed in deterring a national transportation security incident.

(D) Establishment of procedures for the coordination of activities of—

(i) Coast Guard maritime security teams established under this chapter; and

(ii) Federal Maritime Security Coordinators required under this chapter.

(E) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of a transportation security incident and imminent threats of such a security incident to the appropriate State and Federal agencies.

(F) Establishment of criteria and procedures to ensure immediate and effective Federal identification of a transportation security incident, or the substantial threat of such a security incident.

(G) Designation of—

(i) areas for which Area Maritime Transportation Security Plans are required to be prepared under subsection (b); and

(ii) a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area.

(H) A risk-based system for evaluating the potential for violations of security zones designated by the Secretary on the waters subject to the jurisdiction of the United States.

(I) A recognition of certified systems of intermodal transportation.

(J) A plan for ensuring that the flow of cargo through United States ports is reestablished as efficiently and quickly as possible after a transportation security incident.

(3) The Secretary shall, as the Secretary considers advisable, revise or otherwise amend the National Maritime Transportation Security Plan.

(4) Actions by Federal agencies to deter and minimize damage from a transportation security incident shall, to the greatest extent possible, be in accordance with the National Maritime Transportation Security Plan.

(5) The Secretary shall inform vessel and facility owners or operators of the provisions in the National Transportation Security Plan that the Secretary considers necessary for security purposes.

(b) **Area Maritime Transportation Security Plans.**

(1) The Federal Maritime Security Coordinator designated under subsection (a)(2)(G) for an area shall—

(A) submit to the Secretary an Area Maritime Transportation Security Plan for the area; and

(B) solicit advice from the Area Security Advisory Committee required under this chapter, for the area to assure preplanning of joint deterrence efforts, including appropriate procedures for deterrence of a transportation security incident.

(2) The Area Maritime Transportation Security Plan for an area shall—

(A) when implemented in conjunction with the National Maritime Transportation Security Plan, be adequate to deter a transportation security incident in or near the area to the maximum extent practicable;

(B) describe the area and infrastructure covered by the plan, including the areas of population or special economic, environmental, or national security importance that might be damaged by a transportation security incident;

(C) describe in detail how the plan is integrated with other Area Maritime Transportation Security Plans, and with facility security plans and vessel security plans under this section;

(D) include consultation and coordination with the Department of Defense on matters relating to Department of Defense facilities and vessels;

(E) include any other information the Secretary requires; and

(F) be updated at least every 5 years by the Federal Maritime Security Coordinator.

(3) The Secretary shall—

(A) review and approve Area Maritime Transportation Security Plans under this subsection; and

(B) periodically review previously approved Area Maritime Transportation Security Plans.

(4) In security zones designated by the Secretary in each Area Maritime Transportation Security Plan, the Secretary shall consider—

(A) the use of public/private partnerships to enforce security within the security zones, shoreside protection alternatives, and the environmental, public safety, and relative effectiveness of such alternatives; and

(B) technological means of enhancing the security zones of port, territorial waters, and waterways of the United States.

(c) **Vessel and facility security plans.**

(1) Within 6 months after the prescription of interim final regulations on vessel and facility security plans, an owner or operator of a vessel or facility described in paragraph (2) shall prepare and submit to the Secretary a security plan for the vessel or facility, for deterring a transportation security incident to the maximum extent practicable.

(2) The vessels and facilities referred to in paragraph (1)—

(A) except as provided in subparagraph (B), are vessels and facilities that the Secretary believes may be involved in a transportation security incident; and

(B) do not include any vessel or facility owned or operated by the Department of Defense.

(3) A security plan required under this subsection shall—

(A) be consistent with the requirements of the National Maritime Transportation Security Plan and Area Maritime Transportation Security Plans;

(B) identify the qualified individual having full authority to implement security actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to subparagraph (C);

(C) include provisions for—

(i) establishing and maintaining physical security, passenger and cargo security, and personnel security;

(ii) establishing and controlling access to secure areas of the vessel or facility;

(iii) procedural security policies;

(iv) communications systems; and

(v) other security systems;

(D) identify, and ensure by contract or other means approved by the Secretary, the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident;

(E) describe the training, periodic unannounced drills, and security actions of persons on the vessel or at the facility, to be carried out under the plan to deter to the maximum extent practicable a transportation security incident, or a substantial threat of such a security incident;

(F) be updated at least every 5 years; and

(G) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility.

(4) The Secretary shall—

(A) promptly review each such plan;

(B) require amendments to any plan that does not meet the requirements of this subsection;

(C) approve any plan that meets the requirements of this subsection; and

(D) review each plan periodically thereafter.

(5) A vessel or facility for which a plan is required to be submitted under this subsection may not operate after the end of the 12-month period beginning on the date of the prescription of interim final regulations on vessel and facility security plans, unless—

(A) the plan has been approved by the Secretary; and

(B) the vessel or facility is operating in compliance with the plan.

(6) Notwithstanding paragraph (5), the Secretary may authorize a vessel or facility to operate without a security plan approved under this

subsection, until not later than 1 year after the date of the submission to the Secretary of a plan for the vessel or facility, if the owner or operator of the vessel or facility certifies that the owner or operator has ensured by contract or other means approved by the Secretary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident.

(7) The Secretary shall require each owner or operator of a vessel or facility located within or adjacent to waters subject to the jurisdiction of the United States to implement any necessary interim security measures, including cargo security programs, to deter to the maximum extent practicable a transportation security incident until the security plan for that vessel or facility operator is approved.

(d) **Nondisclosure of information.** Notwithstanding any other provision of law, information developed under this chapter is not required to be disclosed to the public, including—

(1) facility security plans, vessel security plans, and port vulnerability assessments; and

(2) other information related to security plans, procedures, or programs for vessels or facilities authorized under this chapter.

46 U.S.C. 70104. (2004) Transportation security incident response

(a) **Facility and vessel response plans.**

The Secretary shall—

(1) establish security incident response plans for vessels and facilities that may be involved in a transportation security incident; and

(2) make those plans available to the Director of the Federal Emergency Management Agency for inclusion in the Director's response plan for United States ports and waterways.

(b) **Contents.** Response plans developed under subsection (a) shall provide a comprehensive response to an emergency, including notifying and coordinating with local, State, and Federal authorities, including the Director of the Federal Emergency Management Agency, securing the facility or vessel, and evacuating facility and vessel personnel.

(c) **Inclusion in security plan.** A response plan required under this subsection for a vessel or facility may be included in the security plan prepared under section 70103(c).

46 U.S.C. 70105. (2004) Transportation security cards

(a) **Prohibition.**

(1) The Secretary shall prescribe regulations to prevent an individual from entering an area of a vessel or facility that is designated as a secure area by the Secretary for purposes of a security plan for the ves-

sel or facility that is approved by the Secretary under section 70103 of this title unless the individual—

(A) holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan; or

(B) is accompanied by another individual who holds a transportation security card issued under this section and is authorized to be in the area in accordance with the plan.

(2) A person shall not admit an individual into such a secure area unless the entry of the individual into the area is in compliance with paragraph (1).

(b) **Issuance of cards.**

(1) The Secretary shall issue a biometric transportation security card to an individual specified in paragraph (2), unless the Secretary decides that the individual poses a security risk under subsection (c) warranting denial of the card.

(2) This subsection applies to—

(A) an individual allowed unescorted access to a secure area designated in a vessel or facility security plan approved under section 70103 of this title;

(B) an individual issued a license, certificate of registry, or merchant mariners document under part E of subtitle II of this title;

(C) a vessel pilot;

(D) an individual engaged on a towing vessel that pushes, pulls, or hauls alongside a tank vessel;

(E) an individual with access to security sensitive information as determined by the Secretary; and

(F) other individuals engaged in port security activities as determined by the Secretary.

(c) **Determination of terrorism security risk.**

(1) An individual may not be denied a transportation security card under subsection (b) unless the Secretary determines that individual—

(A) has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.

(2) The Secretary shall prescribe regulations that establish a waiver process for issuing a transportation security card to an individual found to be otherwise ineligible for such a card under paragraph (1). In deciding to issue a card to such an individual, the Secretary shall—

(A) give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card; and

(B) issue a waiver to an individual without regard to whether that individual would otherwise be disqualified if the individual's employer establishes alternate security arrangements acceptable to the Secretary.

(3) The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a transportation security card that includes notice and an opportunity for a hearing.

(4) Upon application, the Secretary may issue a transportation security card to an individual if the Secretary has previously determined, under section 5103a of title 49, that the individual does not pose a security risk.

(d) **Background records check.**

(1) On request of the Secretary, the Attorney General shall—

(A) conduct a background records check regarding the individual; and

(B) upon completing the background records check, notify the Secretary of the completion and results of the background records check.

(2) A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history databases.

(B) In the case of an alien, a check of the relevant databases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international databases or other appropriate means.

(D) Review of any other national security-related information or database identified by the Attorney General for purposes of such a background records check.

(e) **Restrictions on use and maintenance of information.**

(1) Information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer.

(2) Any information constituting grounds for denial of a transportation security card under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section. The Secretary may share any such information with other Federal law enforcement agencies. An individual's employer may only be informed of whether or not the individual has been issued the card under this section.

(f) **Definition.** In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

46 U.S.C. 70106. (2004) Maritime safety and security teams

(a) **In general.** To enhance the domestic maritime security capability of the United States, the Secretary shall establish such maritime safety and security teams as are needed to safeguard the public and protect vessels, harbors, ports, facilities, and cargo in waters subject to the jurisdiction of the United States from destruction, loss or injury from crime, or sabotage due to terrorist activity, and to respond to such activity in accordance with the transportation security plans developed under section 70103.

(b) **Mission.** Each maritime safety and security team shall be trained, equipped, and capable of being employed to—

(1) deter, protect against, and rapidly respond to threats of maritime terrorism;

(2) enforce moving or fixed safety or security zones established pursuant to law;

(3) conduct high speed intercepts;

(4) board, search, and seize any article or thing on or at, respectively, a vessel or facility found to present a risk to the vessel or facility, or to a port;

(5) rapidly deploy to supplement United States armed forces domestically or overseas;

(6) respond to criminal or terrorist acts within a port so as to minimize, insofar as possible, the disruption caused by such acts;

(7) assist with facility vulnerability assessments required under this chapter; and

(8) carry out other security missions as are assigned to it by the Secretary.

(c) **Coordination with other agencies.** To the maximum extent feasible, each maritime safety and security team shall coordinate its activities with other Federal, State, and local law enforcement and emergency response agencies.

46 U.S.C 70107. (2004) Grants

(a) **In general.** The Secretary shall establish a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services. Before awarding a grant under the program, the Secretary shall provide for review and comment by the appropriate Federal Maritime Security Coordinators and the Maritime Administrator. In administering the grant program, the Secretary shall take into account national economic and strategic defense concerns.

(b) **Eligible costs.** The following costs of funding the correction of Coast Guard identified vulnerabilities in port security and ensuring compliance with Area Maritime Transportation Security Plans and facility security plans are eligible to be funded:

(1) Salary, benefits, overtime compensation, retirement contributions, and other costs of additional Coast Guard mandated security personnel.

(2) The cost of acquisition, operation, and maintenance of security equipment or facilities to be used for security monitoring and recording, security gates and fencing, marine barriers for designated security zones, security-related lighting systems, remote surveillance, concealed video systems, security vessels, and other security-related infrastructure or equipment that contributes to the overall security of passengers, cargo, or crewmembers.

(3) The cost of screening equipment, including equipment that detects weapons of mass destruction and conventional explosives, and of testing and evaluating such equipment, to certify secure systems of transportation.

(4) The cost of conducting vulnerability assessments to evaluate and make recommendations with respect to security.

(c) **Matching requirements**.

(1) *75-percent federal funding*. Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) *Exceptions*.

(A) Small projects. There are no matching requirements for grants under subsection (a) for projects costing not more than $25,000.

(B) Higher level of support required. If the Secretary determines that a proposed project merits support and cannot be undertaken without a higher rate of Federal support, then the Secretary may approve

grants under this section with a matching requirement other than that specified in paragraph (1).

(d) **Coordination and cooperation agreements.** The Secretary shall ensure that projects paid for, or the costs of which are reimbursed, under this section within any area or port are coordinated with other projects, and may require cooperative agreements among users of the port and port facilities with respect to projects funded under this section.

(e) **Administration.**

(1) *In general*. The program shall require eligible port authorities, facility operators, and State and local agencies required to provide security services, to submit an application, at such time, in such form, and containing such information and assurances as the Secretary may require, and shall include appropriate application, review, and delivery mechanisms.

(2) *Minimum standards for payment or reimbursement*. Each application for payment or reimbursement of eligible costs shall include, at a minimum, the following:

(A) A copy of the applicable Area Maritime Transportation Security Plan or facility security plan.

(B) A comprehensive description of the need for the project, and a statement of the project's relationship to the applicable Area Maritime Transportation Security Plan or facility security plan.

(C) A determination by the Captain of the Port that the security project addresses or corrects Coast Guard identified vulnerabilities in security and ensures compliance with Area Maritime Transportation Security Plans and facility security plans.

(3) *Procedural safeguards*. The Secretary shall by regulation establish appropriate accounting, reporting, and review procedures to ensure that amounts paid or reimbursed under this section are used for the purposes for which they were made available, all expenditures are properly accounted for, and amounts not used for such purposes and amounts not obligated or expended are recovered.

(4) *Project approval required*. The Secretary may approve an application for the payment or reimbursement of costs under this section only if the Secretary is satisfied that—

(A) the project is consistent with Coast Guard vulnerability assessments and ensures compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) enough money is available to pay the project costs that will not be reimbursed by the United States Government under this section;

(C) the project will be completed without unreasonable delay; and

(D) the recipient has authority to carry out the project as proposed.

(f) **Audits and examinations.** A recipient of amounts made available under this section shall keep such records as the Secretary may require, and make them available for review and audit by the Secretary, the Comptroller General of the United States, or the Inspector General of the department in which the Coast Guard is operating.

(g) **Reports on security funding and compliance.**

(1) *Initial report*. Within 6 months after the date of enactment of this Act [enacted Nov. 25, 2002], the Secretary shall transmit an unclassified report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, that—

(A) includes a funding proposal and rationale to fund the correction of Coast Guard identified vulnerabilities in port security and to help ensure compliance with Area Maritime Transportation Security Plans and facility security plans for fiscal years 2003 through 2008; and

(B) includes projected funding proposals for fiscal years 2003 through 2008 for the following security programs:

(i) The Sea Marshall program.

(ii) The Automated Identification System and a system of polling vessels on entry into United States waters.

(iii) The maritime intelligence requirements in this Act.

(iv) The issuance of transportation security cards required by section 70105.

(v) The program of certifying secure systems of transportation.

(2) *Other expenditures*. The Secretary shall, as part of the report required by paragraph (1) report, in coordination with the Commissioner of Customs, on projected expenditures of screening and detection equipment and on cargo security programs over fiscal years 2003 through 2008.

(3) *Annual reports*. Annually, beginning 1 year after transmittal of the report required by paragraph (1) until October 1, 2009, the Secretary shall transmit an unclassified annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure, on progress in achieving compliance with the correction of Coast Guard identified vulnerabilities in port security and compliance with Area Maritime Transportation Security Plans and facility security plans that—

(A) identifies any modifications necessary in funding to ensure the correction of Coast Guard identified vulnerabilities and ensure compliance with Area Maritime Transportation Security Plans and facility security plans;

(B) includes an assessment of progress in implementing the grant program established by subsection (a);

(C) includes any recommendations the Secretary may make to improve these programs; and

(D) with respect to a port selected by the Secretary, describes progress and enhancements of applicable Area Maritime Transportation Security Plans and facility security plans and how the Maritime Transportation Security Act of 2002 has improved security at that port.

(h) **Authorization of appropriations.** There are authorized to be appropriated to the Secretary for each of fiscal years 2003 through 2008 such sums as are necessary to carry out subsections (a) through (g).

(i) **Investigations.**—

(1) **In General.**—The Secretary shall conduct investigations, fund pilot programs, and award grants, to examine or develop—

(A) methods or programs to increase the ability to target for inspection vessels, cargo, crewmembers, or passengers that will arrive or have arrived at any port or place in the United States;

(B) equipment to detect accurately explosives, chemical, or biological agents that could be used in a transportation security incident against the United States;

(C) equipment to detect accurately nuclear or radiological materials, including scintillation-based detection equipment capable of signalling the presence of nuclear or radiological materials;

(D) improved tags and seals designed for use on shipping containers to track the transportation of the merchandise in such containers, including sensors that are able to track a container throughout its entire supply chain, detect hazardous and radioactive materials within that container, and transmit that information to the appropriate law enforcement authorities;

(E) tools, including the use of satellite tracking systems, to increase the awareness of maritime areas and to identify potential transportation security incidents that could have an impact on facilities, vessels, and infrastructure on or adjacent to navigable waterways, including underwater access;

(F) tools to mitigate the consequences of a transportation security incident on, adjacent to, or under navigable waters of the United States, including sensor equipment, and other tools to help coordinate effective response to a transportation security incident;

(G) applications to apply existing technologies from other areas or industries to increase overall port security;

(H) improved container design, including blast-resistant containers; and

(I) methods to improve security and sustainability of port facilities in

the event of a maritime transportation security incident, including specialized inspection facilities.

(2) **Implementation of Technology.—**

(A) In General.—In conjunction with ongoing efforts to improve security at United States ports, the Secretary may conduct pilot projects at United States ports to test the effectiveness and applicability of new port security projects, including—

(i) testing of new detection and screening technologies;

(ii) projects to protect United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access; and

(iii) tools for responding to a transportation security incident at United States ports and infrastructure on or adjacent to the navigable waters of the United States, including underwater access.

(B) Authorization of Appropriations.—There is authorized to be appropriated to the Secretary $35,000,000 for each of fiscal years 2005 through 2009 to carry out this subsection.

(3) **National Port Security Centers.—**

"(A) In General.—The Secretary may make grants or enter into cooperative agreements with eligible nonprofit institutions of higher learning to conduct investigations in collaboration with ports and the maritime transportation industry focused on enhancing security of the Nation's ports in accordance with this subsection through National Port Security Centers.

(B) Applications.—To be eligible to receive a grant under this paragraph, a nonprofit institution of higher learning, or a consortium of such institutions, shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(C) Competitive Selection Process..—The Secretary shall select grant recipients under this paragraph through a competitive process on the basis of the following criteria:

(i) Whether the applicant can demonstrate that personnel, laboratory, and organizational resources will be available to the applicant to carry out the investigations authorized in this paragraph.

(ii) The applicant's capability to provide leadership in making national and regional contributions to the solution of immediate and long-range port and maritime transportation security and risk mitigation problems.

(iii) Whether the applicant can demonstrate that is has an established, nationally recognized program in disciplines that contribute directly to maritime transportation safety and education.

(iv) Whether the applicant's investigations will involve major United States ports on the East Coast, the Gulf Coast, and the West Coast, and

Federal agencies and other entities with expertise in port and maritime transportation.

(v) Whether the applicant has a strategic plan for carrying out the proposed investigations under the grant.

(4) **Administrative Provisions.**—

(A) No Duplication of Effort.—Before making any grant, the Secretary shall coordinate with other Federal agencies to ensure the grant will not duplicate work already being conducted with Federal funding.

(B) Accounting.—The Secretary shall by regulation establish accounting, reporting, and review procedures to ensure that funds made available under paragraph (1) are used for the purpose for which they were made available, that all expenditures are properly accounted for, and that amounts not used for such purposes and amounts not expended are recovered.

(C) Recordkeeping.—Recipients of grants shall keep all records related to expenditures and obligations of funds provided under paragraph (1) and make them available upon request to the Inspector General of the department in which the Coast Guard is operating and the Secretary for audit and examination.

(5) **Annual Review and Report.**—The Inspector General of the department in which the Coast Guard is operating shall annually review the programs established under this subsection to ensure that the expenditures and obligations of funds are consistent with the purposes for which they are provided, and report the findings to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

46 U.S.C. 70108. (2004) Foreign port assessment[1]

(a) **In general.** The Secretary shall assess the effectiveness of the antiterrorism measures maintained at—

(1) a foreign port—

(A) served by vessels documented under chapter 121 of this title; or

(B) from which foreign vessels depart on a voyage to the United States; and

(2) any other foreign port the Secretary believes poses a security risk to international maritime commerce.

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[1] The Conference Report (H. Rpt. 107-777). enacted as Public Law 107-295 (116 STAT. 2064), provides at page 82: "Foreign port assessment. New section 70108 of title 46 requires the Secretary to assess the effectiveness of the antiterrorism measures maintained at a foreign port from which vessels depart on a voyage to the United States or which poses a high risk of introducing terrorism to international maritime commerce."

(b) **Procedures.** In conducting an assessment under subsection (a), the Secretary shall assess the effectiveness of—

(1) screening of containerized and other cargo and baggage;

(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

(3) additional security on board vessels;

(4) licensing or certification of compliance with appropriate security standards;

(5) the security management program of the foreign port; and

(6) other appropriate measures to deter terrorism against the United States.

(c) **Consultation.** In carrying out this section, the Secretary shall consult with—

(1) the Secretary of Defense and the Secretary of State—

(A) on the terrorist threat that exists in each country involved; and

(B) to identify foreign ports that pose a high risk of introducing terrorism to international maritime commerce;

(2) the Secretary of the Treasury;

(3) appropriate authorities of foreign governments; and

(4) operators of vessels.

46 U.S.C. 70109. (2004) Notifying foreign authorities[2]

(a) **In general.** If the Secretary, after conducting an assessment under section 70108, finds that a port in a foreign country does not maintain effective antiterrorism measures, the Secretary shall notify the appropriate authorities of the government of the foreign country of the

[2] The Conference Report (H. Rpt. 107-777). enacted as Public Law 107-295 (116 STAT. 2064), provides at page 82: "Notifying foreign authorities. Section 70109 requires the Secretary, after conducting a foreign port assessment, to contact the foreign government if he finds that a port in that foreign country does not maintain effective antiterrorism measures. Section 70109(b) requires the Secretary to make available a port security training program for ports in foreign counties that are found under section 70108 to lack adequate security measures. Inter-American Port Security Training Program (IAPSTP) is administered by the U.S. Maritime Administration under the authority of the U.S. Department of State. Currently, the program works with the Organization of American States to transfer technical information and security expertise related to port security and to develop cooperative regional efforts among the public and private sector that protect the flow of international maritime trade. The program also works with member nations to develop recommendations pertaining to strategic regional approaches to seaport crime, international port and cargo security standards, and other multilateral cooperative endeavors. The Conferees believe that expanding IAPSTP to include nations that lack adequate port security measures will help increase worldwide understanding of maritime and port security. Expansion of the program to other nations can lead to increased multilateral approaches to improving port and cargo security."

finding and recommend the steps necessary to improve the antiterrorism measures in use at the port.

(b) **Training program.** The Secretary, in cooperation with the Secretary of State, shall operate a port security training program for ports in foreign countries that are found under section 70108 to lack effective antiterrorism measures.

46 U.S.C. 70110. (2004) Actions when foreign ports not maintaining effective antiterrorism measures

(a) **In general.** If the Secretary finds that a foreign port does not maintain effective antiterrorism measures, the Secretary—

(1) may prescribe conditions of entry into the United States for any vessel arriving from that port, or any vessel carrying cargo or passengers originating from or transshipped through that port;

(2) may deny entry into the United States to any vessel that does not meet such conditions; and

(3) shall provide public notice for passengers of the ineffective antiterrorism measures.

(b) **Effective date for sanctions.** Any action taken by the Secretary under subsection (a) for a particular port shall take effect—

(1) 90 days after the government of the foreign country with jurisdiction over or control of that port is notified under section 70109 unless the Secretary finds that the government has brought the antiterrorism measures at the port up to the security level the Secretary used in making an assessment under section 70108 before the end of that 90-day period; or

(2) immediately upon the finding of the Secretary under subsection (a) if the Secretary finds, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, vessels, or crew traveling to or from the port.

(c) **State Department to be notified.** The Secretary immediately shall notify the Secretary of State of a finding that a port does not maintain effective antiterrorism measures.

(d) **Action canceled.** An action required under this section is no longer required if the Secretary decides that effective antiterrorism measures are maintained at the port.

46 U.S.C. 70111. (2004) Enhanced crewmember identification

(a) **Requirement.** The Secretary, in consultation with the Attorney General and the Secretary of State, shall require crewmembers on vessels calling at United States ports to carry and present on demand any identification that the Secretary decides is necessary.

(b) **Forms and process.** The Secretary, in consultation with the Attorney General and the Secretary of State, shall establish the proper forms and process that shall be used for identification and verification of crewmembers.

46 U.S.C. 70112. (2004) Maritime Security Advisory Committees

(a) **Establishment of Committees.**

(1) The Secretary shall establish a National Maritime Security Advisory Committee. The Committee—

(A) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security matters;

(B) may make available to the Congress recommendations that the Committee makes to the Secretary; and

(C) shall meet at the call of—

(i) the Secretary, who shall call such a meeting at least once during each calendar year; or

(ii) a majority of the Committee.

(2) (A) The Secretary may—

(i) establish an Area Maritime Security Advisory Committee for any port area of the United States; and

(ii) request such a committee to review the proposed Area Maritime Transportation Security Plan developed under section 70103(b) and make recommendations to the Secretary that the Committee considers appropriate.

(B) A committee established under this paragraph for an area—

(i) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to maritime security in that area;

(ii) may make available to the Congress recommendations that the committee makes to the Secretary; and

(iii) shall meet at the call of—

(I) the Secretary, who shall call such a meeting at least once during each calendar year; or

(II) a majority of the committee.

(b) **Membership.**

(1) Each of the committees established under subsection (a) shall consist of not less than 7 members appointed by the Secretary, each of whom has at least 5 years practical experience in maritime security operations.

(2) The term of each member shall be for a period of not more than 5 years, specified by the Secretary.

(3) Before appointing an individual to a position on such a committee, the Secretary shall publish a notice in the Federal Register soliciting nominations for membership on the committee.

(4) The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee.

(5) The membership of an Area Maritime Security Advisory Committee shall include representatives of the port industry, terminal operators, port labor organizations, and other users of the port areas.

(c) **Chairperson and Vice Chairperson.**

(1) Each committee established under subsection (a) shall elect 1 of its members as the Chairman and 1 of its members as the Vice Chairperson.

(2) The Vice Chairman shall act as Chairman in the absence or incapacity of the Chairman, or in the event of a vacancy in the office of the Chairman.

(d) **Observers.**

(1) The Secretary shall, and the head of any other interested Federal agency may, designate a representative to participate as an observer with the Committee.

(2) The Secretary's designated representative shall act as the executive secretary of the Committee and shall perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 U.S.C. App.).

(e) **Consideration of views.** The Secretary shall consider the information, advice, and recommendations of the Committee in formulating policy regarding matters affecting maritime security.

(f) **Compensation and expenses.**

(1) A member of a committee established under this section, when attending meetings of the committee or when otherwise engaged in the business of the committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS-15 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5.

(2) A member of such a committee shall not be considered to be an officer or employee of the United States for any purpose based on their receipt of any payment under this subsection.

(g) **FACA; termination.**

(1) The Federal Advisory Committee Act (5 U.S.C. App.)—

(A) applies to the National Maritime Security Advisory Committee established under this section, except that such committee terminates on September 30, 2008; and

(B) does not apply to Area Maritime Security Advisory Committees established under this section.

(2) Not later than September 30, 2006, each committee established under this section shall submit to the Congress its recommendation regarding whether the committee should be renewed and continued beyond the termination date.

46 U.S.C. 70113. (2004) Maritime intelligence

(a) **In general.** The Secretary shall implement a system to collect, integrate, and analyze information concerning vessels operating on or bound for waters subject to the jurisdiction of the United States, including information related to crew, passengers, cargo, and intermodal shipments. The system may include a vessel risk profiling component that assigns incoming vessels a terrorism risk rating.

(b) **Consultation.** In developing the information system under subsection (a), the Secretary shall consult with the Transportation Security Oversight Board and other departments and agencies, as appropriate.

(c) **Information integration.** To deter a transportation security incident, the Secretary may collect information from public and private entities to the extent that the information is not provided by other Federal departments and agencies.

46 U.S.C. 70114. (2004) Automatic identification systems

(a) **System requirements.**

(1) Subject to paragraph (2), the following vessels, while operating on the navigable waters of the United States, shall be equipped with and operate an automatic identification system under regulations prescribed by the Secretary:

(A) A self-propelled commercial vessel of at least 65 feet overall in length.

(B) A vessel carrying more than a number of passengers for hire determined by the Secretary.

(C) A towing vessel of more than 26 feet overall in length and 600 horsepower.

(D) Any other vessel for which the Secretary decides that an automatic identification system is necessary for the safe navigation of the vessel.

(2) The Secretary may—

(A) exempt a vessel from paragraph (1) if the Secretary finds that an automatic identification system is not necessary for the safe navigation of the vessel on the waters on which the vessel operates; and

(B) waive the application of paragraph (1) with respect to operation of vessels on navigable waters of the United States specified by the Secretary if the Secretary finds that automatic identification systems are not needed for safe navigation on those waters.

(b) **Regulations.** The Secretary shall prescribe regulations implementing subsection (a), including requirements for the operation and maintenance of the automatic identification systems required under subsection (a).

46 U.S.C. 70115. (2004) Long-range vessel tracking system.

The Secretary shall, consistent with international treaties, conventions, and agreements to which the United States is a party, develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology. The system shall be designed to provide the Secretary the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents. The Secretary may use existing maritime organizations to collect and monitor tracking information under the system.

46 U.S.C. 70116. (2004) Secure systems of transportation

(a) **In general.** The Secretary, in consultation with the Transportation Security Oversight Board, shall establish a program to evaluate and certify secure systems of international intermodal transportation.

(b) **Elements of program.** The program shall include—

(1) establishing standards and procedures for screening and evaluating cargo prior to loading in a foreign port for shipment to the United States either directly or via a foreign port;

(2) establishing standards and procedures for securing cargo and monitoring that security while in transit;

(3) developing performance standards to enhance the physical security of shipping containers, including standards for seals and locks;

(4) establishing standards and procedures for allowing the United States Government to ensure and validate compliance with this program; and

(5) any other measures the Secretary considers necessary to ensure the security and integrity of international intermodal transport movements.

46 U.S.C. 70117. (2004). In rem liability for civil penalties and certain costs

(a) **Civil Penalties.**—Any vessel operated in violation of this chapter or any regulations prescribed under this chapter shall be liable in rem for any civil penalty assessed pursuant to section 70120 for such violation, and may be proceeded against for such liability in the United States district court for any district in which the vessel may be found.

(b) **Reimbursable Costs of Service Providers.**—A vessel shall be liable in rem for the reimbursable costs incurred by any service provider related to implementation and enforcement of this chapter and arising from a violation by the operator of the vessel
of this chapter or any regulations prescribed under this chapter, and may be proceeded against for such liability in the United States district court for any district in which such vessel may be found.

(c) **Definitions**—In this subsection—

(1) the term "reimbursable costs" means costs incurred by any service provider acting in conformity with a lawful order of the Federal government or in conformity with the
instructions of the vessel operator; and

(2) the term "service provider" means any port authority, facility or terminal operator, shipping agent, Federal, State, or local government agency, or other person to whom the
management of the vessel at the port of supply is entrusted, for—

(A) services rendered to or in relation to vessel crew on board the vessel, or in transit to or from the vessel, including accommodation, detention, transportation, and medical expenses; and

(B) required handling of cargo or other items on board the vessel.

46 U.S.C. 70118. (2004).[3] Firearms, arrests, and seizure of property.

Subject to guidelines approved by the Secretary, members of the Coast Guard may, in the performance of official duties—

(1) carry a firearm; and

(2) while at a facility—

(A) make an arrest without warrant for any offense
against the United States committed in their presence; and

(B) seize property as otherwise provided by law.

46 U.S.C. 70118. (2004).[4] Withholding of clearance

(a) **Refusal or Revocation of Clearance..—** If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty under section 70119, or if reasonable cause exists to believe that the owner,

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[3] Enacted by section 801(a) of Public Law 108-293, approved August 9, 2004 (118 STAT. 1078).

[4] Enacted by section 802(a)(2) of Public Law 108-293. Id.

agent, master, officer, or person in charge may be subject to a penalty under section 70120, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).
(b) **Clearance upon Fling of Bond or other Surety.—**
The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

46 USC 70119.[5] (2004). Civil penalty.
Any person that violates this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

46 U.S.C. 70119.[6] (2004). Enforcement by State and local officers
(a) **In General.—**Any State or local government law enforcement officer who has authority to enforce State criminal laws may make an arrest for violation of a security zone regulation prescribed under section 1 of title II of the Act of June 15, 1917 (chapter
30; 50 U.S.C. 191) or security or safety zone regulation under section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)) or a safety zone regulation prescribed under section 10(d) of the Deepwater Port Act of 1974 (33 U.S.C. 1509(d)) by a Coast
Guard official authorized by law to prescribe such regulations, if—
(1) such violation is a felony; and
(2) the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such violation.
(b) **Other Powers Not Affected.—**The provisions of this section are in addition to any power conferred by law to such officers. This section shall not be construed as a limitation of any power conferred by law to such officers, or any other officer
of the United States or any State. This section does not grant to such officers any powers not authorized by the law of the State in which those officers are employed.

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PLANS & REPORTS REQUIRED BY TITLE VIII OF PUBLIC LAW 108-293

Section 803(c) & (d), 804(d), 805, 807 and 809 of Title VIII of Public Law 108-293, require the following plans and reports:

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[5] Section 70117 was redesignated section 70119 by Section 802(a)(1) of Public Law 108-293. Id.

[6] Enacted by section 801(a) of Public Law 108-293, Id.

Section 803(c) & (d) of Public Law 108-293 (118 STAT. 1080), provides:
"**(c) Maritime Information—**Within 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives containing a plan for the implementation of section 70113 of title 46, United States Code. The plan shall—
"(1) identify Federal agencies with maritime information relating to vessels, crew, passengers, cargo, and cargo shippers, those agencies' maritime information collection and analysis activities, and the resources devoted to those activities;
"(2) establish a lead agency within the Department of Homeland Security to coordinate the efforts of other Department agencies in the collection of maritime information and to identify and avoid unwanted redundancy in those efforts;
"(3) identify redundancy in the collection and analysis of maritime information by agencies within the department in which the Coast Guard is operating;
"(4) establish a timeline for coordinating the collection of maritime information among agencies within the department in which the Coast Guard is operating;
"(5) include recommendations on co-locating agency personnel in order to maximize expertise, minimize costs, and avoid redundancy in both the collection and analysis of maritime information;
"(6) establish a timeline for the incorporation of information on vessel movements derived through the implementation of sections 70114 and 70115 of title 46, United States Code, into the system for collecting and analyzing maritime information;
"(7) include recommendations on educating Federal officials on the identification of security risks posed through commercial maritime transportation operations;
"(8) include an assessment of the availability and expertise of private sector maritime information resources;
"(9) include recommendations on how private sector maritime information resources could be utilized to analyze maritime security risks;
"(10) include recommendations on how to disseminate information collected and analyzed through Federal maritime security coordinators, including the manner and extent to which State, local, and private security personnel should be utilized, which should be developed after consideration by the Secretary of the need for nondisclosure of sensitive security information; and
"(11) include recommendations on the need for and how the department could help support a maritime information sharing and analysis center for the purpose of collecting and disseminating real-time or near real-

time information to and from public and private entities, along with recommendations on the appropriate levels of funding to help disseminate maritime security information to the private sector.
"**(d) Limitation on Establishment of Lead Agency.—** The Secretary may not establish a lead agency within the Department of Homeland Security to coordinate the efforts of other Department agencies in the collection of maritime information, until at least 90 days after the plan under subsection (c) is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives."

Section 804(d) of Public law 108-293, approved August 9, 2004 (118 STAT. 1081) provides:
"**(d) Report on Design of Maritime Transportation Security Grant Program.—**Within 90 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of House of Representatives on the design of the maritime transportation security grant program established under section 70107(a) of title 46, United States Code. In the report, the Secretary shall include recommendations on—
"(1) whether the grant program should be discretionary or formula-based and the reasons for the recommendation;
"(2) requirements for ensuring that Federal funds will not be substituted for grantee funds;
"(3) targeting requirements to ensure that funding is directed in a manner that considers— (A) national economic and strategic defense concerns; and (B) the fiscal capacity of the recipients to fund facility security plan requirements without grant funds; and
"(4) matching requirements to ensure that Federal funds provide an incentive to grantees for the investment of their own funds in the improvements financed in part by Federal funds provided under the program.

Section 805 of Public Law 108-293 (118 STAT. 1082), provides:
"SEC. 805. SECURITY ASSESSMENT OF WATERS UNDER THE JURISDICTION OF THE UNITED STATES.
Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall—
"(1) conduct a vulnerability assessment under section 70102(b) of title 46, United States Code, of the waters under the jurisdiction of the United States that are adjacent to nuclear facilities that may be damaged by a transportation security incident as defined in section 70101(6) of title 46, United States Code;

"(2) coordinate with the appropriate Federal agencies in preparing the vulnerability assessment required under paragraph (1); and
"(3) submit the vulnerability assessments required under paragraph (1) to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate."

Section 807 of Public Law 108-293 (118 STAT. 1082), provides:
"SEC. 807. JOINT OPERATIONAL CENTERS FOR PORT SECURITY. The Commandant of the Coast Guard shall report to the Congress, within 180 days after the date of the enactment of this Act, on the implementation and use of joint operational centers for port security at certain United States seaports. The report shall—
"(1) compare and contrast the composition and operational characteristics of existing joint operational centers for port security, including those in Norfolk, Virginia, Charleston, South Carolina, and San Diego, California;
"(2) examine the use of such centers to implement— (A) the plans developed under section 70103 of title 46, United States Code; (B) maritime intelligence activities under section 70113 of title 46, United States Code; (C) short and long range vessel tracking under sections 70114 and 70115 of title 46, United States Code; and (D) secure transportation systems under section 70116 of title 46, United States Code; and
"(3) estimate the number, location and costs of such centers necessary to implement the activities authorized under sections 70103, 701113, 70114, 70115, and 70116 of title 46, United States Code".

Section 809 of Public Law 108-293 (118 STAT. 1085), provides:
"SEC. 809. VESSEL AND INTERMODAL SECURITY REPORTS.
"(a) **In General.—**Within 180 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit the reports and plan required under subsections (b), (c), (e), (f), and (j) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.
"(b) **Report Regarding Security Inspection of Vessels and Vessel-borne Cargo Containers Entering the United States.—**
"(1) Requirement.—The Secretary shall prepare a report regarding the numbers and types of vessels and vessel-borne cargo containers that enter the United States in a year.
"(2) Contents.—The report shall include the following: (A) A section regarding security inspection of vessels that includes the following: (i) A complete breakdown of the numbers and types of vessels that entered the United States in the most recent 1-year period for which information

is available. (ii) The cost incurred by the Federal Government in inspecting such vessels in such 1-year period, including specification and comparison of such cost for each type of vessel. (iii) An estimate of the per-vessel cost that would be incurred by the Federal Government in inspecting each type of vessel that enters the United States each year, including costs for personnel, vessels, equipment, and funds. (iv) An estimate of the annual total cost that would be incurred by the Federal Government in inspecting all vessels that enter the United States each year, including costs for personnel, vessels, equipment, and funds. (B) A section regarding security inspection of containers that includes the following: (i) A complete breakdown of the numbers and types of vessel-borne cargo containers that entered the United States in the most recent 1-year period for which information is available, including specification of the number of 1 TEU containers and the number of 2 TEU containers. (ii) The cost incurred by the Federal Government in inspecting such containers in such 1-year period, including specification and comparison of such cost for a 1 TEU container and for a 2 TEU container, and the number of each inspected. (iii) An estimate of the per-container cost that would be incurred by the Federal Government in inspecting each type of vessel-borne container that enters the United States each year, including costs for personnel, vessels, and equipment. (iv) An estimate of the annual total cost that would be incurred by the Federal Government in inspecting, and where allowed by international agreement, inspecting in a foreign port, all vessel-borne containers that enter the United States each year, including costs for personnel, vessels, and equipment.

"(c) **Plan for Implementing Secure Systems of Transportation.—**The Secretary shall prepare a plan for the implementation of section 70116 of title 46, United States Code. The plan shall—

"(1) include a timeline for establishing standards and procedures pursuant to section 70116(b) of title 46, United States Code;

"(2) provide a preliminary assessment of resources necessary to evaluate and certify secure systems of transportation, and the resources necessary to validate that the secure systems of transportation are operating in compliance with the certification requirements;

"(3) contain an analysis of whether establishing a voluntary user fee to fund the certification of private secure systems of transportation, paid for by the person applying for certification, would enhance cargo security;

"(4) contain an analysis of the need for and feasibility of establishing a system to inspect, monitor, and track intermodal shipping containers within the United States; and

"(5) contain an analysis of the need for and feasibility of developing international standards for secure systems of transportation, including recommendations, that includes an examination of working with appropriate international organizations to develop standards to enhance the

physical security of shipping containers consistent with section 70116 of title 46, United States Code.

"(d) **Inspector General Implementation Report.—**One year after the date on which the plan under subsection (c) is submitted to the Congress, the Inspector General of the department in which the Coast Guard is operating shall transmit a report evaluating the progress made by the department in implementing the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

"(e) **Report on Radiation Detectors.—**The Secretary shall prepare a report on progress in the installation of a system of radiation detection at all major United States seaports, and a timeline and expected completion date for the system. In the report, the Secretary shall include a preliminary analysis of any issues related to the installation or efficacy of the radiation detection equipment, as well as a cost estimate for completing installation of the system.

"(f) **Report on Nonintrusive Inspection at Foreign Ports..—** The Secretary shall prepare a report—

"(1) on whether and to what extent foreign seaports have been willing to utilize nonintrusive screening equipment at their ports to screen cargo, including the number of cargo containers that have been screened at foreign seaports, and the ports where they were screened;

"(2) indicating which foreign ports may be willing to utilize nonintrusive screening equipment for cargo exported for import into the United States; and

"(3) indicating ways to increase the effectiveness of the United States Government's targeting and screening activities outside the United States and to what extent additional resources and program changes will be necessary to maximize scrutiny of cargo in foreign seaports that is destined for the United States.

"(g) **Evaluation of Cargo Inspection Targeting System for International Intermodal Cargo Containers.—**Within 180 days after the date of the enactment of this Act and annually thereafter, the Inspector General of the department in which the Coast Guard is operating shall prepare a report that includes an assessment of—

"(1) the effectiveness of the current tracking system to determine whether it is adequate to prevent international intermodal containers from being used for purposes of terrorism;

"(2) the sources of information, and the quality of the information at the time of reporting, used by the system to determine whether targeting information is collected from the best and most credible sources and evaluate data sources to determine information gaps and weaknesses;

"(3) the targeting system for reporting and analyzing inspection statistics, as well as testing effectiveness;

"(4) the competence and training of employees operating the system to determine whether they are sufficiently capable to detect potential terrorist threats; and

"(5) whether the system is an effective system to detect potential acts of terrorism and whether additional steps need to be taken in order to remedy deficiencies in targeting international intermodal containers for inspection.

"(h) **Action Report.—**If the Inspector General of the department in which the Coast Guard is operating determines in any of the reports prepared under subsection (g) that the targeting system is insufficiently effective as a means of detecting potential acts of terrorism utilizing international intermodal containers, then the Secretary of the department in which the Coast Guard is operating shall, within 90 days, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure House of Representatives on what actions will be taken to correct deficiencies identified in the Inspector General Report.

"(i) **Compliance with Security Standards Established Pursuant to Maritime Transportation Security Plans..—**Within 180 days after the date of the enactment of this Act and annually thereafter, the Secretary of the department in which the Coast Guard is operating shall prepare a report on compliance and steps taken to ensure compliance by ports, terminals, vessel operators, and shippers with security standards established pursuant to section 70103 of title 46, United States Code. The reports shall also include a summary of security standards established pursuant to such section during the previous year. The Secretary shall submit the reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

"(j) **Empty Containers.—**The Secretary of the department in which the Coast Guard is operating shall prepare a report on the practice and policies in place at United States ports to secure shipment of empty containers and trailers. The Secretary shall include in the report recommendations with respect to whether additional Federal actions are necessary to ensure the safe and secure delivery of cargo and to prevent potential acts of terrorism involving such containers and trailers.

"(k) R**eport and Plan Formats.—**The Secretary and the Inspector General of the department in which the Coast Guard is operating may submit any plan or report required by this section in both classified and redacted formats, if the Secretary determines that it is appropriate or necessary."

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PLANS AND REPORTS REQUIRED BY SEC. 4072 OF PUBLIC LAW 108-458

Section 4072(c) and (d) of Public Law 108-458, approved December 17, 2004 (118 STAT. 3638, 3731), provides:

"(c) **Strategic Plan Reports.--**Not later than 90 days after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives--

"(1) a comprehensive program management plan that identifies specific tasks to be completed, and deadlines for completion, for the transportation security card program under section 70105 of title 46, United States Code, that incorporates best practices for communicating, coordinating, and collaborating with the relevant stakeholders to resolve relevant issues, such as background checks;

"(2) a report on the status of negotiations under section 103(a) of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70111);

"(3) the report required by section 107(b) of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1226 note); and

"(4) a report on the status of the development of the system and standards required by section 111 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70116 note).

"(d) **Other Reports.--** Not later than 90 days after the date of the enactment of this Act-

"(1) the Secretary of Homeland Security shall submit to the appropriate congressional committees--

"(A) a report on the establishment of the National Maritime Security Advisory Committee under section 70112 of title 46, United States Code; and

"(B) a report on the status of the program required by section 70116 of title 46, United States Code, to evaluate and certify secure systems of international intermodal transportation;

"(2) the Secretary of Transportation shall submit to the appropriate congressional committees the annual report required by section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) that includes information that should have been included in the last preceding annual report that was due under that section; and

"(3) the Commandant of the United States Coast Guard shall submit to the appropriate congressional committees the report required by section 110(b) of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note)."

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PORT SECURITY FUNDING

2003.

Public Law 108-7.

Public Law 108-7, approved February 20, 2003 (117 STAT. 11), the Consolidated Appropriations Resolution, 2003, provides at 117 STAT. 386:

"MARITIME AND LAND SECURITY.

"For necessary expenses of the Transportation Security Administration related to maritime and land transportation security grants and services pursuant to Public Law 107–71, $244,800,000, to remain available until expended: Provided, That of the total amount provided herein, $150,000,000 shall be available only to make port security grants, which shall be distributed under the same terms and conditions as provided for under Public Law 107–117[1]; $4,000,000 shall be available only for radiation detection and monitoring system evaluation and procurement; and $30,000,000 shall be available only to execute grants, contracts, and interagency agreements for the purpose of deploying Operation Safe Commerce."

Section 329 of Public Law 108-7. provides at 117 STAT. 413:

"SEC. 329. None of the funds in this Act may be used to make a grant unless the Secretary of Transportation, or the Secretary of the department in which the Transportation Security Administration is operating, notifies the House and Senate Committees on Appropriations not less than 3 full business days before any discretionary grant award, letter of intent, or full funding grant agreement totaling $1,000,000 or more is announced by the department or its modal administrations from: . . . or (4) any port security grants totaling $500,000 or more of the Transportation Security Administration: Provided, That no notification shall involve funds that are not available for obligation."

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[1] Public Law 107-117, approved January 10, 2002 (115 STAT. 2230, 2327), the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002, provides: "For emergency expenses to respond to the September 11, 2001, terrorist attacks on the United States, for the Transportation Security Administration, $94,800,000, to remain available until September 30, 2003, to be obligated from amounts made available in Public Law 107-38: Provided, That $93,300,000 shall be for the Under Secretary of Transportation for Security to award competitive grants to critical national seaports to finance the costs of enhancing facility and operational security: Provided further, That such grants shall be awarded based on the need for security assessments and enhancements as determined by the Under Secretary of Transportation for Security, the Administrator of the Maritime Administration, and the Commandant of the U.S. Coast Guard: Provided further, That such grants shall not supplant funding already provided either by the ports or by any Federal entity: Provided further, That no more than $1,000,000 of the grant funds available under this heading shall be used for administration."

Public Law 108-11. Public Law 108-11, approved April 16, 2003 (117 STAT. 559), the Emergency Wartime Supplemental Appropriations Act, 2003, provides at 117 STAT. 582,

"TRANSPORTATION SECURITY ADMINISTRATION.

"For necessary expenses for 'Transportation Security Administration', $665,000,000, to remain available until expended: Provided, That $130,000,000 of this amount shall not be made available until September 30, 2003: Provided further, That of the total amount provided, the following amounts are made available solely for the purposes specified below . . . (2) port security grants, $20,000,000; . . . which shall not be obligated. . . . [certain conditions]."[2]

Public Law 108-90. Public Law 108-90, approved October 1, 2003 (117 STAT. 1137), the Department of Homeland Security Appropriations Act, 2004, provides at 117 STAT. 1142:

"MARITIME AND LAND SECURITY.

"For necessary expenses of the Transportation Security Administration related to maritime and land transportation security grants and services pursuant to the Aviation and Transportation Security Act (49 U.S.C. 40101 note), $263,000,000, to remain available until September 30, 2005: Provided, That of the total amount provided under this heading, $125,000,000 shall be available for port security grants, which shall be distributed under the same terms and conditions as provided for under Public Law 107-117[3]; and $17,000,000 shall be available to execute grants, contracts, and interagency agreements for the purpose of deploying Operation Safe Commerce."

2004

Public Law 108-199.

Public Law 108-199, approved January 23, 2004 (118 STAT. 312), the Consolidated Appropriations Act, 2004, appropriated funds for the Maritime Administration as follows: " For necessary expenses of operations and training activities authorized by law, $106,997,000. . of which $500,000 shall remain available until expended for the evaluation and provision of the fourteen commercial strategic ports; and of which

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[2] The Conference Report (H. Report 108-76), provides at page 81: ". . . Port Security Grants. The conferees are aware of approximately $1,000,000,000 in port security requirements in the first year and $4,400,000,000 over 10 years, as estimated by the Coast Guard. To date, $368,000,000 has been appropriated to these efforts and an additional $20,000,000 is provided in this Act. However, TSA has only issued port security grants totaling $93,000,000. The conferees direct TSA to issue grants for the remainder of these previous appropriations no later than 60 days after enactment of this Act."

[3] See footnote 1, page 628.

$1,000,000 shall remain available until September 30, 2005, for Maritime Security Professional Training in support of section 109 of the Maritime Transportation Security Act of 2002."

Public Law 108-334.

Public Law 108-334, approved October 18, 2004 (118 STAT. 1298), the Homeland Security Department Appropriations Act, 2005, provides at 118 STAT. 1309:

"State and Local Programs

"For grants, contracts, cooperative agreements, and other activities, including grants to State and local governments for terrorism prevention activities, notwithstanding any other provision of law, $3,086,300,000, which shall be allocated as follows:

* * *

"(2) $1,200,000,000 for discretionary grants, as determined by the Secretary of Homeland Security, of which—

* * *

"(B) $150,000,000 shall be for port security grants, which shall be distributed under the same terms and conditions as provided for under Public Law 107–117 ;

* * *

Provided, That, none of the grants provided under this heading shall be used for the construction or renovation of facilities; except for a minor perimeter security project, not to exceed $1,000,000, as determined necessary by the Secretary of Homeland Security: *Provided further,* That the proceeding proviso shall not apply to grants under (2)(B) and (E) of this heading:"

MARAD REVISION OF PORT SECURITY PLANNING GUIDE.

SEC. 113[4]. Revision of Port Security Planning Guide. The Secretary of Transportation, acting through the Maritime Administration and after consultation with the National Maritime Security Advisory Committee and the Coast Guard, shall publish a revised version of the document entitled ''Port Security: A National Planning Guide'', incorporating the requirements prescribed under chapter 701 of title 46, United States Code, as amended by this Act, within 3 years after the date of enactment of this Act, and make that revised document available on the Internet."

[4] Section 113 of Public Law 107-295, approved November 25, 2002 (116 STAT. 2093), the Maritime Transportation Security Act of 2002.

6 U.S.C. 187. (2004). Homeland Security Advanced Research Projects Agency[5]

(a) **Definitions.** In this section:

(1) Fund. The term "Fund" means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) Homeland security research. The term "homeland security research" means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA. The term "HSARPA" means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) Under Secretary. The term "Under Secretary" means the Under Secretary for Science and Technology.

(b) **Homeland Security Advanced Research Projects Agency.**

(1) Establishment. There is established the Homeland Security Advanced Research Projects Agency.

(2) Director. HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) Responsibilities. The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to--

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) Targeted competitions. The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) Coordination. The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

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[5] Section 307 of Public Law 107-296, approved November 25, 2002 (116 STAT. 2135, 2168), the Homeland Security Act of 2002.

(6) Personnel. In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105-261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) Demonstrations. The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) **Fund.**

(1) Establishment. There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) Authorization of appropriations. There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) Coast Guard. Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

Public Law 108-7, approved February 20, 2003 (117 STAT. 11), the Consolidated Appropriations Resolution, 2003, provides at 117 STAT. 387:

"RESEARCH AND DEVELOPMENT

"For necessary expenses of the Transportation Security Administration for research and development related to transportation security, $110,200,000, to remain available until expended: Provided, That of the total amount provided herein, $10,000,000 shall be available only to make research and development grants for port security pursuant to the terms and conditions of section 70107(i) of Public Law 107–295."

SECURITY AND TERRORISM REPORTS

46 App. U.S.C. 1802 (2004). Threat of terrorism to United States ports and vessels Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report to the Congress on the

threat from acts of terrorism to United States ports and vessels operating from those ports. Beginning with the first report submitted under this section after the date of enactment of the Maritime Transportation Security Act of 2002 [enacted Nov. 25, 2002], the Secretary shall include a description of activities undertaken under title I of that Act and an analysis of the effect of those activities on port security against acts of terrorism.[6]

Reports Required by Section 110(b) and (c) of Public Law 107-295, approved November 25, 2002 (116 STAT. 2091):

(b) **Report on Training Center**—The Commandant of the United States Coast Guard, in conjunction with the Secretary of the Navy, shall submit to Congress a report, at the time they submit their fiscal year 2005 budget, on the life cycle costs and benefits of creating a Center for Coastal and Maritime Security. The purpose of the Center would be to provide an integrated training complex to prevent and mitigate terrorist threats against coastal and maritime assets of the United States, including ports, harbors, ships, dams, reservoirs, and transport nodes.

(c) **Report on Secure System of Transportation Program**. -Within 1 year after the secure system of transportation program is implemented under section 70116 of title 46, United States Code, as amended by this Act, the Secretary of the department in which the Coast Guard is operating shall transmit a report to the Senate Committees on Commerce, Science, and Transportation and Finance and the House of Representatives Committees on Transportation and Infrastructure and Ways and Means that—

(1) evaluates the secure system of transportation program and its components;

(2) states the Secretary's view as to whether any procedure, system, or technology evaluated as part of the program offers a higher level of security than requiring imported goods to clear customs under existing procedures and for the requirements of the National Maritime Security Plan for reopening of United States ports to commerce;

(3) states the Secretary's view as to the integrity of the procedures, technology, or systems evaluated as part of the program;

(4) makes a recommendation with respect to whether the program, or any procedure, system, or technology should be incorporated in a nationwide system for preclearance of imports of waterborne goods and

[6] Section 4072(d)(2) of Public Law 108-458, approved December 17, 2004 (118 STAT 3731), provides: "(2) the Secretary of Transportation shall submit to the appropriate congressional committees the annual report required by section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) that includes information that should have been included in the last preceding annual report that was due under that section."

for the requirements of the National Maritime Security Plan for the reopening of United States ports to Commerce;

(5) describes the impact of the program on staffing levels at the department in which the Coast Guard is operating, and the Customs Service; and

(6) states the Secretary's views as to whether there is a method by which the United States could validate foreign ports so that cargo from those ports is preapproved for entry into the United States and for the purpose of the requirements of the National Maritime Security Plan for the reopening of United States ports to commerce."

EXTENSION OF TERRITORIAL JURISDICTION.

Section 104 of Public Law 107-295 (116 STAT. 2085), amended 50 U.S.C. 195, to extend the territorial jurisdiction of the United States from 3 miles to 12 miles offshore, and provided a civil penalty of $25,000 for each violation.

50 U.S.C. 195 (2004). "United States" defined. In this Act:

(1) United States. The term "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(2) Territorial waters. The term "territorial waters of the United States" includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988 [43 USCS § 1331 note].

Presidential Proclamation No. 5928 of Dec. 27, 1988, 54 *Fed. Reg. 777*, provides:

"International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

"The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

"Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

"NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the

Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

"The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law."

Penalty Provision. Section 104(b) of Public Law 107-295 (116 STAT. 2085), amended 50 U.S.C. 192, to generally add a subsection **(c) Civil Penalty**, providing for the civil penalty of $25,000[7].

The Conference Report (H. Rpt. 107-777). provides at page 85: "To better protect our ports and waterways and effectively counter the threat posed by maritime terrorism, the United States must be able to exercise broad powers in the maritime environment. International law, both conventional and customary, provides coastal States with broad security powers in the maritime environment. Both the Convention on the Territorial Sea and Contiguous Zone, 1958 (TSC), to which the United States is a party, and the 1982 United Nations Convention on the Law of the Sea (LOS), clearly recognize coastal States' sovereignty in their territorial sea. Article 14(4) of the TSC states that innocent passage 'shall take place in conformity with these articles and with other rules of international law.' The 'other rules of international law' include customary international law. The United States, although not a party to the 1982 United Nations Convention on the Law of the Sea (LOS), has consistently maintained that specific provisions, including Article 21, represent customary international law. Therefore, the Conferees note that Section 33 U.S.C. 1223(d) of the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.) (PWSA), which limits application of the PWSA with respect to foreign vessels in innocent passage to actions authorized by 'international treaty, convention or agreement, to which the United States is a party', also allows for such actions to be taken under PWSA which are consistent with customary international law."

Section 802(b) of Public Law 108-293, approved August 9, 2004 (118 STAT. 1079), further amended 50 U.S.C. 192, to generally provide a new subsection **(d) In Rem Liability**, and subsection **(e) Withholding of Clearance.** As so amended, 50 U.S.C. 192 provides:

[7] Note that this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 483.

50 U.S.C. 192 (2004). Seizure and forfeiture of vessel; fine and imprisonment

(a) **In general.** If any owner, agent, master, officer, or person in charge, or any member of the crew of any such vessel fails to comply with any regulation or rule issued or order given under the provisions of this title, or obstructs or interferes with the exercise of any power conferred by this title, the vessel, together with her tackle, apparel, furniture, and equipment, shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws; and the person guilty of such failure, obstruction, or interference shall be punished by imprisonment for not more than ten years and may in the discretion of the court, be fined not more than $10,000.

(b) **Application to others.** If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this title, or knowingly obstructs or interferes with the exercise of any power conferred by this title, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000.

(c) **Civil penalty.** A person violating this title, or a regulation prescribed under this title, shall be liable to the United States Government for a civil penalty of not more than $25,000[8] for each violation. Each day of a continuing violation shall constitute a separate violation.

(d) **In rem liability**. Any vessel that is used in violation of this title, or of any regulation issued under this title, shall be liable in rem for any civil penalty assessed pursuant to subsection (c) and may be proceeded against in the United States district court for any district in which such vessel may be found.

(e) **Withholding of clearance.**

(1) In general. If any owner, agent, master, officer, or person in charge of a vessel is liable for a penalty or fine under subsection (c), or if reasonable cause exists to believe that the owner, agent, master, officer, or person in charge may be subject to a penalty or fine under this section, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91).

(2) Clearance upon filing of bond or other surety. The Secretary may require the filing of a bond or other surety as a condition of granting clearance refused or revoked under this subsection.

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[8] Id.

ASSIGNMENT OF COAST GUARD AND MERCHANT MARINE PERSONNEL AS SEA MARSHALLS

Section 107(a) of Public Law 107-295 (116 STAT. 2088) amended Section 7(b) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)), to allow for the dispatch of properly trained and qualified armed Coast Guard personnel on facilities and vessels to deter or respond to acts of terrorism or transportation security incidents. Section 107(b) requires the Secretary of the department in which the Coast Guard is operating to report to Congress on the use of non-Coast Guard personnel as sea marshals. This could include "documented United States Merchant Marine personnel," and "the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the Untied States, to provide training."

33 U.S.C. 1226. (2004) Port, harbor, and coastal facility security

(a) **General authority.** The Secretary may take actions described in subsection (b) to prevent or respond to an act of terrorism against—

(1) an individual, vessel, or public or commercial structure, that is—

(A) subject to the jurisdiction of the United States; and

(B) located within or adjacent to the marine environment; or

(2) a vessel of the United States or an individual on board that vessel.

(b) **Specific authority.** Under subsection (a), the Secretary may—

(1) carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism;

(2) recruit members of the Regular Coast Guard and the Coast Guard Reserve and train members of the Regular Coast Guard and the Coast Guard Reserve in the techniques of preventing and responding to acts of terrorism; and

(3) dispatch properly trained and qualified armed Coast Guard personnel on vessels and public or commercial structures on or adjacent to waters subject to United States jurisdiction to deter or respond to acts of terrorism or transportation security incidents, as defined in section 70101 of title 46, United States Code.

(c) **Nondisclosure of port security plans.** Notwithstanding any other provision of law, information related to security plans, procedures, or programs for passenger vessels or passenger terminals authorized under this Act is not required to be disclosed to the public.

Section 107(b) of Public Law 107-295 (116 STAT. 2088) provides:

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Sec. 107(b). REPORT ON USE OF NON-COAST GUARD PERSONNEL.—The Secretary of the department in which the Coast Guard is operating shall evaluate and report to the Congress on—

(1) the potential use of Federal, State, or local government personnel, and documented United States Merchant Marine personnel, to supplement Coast Guard personnel under section 7(b)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1226(b)(3));

(2) the possibility of using personnel other than Coast Guard personnel to carry out Coast Guard personnel functions under that section and whether additional legal authority would be necessary to use such personnel for such functions; and

(3) the possibility of utilizing the United States Merchant Marine Academy, State maritime academies, or Coast Guard approved maritime industry schools in the United States, to provide training under that section.

MARITIME SECURITY PROFESSIONAL TRAINING AT MARITIME SCHOOLS

Section 109 of Public Law 107-295 (116 STAT. 2090), provides that in developing maritime security professional standards, the Secretary is authorized to consult with various organizations, including the U.S. Merchant Marine Academy's Global Maritime and Transportation School. Section 109(c)(2) authorizes the Secretary to provide such training at certain institutions, including the 6 State Maritime Academies and the U.S. Merchant Marine Academy.

SEC. 109. MARITIME SECURITY PROFESSIONAL TRAINING.

(a) **In General.—**

(1) *Development of Standard.*—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall develop standards and curriculum to allow for the training and certification of maritime security professionals.

In developing these standards and curriculum, the Secretary shall consult with the National Maritime Security Advisory Committee established under section 70112 of title 46, United States Code, as amended by this Act.

(2) Secretary to Consult on Standards.—In developing standards under this section, the Secretary may, without regard to the Federal Advisory Committee Act (5 U.S.C. App.), consult with the Federal Law Enforcement Training Center, the United States Merchant Marine Academy's Global Maritime and Transportation School, the Maritime Security Council, the International Association of Airport and Port Police, the National Cargo Security Council, and any other Federal, State, or local government or law enforcement agency or private organization or individual determined by the Secretary to have pertinent expertise.

(b) **Minimum Standards.**—The standards established by the Secretary under subsection (a) shall include the following elements:

(1) The training and certification of maritime security professionals in accordance with accepted law enforcement and security guidelines, policies, and procedures, including, as appropriate, recommendations for incorporating a background check process for personnel trained and certified in foreign ports.

(2) The training of students and instructors in all aspects of prevention, detection, investigation, and reporting of criminal activities in the international maritime environment.

(3) The provision of off-site training and certification courses and certified personnel at United States and foreign ports used by United States-flagged vessels, or by foreign-flagged vessels with United States citizens as passengers or crewmembers, to develop and enhance security awareness and practices.

(c) **Training Provided to Law Enforcement and Security Personnel.**—

(1) *In General.*—The Secretary is authorized to make the training opportunities provided under this section available to any Federal, State, local, and private law enforcement or maritime security personnel in the United States or to personnel employed in foreign ports used by vessels with United States citizens as passengers or crewmembers.

(2) *Academies and Schools.*—The Secretary may provide training under this section at—

(A) each of the 6 State maritime academies;

(B) the United States Merchant Marine Academy;

(C) the Appalachian Transportation Institute; and

(D) other security training schools in the United States.

(d) **Use of Contract Resources.**—The Secretary may employ Federal and contract resources to train and certify maritime security professionals in accordance with the standards and curriculum developed under this Act.

(e) **Annual Report.**—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the expenditure of appropriated funds and the training under this section.

(f) **Authorization of Appropriations.**—There are authorized to be appropriated to the Secretary to carry out this section $5,500,000 for each of fiscal years 2003 through 2008.

TERRORISM RISK INSURANCE ACT OF 2002

Title I of Public Law 107-297, approved November 26, 2002, (116 STAT. 2322), the Terrorism Risk Insurance Act of 2002 provides:

TITLE I—TERRORISM INSURANCE PROGRAM[1]

Sec. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) **Findings.**—The Congress finds that—

(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the

[1] Set forth at 15 U.S.C. 6701, Note

United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

(b) **Purpose.**—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

Sec. 102. DEFINITIONS.

In this title, the following definitions shall apply:

(1) Act of terrorism.——

(A) Certification.—The term "act of terrorism" means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to—

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

(I) an air carrier or vessel described in paragraph (5)(B); or

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) Limitation.—No act shall be certified by the Secretary as an act of terrorism if—

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(C) Determinations final.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) Nondelegation.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

(2) *Affiliate.*— The term "affiliate" means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

(3) *Control.*— An entity has "control" over another entity, if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(C) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(4) *Direct earned premium.*— The term "direct earned premium" means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

(5) *Insured loss.*— The term "insured loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

(A) occurs within the United States; or

(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

(6) *Insurer.*— The term "insurer" means any entity, including any affiliate thereof—

(A) that is—

(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

(ii) not licensed or admitted as described in clause (i), if it is an

eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

(iv) a State residual market insurance entity or State workers' compensation fund; or

(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

(C) that meets any other criteria that the Secretary may reasonably prescribe.

(7) *Insurer deductible.*— The term "insurer deductible" means—

(A) for the Transition Period, the value of an insurer's direct earned premiums over the calendar year immediately preceding the date of enactment of this Act, multiplied by 1 percent;

(B) for Program Year 1, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 1, multiplied by 7 percent;

(C) for Program Year 2, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 2, multiplied by 10 percent;

(D) for Program Year 3, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 3, multiplied by 15 percent; and

(E) notwithstanding subparagraphs (A) through (D), for the Transition Period, Program Year 1, Program Year 2, or Program Year 3, if an insurer has not had a full year of operations during the calendar year immediately preceding such Period or Program Year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

(8) *NAIC.*— The term "NAIC" means the National Association of Insurance Commissioners.

(9) *Person.*— The term "person" means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(10) *Program.*— The term "Program" means the Terrorism Insurance

Program established by this title.

(11) *Program years.*—

(A) Transition period.—The term "Transition Period" means the period beginning on the date of enactment of this Act and ending on December 31, 2002.

(B) Program year 1.—The term "Program Year 1" means the period beginning on January 1, 2003 and ending on December 31, 2003.

(C) Program year 2.—The term "Program Year 2" means the period beginning on January 1, 2004 and ending on December 31, 2004.

(D) Program year 3.—The term "Program Year 3" means the period beginning on January 1, 2005 and ending on December 31, 2005.

(12) P*roperty and casualty insurance.*— The term "property and casualty insurance"—

(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance; and

(B) does not include—

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) insurance for medical malpractice;

(v) health or life insurance, including group life insurance;

(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.); or

(vii) reinsurance or retrocessional reinsurance.

(13) *Secretary.*— The term "Secretary" means the Secretary of the Treasury.

(14) *State.*— The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(15) *United States.*— The term "United States" means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control

and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

(16) *Rule of construction for dates.*— With respect to any reference to a date in this title, such day shall be construed—

(A) to begin at 12:01 a.m. on that date; and

(B) to end at midnight on that date.

Sec. 103. TERRORISM INSURANCE PROGRAM

(a) **Establishment of Program.**—

(1) *In general.*— There is established in the Department of the Treasury the Terrorism Insurance Program.

(2) *Authority of the secretary.*— Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

(3) *Mandatory participation.*— Each entity that meets the definition of an insurer under this title shall participate in the Program.

(b) **Conditions for Federal Payments.**—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

(A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;

(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and

(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy;

(3) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

(4) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

(B) written certification—

(i) of the underlying claim; and

(ii) of all payments made for insured losses; and

(C) certification of its compliance with the provisions of this subsection.

(c) **Mandatory Availability.—**

(1) *Initial program periods.—* During the period beginning on the first day of the Transition Period and ending on the last day of Program Year 2, each entity that meets the definition of an insurer under section 102—

(A) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(2) *Program year 3.—* Not later than September 1, 2004, the Secretary shall, based on the factors referred to in section 108(d)(1), determine whether the provisions of subparagraphs (A) and (B) of paragraph (1) should be extended through Program Year 3.

(d) **State Residual Market Insurance Entities.—**

(1) I*n general.—* The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

(2) *Treatment of certain entities.—* For purposes of the regulations issued pursuant to paragraph (1)—

(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

(3) *Treatment of participation in certain entities.—* Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

(e) **Insured Loss Shared Compensation.—**

(1) *Federal share.—*

(A) In general.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during the Transition Period and each Program Year shall be equal to 90 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such Transition Period or such Program Year.

(B) Prohibition on duplicative compensation.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

(2) *Cap on annual liability.*—

(A) In general.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $ 100,000,000,000, during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3 (until such time as the Congress may act otherwise with respect to such losses)—

(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of that amount that exceeds $100,000,000,000.

(B) Insurer share.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program.

(3) Notice to congress.— The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, or during Program Year 2 or Program Year 3, and the Congress shall determine the procedures for and the source of any payments for such excess insured losses.

(4) Final netting.— The Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(5) Determinations final.— Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

(6) Insurance marketplace aggregate retention amount.— For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be—

(A) for the period beginning on the first day of the Transition Period and ending on the last day of Program Year 1, the lesser of—

(i) $10,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such period;

(B) for Program Year 2, the lesser of—

(i) $12,500,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

(C) for Program Year 3, the lesser of—

(i) $15,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year.

(7) *Recoupment of federal share.*—

(A) Mandatory recoupment amount.—For purposes of this paragraph, the mandatory recoupment amount for each of the periods referred to in subparagraphs (A), (B), and (C) of paragraph (6) shall be the difference between—

(i) the insurance marketplace aggregate retention amount under paragraph (6) for such period; and

(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

(I) are within the insurer deductible for the insurer subject to the losses; or

(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

(B) No mandatory recoupment if uncompensated losses exceed insurance marketplace retention.—Notwithstanding subparagraph (A), if the aggregate amount of uncompensated insured losses referred to in clause (ii) of such subparagraph for any period referred to in subparagraph (A), (B), or (C) of paragraph (6) is greater than the insurance marketplace aggregate retention amount under paragraph (6) for such period, the mandatory recoupment amount shall be $0.

(C) Mandatory establishment of surcharges to recoup mandatory recoupment amount.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation) occurring during any of the periods referred to in subparagraph (A), (B), or (C) of paragraph (6), terrorism loss risk-spreading premiums in an amount equal to any mandatory recoupment amount for such period.

(D) Discretionary recoupment of remainder of financial assistance.—

To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

(i) the ultimate costs to taxpayers of no additional recoupment;

(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

(iv) such other factors as the Secretary considers appropriate.

(8) Policy surcharge for terrorism loss risk-spreading premiums.——

(A) Policyholder premium.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

(B) Collection.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

(C) Percentage limitation.—A terrorism loss risk-spreading premium (including any additional amount included in such premium on a discretionary basis pursuant to paragraph (7)(D)) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.—

(i) Adjustments.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

(II) the risk factors related to rural areas and smaller commer-

cial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

(III) the various exposures to terrorism risk for different lines of insurance.

(ii) Recoupment of adjustments.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums.

(E) Timing of premiums.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

(f) **Captive Insurers and Other Self-Insurance Arrangements.—** The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

(g) Reinsurance to Cover Exposure.—

(1) *Obtaining coverage.—* This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

(2) *Limitation on financial assistance.—* The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the Transition Period or a Program Year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for such period. If such recoveries and financial assistance for the Transition Period or a Program Year exceed such aggregate amount of insured losses for that period and there is no agreement between the insurer and any reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

(h) **Group Life Insurance Study.—**

(1) *Study.*— The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

(2) *Conditional Coverage.*— To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

(i) **Study and Report.**—

(1) *Study.*— The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

(2) *Report.*— Not later than 9 months after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

Sec. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

(a) **General Authority.**—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

(1) to investigate and audit all claims under the Program; and

(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

(b) **Interim Rules and Procedures.**—The Secretary may issue interim final rules or procedures specifying the manner in which—

(1) insurers may file and certify claims under the Program;

(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

(3) the Secretary may, at any time, seek repayment from or reimburse

any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

(c) **Consultation.**—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

(d) **Contracts for Services.**—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

(e) **Civil Penalties.**—

(1) In general.— The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

(C) submits to the Secretary fraudulent claims under the Program for insured losses;

(D) has failed to provide the disclosures required under subsection (f); or

(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

(2) *Amount.*— The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

(3) *Recovery of amount in dispute.*— A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be in addition to any such amounts recovered by the Secretary.

(f) **Submission of Premium Information.**—

(1) *In general.*— The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

(2) *Access to information.*— To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

(3) *Availability to congress.*— The Secretary shall make information compiled under this subsection available to the Congress, upon request.

(g) **Funding.**—

(1) *Federal payments.*— There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

(2) *Administrative expenses.*— There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

Sec. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

(a) **General Nullification.**—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act shall be void to the extent that it excludes losses that would otherwise be insured losses.

(b) **General Preemption.**—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

(c) **Reinstatement of Terrorism Exclusions.**—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only—

(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) if—

(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

(i) the increased premium for such terrorism coverage; and

(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

Sec. 106. PRESERVATION PROVISIONS.

(a) **State Law.**—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

(1) except as specifically provided in this title; and

(2) except that—

(A) the definition of the term "act of terrorism" in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

(B) during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

(b) **Existing Reinsurance Agreements.**—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act. The terms and conditions of such an agreement shall be determined by the language of that agreement.

Sec. 107. LITIGATION MANAGEMENT.

(a) **Procedures and Damages.**—

(1) *In general.*— If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terror-

ism, except as provided in subsection (b).

(2) *Preemption of state actions.*— All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

(3) *Substantive law.*— The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

(4) *Jurisdiction.*— For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

(5) *Punitive damages.*— Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

(b) **Exclusion.**—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

(c) **Right of Subrogation.**—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

(d) **Relationship to Other Law.**—Nothing in this section shall be construed to affect—

(1) any party's contractual right to arbitrate a dispute; or

(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107-42; 49 U.S.C. 40101 note.).

(e) **Effective Period.**—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

Sec. 108. TERMINATION OF PROGRAM.

(a) **Termination of Program.**—The Program shall terminate on December 31, 2005.

(b) **Continuing Authority to Pay or Adjust Compensation.**—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

(c) **Repeal; Savings Clause.**—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

(d) **Study and Report on the Program.**—

(1) *Study.*— The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

(2) *Report.*— The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

HOMELAND SECURITY ACT

Public Law 107-296, approved November 25, 2002 (116 STAT. 2135), the Homeland Security Act of 2002, transferred the U.S. Customs Service and the U.S. Coast Guard to the Department of Homeland Security.

1. **U. S. CUSTOMS SERVICE.** Section 403 of Public Law 107-296 (116 STAT. 2178) transferred the U.S. Customs Service from the Treasury Department of the Department to Homeland Security.

SEC. 403. FUNCTIONS TRANSFERRED[1].

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

* * * * * *

2. **U. S. COAST GUARD.** Section 888 of Public Law 107-296 (116 STAT. 2249) transferred the U.S. Coast Guard to the Department of Homeland Security.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE[2].

* * * * * *

(b) **Transfer.**—There are transferred to the Department the authorities, functions personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

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[1] Section 403 of Public Law 107-296, is set forth in 6 U.S.C. 203.

[2] Section 888 of Public Law 107-296, is set forth in 6 U.S.C. 468.

APPENDIX

PUBLIC LAWS OF THE 108TH CONGRESS, SECOND SESSION,

PROVIDING OR AMENDING CERTAIN MARITIME LAWS.

CONSOLIDATED APPROPRIATIONS ACT, 2004. Public Law 108-199, approved January 23, 2004 (118 STAT. 3), contains the following provisions of particular interest:

Ocean Freight Differential. At 118 STAT. 28, Public Law 108-199, appropriated $28 million for ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985. Set forth as at page 146. Conference Report (108-401), at page 505.

Title XI Fishery Amendments. Sections 213 and 214 of Public Law 108-199 (118 STAT. 75), each appropriated $500,000, to fund up to $50 million in Title XI loans under Section 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f & 1279g). Section 213 is to carry out a New England lobster fishing capacity reduction program, and Section 214, a Bering Sea and Aleutian Islands nonpollock groundfish capacity reduction program.

NOAA Vessel Construction in U.S. Yards. Section 606 of Public Law 108-199 (118 STAT. 94), generally prohibits the construction, repair (other than emergency repair), overhaul, conversion, or modernization of NOAA vessels in shipyards located outside of the United States.

Bering Sea and Aleutian Islands Crab Rationalization. Section 801 of Public Law 108-199 (118 STAT. 108), provides in part for a loan program to be carried out pursuant to the authority of sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f & 1279g).

Saint Lawrence Seaway Development Corporation. At 118 STAT. 312, Public Law 108-199, appropriated $14.4 million for necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, to be derived from the Harbor

Maintenance Trust Fund, pursuant to Public Law 99–662. Set forth at page 521. Conference Report (108-401), at page 1002

Maritime Administration Appropriations 2004. At 118 STAT. 312, Public Law 108-199, provides:

"Maritime Security Program. For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $98,700,000, to remain available until expended.

"Operations and Training. For necessary expenses of operations and training activities authorized by law, $106,997,000, of which $23,600,000 shall remain available until September 30, 2004, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $13,500,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; of which $8,063,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair; of which $500,000 shall remain available until expended for the evaluation and provision of the fourteen commercially strategic ports; and of which $1,000,000 shall remain available until September 30, 2005, for Maritime Security Professional Training in support of section 109 of the Maritime Transportation Security Act of 2002.

"Ship Disposal. For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $16,211,000, to remain available until expended.

"Maritime Guaranteed Loan (Title XI) Program Account. For administrative expenses to carry out the guaranteed loan program, not to exceed $4,498,000, which shall be transferred to and merged with the appropriation for Operations and Training.

"Ship Construction (Rescission). Of the unobligated balances available under this heading, $4,107,056 are rescinded.

"General Provisions.—Maritime Administration.

* * *

Set forth at page 426, Conference Report (108-401), at page 1002

Federal Maritime Commission Appropriations FY 2004. At 118 STAT. 328, Public Law 108-199, appropriated $18,471,000: *Provided*, That not to exceed $2,000 shall be available for official reception and representation expenses.

Philadelphia Military Cargo Terminal. Section 115 of Public Law 108-199 (118 STAT. 439), provides: "SEC. 115. Of the amounts provided in Public Laws 107–117, 107–248, and 108–87 under the heading 'National Defense Sealift Fund' for construction of additional sealift capacity, $40,000,000 shall be made available for the construction of a Port of Philadelphia marine cargo terminal for high-speed military sealift and other military purposes." Set forth at page 594.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005. Public Law 108-287, approved August 5, 2004 (118 STAT. 951), contains the following provisions of particular interest:

Shipbuilding & Conversion, Navy. At 118 STAT. 961, provides: "For expenses necessary for the construction, acquisition or conversion of vessels as authorized by law, . . . In all: $10,427,443,000, to remain available for obligation until September 30, 2009." Set forth in full at page 412.

National Defense Sealift Fund. At 118 STAT. 966, Public Law 108-287. provides: "For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $1,204,626,000, to remain available until expended." Set forth in full at page 410. Conference Report (108-622), at page 360.

American Samoa Medical Services. Sections 8009 and 8060 of Public Law 108-287 (118 STAT. 984, 971) generally continue DOD humanitarian efforts for peoples from American Samoa and other Oceania countries.

Limitation on Conversion to Contractor Performance. Section 8014 of Public law 108-287 (118 STAT. 972), provides that, subject to the enumerated conditions, none of the funds appropriated shall be available to convert to contractor performance an activity or function of DOD that, on or after the date of the enactment, is performed by more than 10 DOD civilian employees. See also Section 8035 (118 STAT. 978) for a somewhat similar provision for the Corps of Engineers and "other government agencies."

Buy American Provisions. Buy American provisions are set forth in Public Law 108-287, at Section 8016 (118 STAT. 973) for anchor chain; Section 8029 (118 STAT. 977) for Canadian steel pipe; Section 8059 (118 STAT. 984) for ball bearings; and Section 8061 (118 STAT. 984)

for supercomputers. Section 8045 (118 STAT. 980) prohibits the expenditure of DOD funds where Buy American Provisions have not been complied with.

DOD/Private Industry Depot Maintenance Activities. Section 8031 of Public Law 108-287 (118 STAT. 977), continues the DOD authority to generally acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms. Set forth at page 418.

Defense Export Loan Guarantees/Guarantee Limitation. Section 8065 of Public Law 108-287 (118 STAT. 985), provides: "SEC. 8065. To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, for the current fiscal year and hereafter the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: Provided, That the total contingent liability of the United States for guarantees issued under the authority of this section may not exceed $15,000,000,000." Set forth in full at page 415.

T-AKE Class Vessels/Buy American/Diesel Engines. Section 8078 of Public Law 108-287 (118 STAT. 988), provides: "SEC. 8078. None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T–AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity." Set forth in full at page 412.

Littoral Combat Ship Program. Section 8092(a) of Public Law 108-287 (118 STAT. 992), provides: "SEC. 8092. (a) Of the amounts appropriated in this Act under the heading 'Research, Development, Test and Evaluation, Navy', $214,678,000 shall be available for the construction of the first prototype vessel under the Littoral Combat Ship program." Additional conditions are set forth in Section 8092(b). Conference Report (H. Rpt. 108-622), at page 310 discusses the following programs: Littoral Combat Ship, Next Generation Destroyer - DD(X), and Amphibious Assault ship - LHA Replacement.

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2004. Public Law 108-293, approved August 9, 2004 (118 STAT. 1028), contains the following provisions of particular interest:

Saint Lawrence Seaway/Secretary of Transportation. Section 304 of Public Law 108-293 (118 STAT. 1042), amended Section 3(2) of the Ports and Waterways Safety Act (33 U.S.C. 1222(2)), to maintain the role of the Secretary of Transportation in carrying out this Act as it relates to the Seaway. Conference Report (108-617), at page 77.

Reports from Charterers. Section 401 of Public Law 108-293 (118 STAT. 1042), amended 46 U.S.C. 12120, to include charterers so as to read as follows: "To ensure compliance with this chapter, and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require owners, masters and charterers of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe." Set forth at page 260. Conference Report (108-617), at page 77.

Removal of Mandatory Revocation for Proved Drug Convictions in Suspension and Revocation Cases. Section 402 of Public Law 108-293 (118 STAT. 1043), amended 46 U.S.C. 7704(b), to generally give the Coast Guard flexibility to temporarily suspend a mariner's credentials in drug law conviction cases by removing the requirement for a hearing and revocation in every such case. Conference Report (108-617), at page 78

Records of Merchant Mariners' Documents. Section 403 of Public Law 108-293 (118 STAT. 1043), amended 46 U.S.C. 7319, to strike the prohibition on "general or public inspection'' of merchant mariners' documents, to bring such records under the record protection and release policies of the Privacy Act (5 U.S.C. 552a), and the Freedom of Information Act (5 U.S.C. 552). This will permit family members and historians to seek information about deceased mariners. Conference Report (108-617), at page 78.

Exemption of Unmanned Barges From Certain Citizenship Requirements. 46 U.S.C. 12110(d), provided: "(d) A documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States." Section 404 of Public Law 108-293 (118 STAT. 1043), amended 46 U.S.C. 12110(d) and 46 U.S.C. 12122(b)(6), by inserting "or an unmanned barge operating outside of the territorial waters of the United States," after "recreational endorsement" to exempt unmanned barges from this requirement. Set forth at page 258 & 261. Conference Report (108-617), at page 79.

Drugs & Alcohol/Revision of Temporary Suspension Criteria in Document Suspension and Revocation. Section 407 of Public Law 108-293 (118 STAT. 1044), amended 46 U.S.C. 7702(d), to allow the

Coast Guard to temporarily suspend or revoke a merchant mariner's credentials if the mariner has been convicted of certain National Driver Register Act offenses. Conference Report (108-617), at page 80.

Revision of Basis for Document Suspension and Revocation Cases. Section 408 of Public Law 108-293 (118 STAT. 1044), amended 46 U.S.C. 7703, to allow the Coast Guard to suspend or revoke a merchant mariner's credentials (MMC) if the mariner commits an act of incompetence, whether or not acting under MMC authority at the time the act occurs. It also adds security threat as a basis for revocation. Conference Report (108-617), at page 81.

Hours of Service on Towing Vessels. Section 409 of Public Law 108-293 (118 STAT. 1044), amended 46 U.S.C. 8904, to generally authorize the Coast Guard to prescribe maximum hours of service for individuals engaged on a towing vessel subject to that section. Conference Report (108-617), at page 81.

Passenger Vessels/SOLAS/Prevention of Departure. Section 411 of Public Law 108-293 (118 STAT. 1045), amended 46 U.S.C. 3505, to authorize the Coast Guard to conduct examinations to ensure that a foreign-flag passenger vessel calling at a U.S. port complies with SOLAS when a U.S. citizen passenger is aboard. Current law is limited to U.S. citizens who embarked at that port. Conference Report (108-617), at page 83.

Kings Point/Foreign Nationals Sea Service. Section 412 of Public Law 108-293 (118 STAT. 1046), amended 46 U.S.C. 8103(b)(1)(A), to allow foreign nationals enrolled at Kings Point serve aboard a vessel as an unlicensed seaman for purposes of fulfilling educational requirements for graduation from the Academy. Set forth at page 265. Conference Report (108-617), at page 83.

Drug Testing Reporting. Section 414 of Public Law 108-293 (118 STAT. 1046), added 46 U.S.C. 7706, to generally require Federal Agencies to submit to the Coast Guard the results of positive drug tests and verified test violations of civilian and certain uniformed personnel employed aboard Federally-operated vessels. Conference Report (108-617), at page 84

Transportation of Platform Jackets. Section 417 of Public Law 108-293 (118 STAT. 1048), amended the thirteenth proviso of the Jones Act (46 App. U.S.C. 883) (pertaining to the transportation of platform jackets by a launch barge), to allow previously nonqualified launch barges built before December 31, 2000, and having a launch capacity of at least 12,000 gross tons, to transport platform jackets in the coastwise

trade under certain conditions. Set forth at page 310. Conference Report (108-617), at page 85.

Federal Maritime Commission Authorizations. Section 501 of Public Law 108-293 (118 STAT. 1049) authorized appropriations for the FMC for each of the Fiscal years 2005 through 2008, as follows: FY 2005 - $19.500 Million; FY 2006 - $20.750 Million; FY2007 - $ 21.500 Million; FY 2008 - $22.575 Million. Conference Report (108-617), at page 85.

Operation of STAD AMSTERDAM in Jones Act Trades. Section 604 of Public Law 108-293 (118 STAT. 1052), generally authorizes the Coast Guard to permit, for 45 calendar days a year, the vessel STAD AMSTERDAM to carry certain enumerated nonpaying guests between ports and places in the United States. Set forth at page 337. Conference Report (108-617), at page 87.

Great Lakes National Maritime Enhancement Institute/Study. Section 605 of Public Law 108-293 (118 STAT. 1052), generally authorizes the Secretary of Transportation to designate a National Maritime Enhancement Institute in the Great Lakes region. The Secretary is required to conduct a study [with the assistance of any NMEI] on a number of issues related to marine cargo transportation in the Great Lakes, and to report the result on this study to Congress. The study is to be completed within two years of the enactment of the Act and $1.5 million is authorized to be appropriated to the Secretary of Transportation for each of fiscal years 2005 and 2006. Set forth at page 532. Conference Report (108-617), at page 87.

Misc. Certificates of Documentation. Section 607 of Public Law 108-293 (118 STAT. 1054) authorizes the Coast Guard to issue a certificate of documentation with coastwise endorsement for the following vessels: OCEAN LEADER, REVELATION, W.N. RAGLAND, and M/T MISS LINDA.

Requirements for Coastwise Endorsement. Section 608(a) of Public Law 108-293 (118 STAT. 1054), amended 46 U.S.C. 12106, by amending subsection (e), and adding a new subsection (f) to provide a narrow exception for certain foreign owners of U.S.-built vessels engaged in the coastwise trade. Section 608(b), (c), (d), and (e) of Public Law 108-293, provides certain flexibility with respect to certain U.S. citizenship requirements for operation in the coastwise trade. 46 U.S.C. 12106 is set forth at page 251. Conference Report (108-617), at page 88.

Merchant Mariners Documents Pilot Program. Section 611 of Public Law 108-293 (118 STAT. 1058), authorizes the Coast Guard to conduct a pilot program to demonstrate methods to improve processes

and procedures for issuing merchant mariners' documents. Set forth at page 26. Conference Report (108-617), at page 89.

Westlake Chemical Barge Documentation. Section 618 of Public Law 108-293 (118 STAT. 1062), authorizes ten U.S.-built, U.S.-manned and U.S.-owned barges to operate in the coastwise trade. Conference Report (108-617), at page 91.

Dry Bulk Cargo Residue Disposal Regulations. Section 623 of Public Law 108-293 (118 STAT. 1063), generally extends the interim authority of the Coast Guard to issue regulations regarding dry bulk cargo residue disposal. Conference Report (108-117) at page 92.

Vessel Response Plans for Nontank Vessels Over 400 Gross Tons. Section 701 of Public Law 108-293 (118 STAT. 1067), amended the Federal Water Pollution Control Act (33 U.S.C. 1231, 1321(j)), to generally require any vessel over 400 gross tons that carries oil, including bunkers, to submit a pollution response plan.

Double Hull Tanker Construction Alternatives. Section 705 of Public Law 108-293 (118 STAT. 1075), amended Section 4115(e)(3) of the Oil Pollution Act of 1990 (46 U.S.C. 3703a note), to generally require the Coast Guard, within one year of enactment, to establish and publish an environmental equivalency evaluation index to assess outflow performance due to collisions and groundings for double hull tank vessels and alternative hull designs. Set forth at page 502. Conference Report (107-617), at page 95

Report on Implementation of the Oil Pollution Act of 1990. Section 707 of Public Law 108-293 (118 STAT. 1076), requires the Coast Guard to submit a report to the Congress, on various issues arising from implementation of the Oil Pollution Act of 1990. These include (a) the domestic and international implications of changing the phase-out date for single hull vessels pursuant to 46 U.S.C. 3703a, from 2015 to 2010; (b) the costs and benefits of requiring vessel monitoring systems on tank vessels used to transport oil or other hazardous cargo, and of using additional aids to navigation; and (c) a summary of manning, inspection, and other safety issues for tank barges and towing vessels used in connection with them. Conference Report (108-617), at page 95.

Port Security Enhancements. Title VIII of Public Law 108-293 (118 STAT. 1078), Maritime Transportation Security, consists of Section 801 through 809. These sections made substantial amendments to 46 U.S.C. 70101 et seq., **Port Security Enhancements**, commencing at page 597. Conference Report (108-617), commencing at page 96.

Sec. 801. Enforcement. Section 801of Public Law 108-293 (118 STAT. 1078), added 46 U.S.C. 70118 and 70119 to Chapter 701.
46 U.S.C. 70118. *Firearms, arrests, and seizure of property*, provides the Coast Guard with express authority to carry firearms, seize property, and make an arrest while at a maritime facility under guidelines to be approved by the Secretary and the Attorney General.
46 U.S.C. 70119. *Enforcement by States and local officers*, allows State and local law enforcement personnel to make warrantless arrests for certain felony violations.

Sec. 802. In Rem Liability for Civil Penalties and Certain Costs. Section 802 of Public Law 108-293 (118 STAT. 1078), redesignated *46 U.S.C. 70117. Civil Penalty*, as 46 U.S.C. 70119. *Civil Penalty*, and inserted a new *46 U.S.C. 70117 and 70118.*
46 U.S.C. 70117. In rem liability for civil penalties and certain costs, established in rem liability for any vessel operated in violation of Chapter 701 or regulations issued under the chapter.
46 U.S.C. 70118. Withholding of clearance, authorizes the Captain of the Port to withhold clearance of any vessel if the owner or operators are suspected to be subject to a financial penalty resulting from violations of port security violations; granting clearance upon the filing of a surety bond. Conforming amendments are made to 50 U.S.C. 192. Seizure and Forfeiture of /vessels; Fine and Imprisonment.

Sec. 803. Maritime Information. Section 803(a) of Public Law 108-293 (118 STAT. 1080), amended 46 U.S.C. 70113; Section 803(b) amended 46 U.S.C. 70115, and Section 803(c) and (d) provided additional requirements, to generally require the Coast Guard (1) to develop a long-range vessel tracking system consistent with U.S. international agreements, (2) to develop a plan to improve the collection, collaboration, coordination, dissemination and use of maritime information by Federal agencies; and (3) to submit this plan to Congressional committees. The Coast Guard is authorized to acquire vessel risk profiling data from the private sector.

Sec. 804. Maritime Transportation Security Grants. Section 804 of Public Law 108-293 (118 STAT. 1081), amended 46 U.S.C. 70107, to direct the Secretary of Homeland Security to establish a grant program for implementation of the Area Maritime Transportation Security Plans and Facility Security Plans that will be reviewed by the Federal Maritime Security Coordinator and the Maritime Administration prior to a grant being awarded. In addition, the Secretary is required to transmit a report and provide recommendations for the grant process. Note that until October 1, 2004, the Maritime Administration had the authority to establish the grant program, and since then is limited to review and comment on the programs.

Sec. 805. Security Assessment of Waters Under the Jurisdiction of the United States. Section 805 of Public Law 108-293 (118 STAT.

1082), requires the Coast Guard to conduct a vulnerability assessment study under 46 U.S.C. 70102(b), and submit it to the Congress.

Sec. 806. Membership of Area Maritime Security Advisory Committees. Section 806 of Public Law 108-293 (118 STAT. 1082), amended 46 U.S.C. 70112(b), to require the Area Maritime Security Advisory Committees to include members from the port industry, terminal operators, port labor organizations, and other users of port areas.

Sec. 807. Joint Operational Centers for Port Security. Section 807 of Public Law 108-293 (118 STAT. 1082), generally requires the Coast Guard within 180 days to submit a report to the Congress on the implementation and use of joint operational centers for port security at certain Untied States seaports. Certain report requirements are set forth.

Sec. 808. Investigations. Section 808 of Public Law 108-293 (118 STAT. 1083), amended 46 U.S.C. 70107(i), to direct the Coast Guard to conduct certain investigations and pilot projects to enhance the security of American ports. The Coast Guard is authorized to establish National Port Security Centers at colleges and universities to conduct these investigations and requires annual reports to the Congress.

Sec. 809. Vessel and Intermodal Security Reports. Section 809 of Public Law 108-293 (118 STAT. 1085), requires the Coast Guard to take certain action. Section 809 consists of the following subsections: (a) In General; (b) Report Regarding Security Inspection of Vessels and Vessel-borne Cargo Containers Entering the United States; (c) Plan for Implementing Secure Systems of Transportation; (d) Inspector General Implementation Report; (e) Report on Radiation Detectors; (f) Report on Nonintrusive Inspection at Foreign Ports;. (g) Evaluation of Cargo Inspection Targeting System for International Intermodal Cargo Containers;. (h) Action Report; (i) Compliance with Security Standards Established Pursuant to Maritime Transportation Security Plans; (j) Empty Containers; and (k) Report and Plan Formats.

HOMELAND SECURITY DEPARTMENT APPROPRIATIONS ACT FY 2005. Public Law 108-334, approved October 18, 2004 (118 STAT. 1298), contains the following provision of particular interest.

State and Local Programs. At 118 STAT. 1309, Public Law 108-334 allocates "$150,000,000 shall be for port security grants, which shall be distributed under the same terms and conditions as provided for under Public Law 107-117". Set forth at page 629. Conference Report (108-774), comments on these matters as follows: Page 29 for the "Transportation Security Plan;" Page 34 for "Grant Awards;" Page 37 for "Cargo Container Security;" Page 37 for "Coordination of Aviation and Marine Operations and Planning;" Page 52 for "Maritime and Land Security Grants;" and Page 65 for "Transportation Security Grants."

AMERICAN JOBS CREATION ACT OF 2004. Public Law 108-357, approved October 22, 2004 (118 STAT. 1418), is a comprehensive tax law that contains the following provisions of particular interest.

Reduced Taxes for Certain Inland Waterways Fuel. Section 241(b) of Public Law 108-357 (118 STAT. 1438), amended 26 U.S.C. 4042(b)(2), effective January 1, 2005, to phase out the 4.3 cents-per-gallon tax on diesel fuel used in barges operating on designated inland waters. Set forth at page 555. Conference Report (108-755), at page 564.

International Shipping Tonnage Tax. Section 248(a) of Public Law 108-357 (118 STAT.1449), generally added 26 U.S.C. 1352 - 1359, to give U.S.-flag operators the option of being assessed a tonnage tax rather than the traditional income tax on corporate profits. Set forth at page 556. Conference Report (108-755), at page 349.

Controlled Foreign Shipping Corporations - Subpart F Income. Very generally, Section 415 of Public Law 108-357 (118 STAT. 1511), amended 26 U.S.C. 952 & 954, to repeal the Subpart F Rules relating to foreign base company shipping income. Set forth at page 565. Conference Report (108-755), at page 400.

Shipyard Accounting Change. Section 708 of Public Law 108-357 (118 STAT. 1550), generally permits U.S. shipyards with naval shipbuilding contracts to institute a tax accounting rule change to further reduce costs. Set forth at page 568. Conference Report (108-755), at page 486.

NATIONAL DEFENSE AUTHORIZATION ACT, FY 2005. Public Law 108-375, approved October 28, 2004 (118 STAT. 1811). contains the following provisions of particular interest:

Navy Shipbuilding and Conversion. Section 102(a)(3) of Public Law 108-375 (118 STAT 1826), authorizes $10,116, 827, 000, for this purpose.

DDG-51 Modernization Program. Section 121 of Public Law 108-375 (118 STAT. 1828), directs the Secretary of the Navy to accelerate the modernization program for the DDG-51 Arleigh Burke-class of destroyers, and report to the Congress by March 31, 2003. Conference Report (108-767), at page 494.

LHA (R) Amphibious Assault Ship Program. Section 123 of Public Law 108-375 (118 STAT. 1828), generally authorizes the Secretary of the Navy to procure the first amphibious assault ship of the LHA(R) class, subject to the availability of appropriations. Conference Report (108-767), at page 495.

Sense of Congress Regarding Funding of the Advanced Shipbuilding Enterprise Under the National Shipbuilding Research Program of the Navy. Section 242 of Public Law 108-375 (118 STAT. 1838), generally provides the sense of the Congress for continued funding. Conference Report (108-767), at page 589.

National Defense Sealift Fund. Section 302(2) of Public Law 108-375 (118 STAT. 1841), authorizes $1,269,252,000, for this purpose. Set forth at page 411.

Redesignate the Naval Reserve as the Navy Reserve. Section 517 of Public Law 108-375 (118 STAT. 1884), generally authorizes the Secretary of the Navy, with the approval of the President, to redesignate the reserve component known as the Naval Reserve as the "Navy Reserve". Set forth at page 221. Conference Report (108-767), at page 668.

U.S. Merchant Marine Academy/Limitation on Charges and Fees for Attendance. Section 554(e) of Public Law 108-375 (118 STAT. 1909), added subsection (j) to Section 1303 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(j)), to generally prohibit charges for tuition, room, or board unless specifically authorized by law enacted after October 5, 1994. Does not apply to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. Set forth at page 210. Conference Report (108-767), at page 675.

Award of Contracts for Ship Dismantling on Net-Cost Basis. Section 1011 of Public Law 108-375 (118 STAT. 2038), added 10 U.S.C. 7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis, to generally authorize the Secretary of the Navy to award contracts for the dismantling of vessels stricken from the Naval Vessel Register on a net-cost basis. Conference Report (108-767), at page 754.

Use of Proceeds from Exchange and Sale of Obsolete Navy Service Craft and Boats. Section 1012 of Public Law 108-375 (118 STAT. 2039), added 10 U.S.C. 7312, Service craft stricken from Naval Vessel Register; obsolete boats; use of proceeds from exchange or sale, to generally authorize the Secretary of the Navy to retain such proceeds to use for the specified purposes. Conference Report (108-767), at page 754.

U.S. Shipyard Repair of Naval Vessels Transferred to Foreign Recipients. Section 1013 of Public Law 108-375 (118 STAT. 2040), authorizes the President, for two years from the date of enactment, to transfer to the specified foreign countries, by grant or sale, the enumerated Navy vessels. To the maximum extent practicable, the President shall require that the country to which the vessel is transferred shall

have repair or refurbishment of the vessel performed at a U.S. shipyard, including a Navy shipyard. Set forth at page 420 . Conference Report (108-767), at page 754.

Independent Study to Assess Cost Effectiveness of the Navy Ship Construction Program. Section 1014 of Public Law 108-375 (118 STAT. 2041), generally requires the Secretary of Defense to provide for a study of the cost effectiveness of the Navy ship construction program by a group of industrial experts independent of the Department of Defense. This report is to be submitted to the Congress by October 1, 2005. Conference Report (108-767), at page 755.

Limitation on Disposal of Obsolete Destroyer EDSON (DD-946). Section 1015 of Public Law 108-375 (118 STAT. 2042), restricts the Secretary of the Navy from disposing of this vessel before October 1, 2007, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under 10 U.S.C. 7306(a)(3). Conference Report (108-767), at page 756.

Use of National Driver Register for Personnel Security Investigations and Determinations. Section 1061 of Public Law 108-375 (118 STAT. 2056), amended 49 U.S.C. 30305(b), to generally authorize access to the National Driver Register by federal departments and agencies for use in personnel security investigations and for use in personnel investigation with regard to federal employment requiring access to national security information. Conference Report (108-767), at page 761.

Liability Protection for DOD Volunteers Working in the Maritime Environment. Section 1081 of Public Law 108-375 (118 STAT. 2059), amended 10 U.S.C. 1588(d)(1)(B), for this purpose. Conference Report (108-767), at page 762.

Sunken Military Craft. Very generally, Title XIV of Public Law 108-375 (118 STAT. 2094), set forth as Sections 1401 through 1408 (10 U.S.C. 113 note), protects sunken U.S. military vessels, aircraft, and spacecraft, as well as the remains and personal effects of their crews from salvage, recovery, or other disturbance without authorization from the Secretary of the military department concerned. Conference Report (108-767), at page 791.

Maritime Administration Authorization. Title XXXV of Public Law 108-375 (118 STAT. 2194), consists of Section 3501, 3502, and 3503. Conference Report (108-767), at page 907.

Section 3501 of Public Law 108-375 (118 STAT. 2194), provides:

"Sec. 3501. Authorization of Appropriations for Maritime Administration. There are authorized to be appropriated to the Secretary of Transportation for the Maritime Administration for fiscal year 2005 (in lieu of amounts authorized for the same purposes by section 3511 of the National Defense Authorization Act for Fiscal Year 2004)[1] --

"(1) for expenses necessary for operations and training activities, $109,300,000;

"(2) for administrative expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (*46 U.S.C. App. 1271* et seq.), $4,764,000; and

"(3) for ship disposal, $35,000,000, of which $2,000,000 shall be for decommissioning, removal, and disposal of the nuclear reactor and hazardous materials on board the vessel SAVANNAH."

Set forth at page 425. The Conference Report (108-767), provides at page 907. "*Authorization of appropriations for Maritime Administration (sec.3501).* The House bill contained a provision (sec. 3501) that would authorize funds to be appropriated for the Maritime Administration for expenses necessary for operations and training activities, for administrative activities under the loan guarantee program, and for ship disposal. The Senate amendment contained no similar provision. The Senate recedes."

Section 3502 of Public Law 108-375 (118 STAT. 2195), provides:

"Sec. 3502. Extension of Authority to Provide War Risk insurance for Merchant Marine Vessels. (a) Extension.--Section 1214 of the Merchant Marine Act, 1936 (*46 U.S.C. App. 1294*), is amended by striking 'June 30, 2005' and inserting 'December 31, 2010'.

"(b) INVESTMENT OF ASSETS IN INSURANCE FUND.—Section 1208(a) of such Act (46 U.S.C. App. 1288), is amended by striking the third sentence and inserting the following: 'The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary

[1] Section 3511 of Public Law 108-136 (117 STAT. 1789), authorized funds for the Maritime Administration as follows: (1) for expenses necessary for operations and training activities, not to exceed $106,000,000 for the fiscal year ending September 2005; (2) for expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et. seq.), $36,000,000 for fiscal year 2005 of which— (A) $30,000,000 shall be for the cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees under the program; and (B) $6,000,000 shall be for administrative expenses related to loan guarantee commitments under the program.; and (3) for ship disposal, $11,422,000 for fiscal year 2005.

of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.”.

Set forth at page 199 and 194. Note drafting error explained in the footnote 73 on page 194. The Conference Report (108-767), provides at page 907: "*Extension of authority to provide war risk insurance for Merchant Marine vessels (sec. 3502)* The House bill contained a provision (sec. 3502) that would amend section 1214 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1294) to extend the authority to provide war risk insurance for Merchant Marine vessels from June 30, 2005 to December 31, 2010. The provision would also amend section 1208(a) of the same Act (46 U.S.C. App. 1288), allowing the Secretary of Transportation to request the Secretary of the Treasury to invest such portion of the fund that is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. The Senate amendment contained a similar provision (sec. 1066), which would have extended the authority to provide war risk insurance to December 31, 2008, and would have allowed similar investments of a portion of the fund. The Senate recedes."

Section 3503 of Public Law 108-375 (118 STAT. 2195), provides:

"Sec. 3503. Modification of Priority Afforded applications for National Defense Tank Vessel Construction Assistance.

" Section 3542(d)(2) of the Maritime Security Act of 2003 (title XXXV of Public Law 108-136; 117 Stat. 1821; *46 U.S.C. 53101* note) is amended--

"(1) in subparagraph (A), by striking ‘and’ at the end;

"(2) in subparagraph (B) by striking the period at the end and inserting ‘; and’; and

"(3) by adding at the end the following:

'(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.'"

Set forth at page 114. The Conference Report (108-767), provides at page 907 "*Modification of priority afforded applications for national defense tank vessel construction assistance (sec. 3503).* The Senate

amendment contained a provision (sec. 2901) that would amend section 3542(d)(2) of the Maritime Security Act of 2003 (title XXXV of Public Law 108–136). The amendment would require the Secretary of Transportation to give priority consideration to a proposal for national defense tank vessels if they had been accepted for participation in the Shipboard Technology Evaluation Program (STEP) as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the U.S. Coast Guard on January 2, 2004. The House bill contained no similar provision. The House recedes with an amendment that would allow the Secretary of Transportation to give priority to subsidy proposals received after fiscal year 2005 if the vessels, which are to be constructed, have been selected to participate in the STEP."

MISC. TRADE & TECHNICAL CORRECTIONS ACT OF 2004. Public Law 108-429, approved December 3, 2004 (118 STAT. 2434), contains the following provision of particular interest.

Vessel Repairs on the High Seas. Section 1554(a) of Public Law 108-429 (118 STAT. 2578) , amended Section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h), by the addition of a paragraph (4), to clarify that non-emergency repairs and maintenance performed at sea by the crew of a U.S.-flag vessel are not subject to the 50 percent ad valorem duty provided by that section. Legislation was required to overturn a U.S. Customs ruling. Set forth on page 527. Conference Report (108-771), at page 187, makes reference to the Senate Report (108-28). See the footnote on page 530.

CONSOLIDATED APPROPRIATIONS ACT, 2005. Public Law 108-447, approved December 8, 2004, (118 STAT. 2809), contains the following provisions of particular interest:

Ocean Freight Differential. At 118 STAT. 2835, Public Law 108-447, appropriated $22,723,000 for ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985. Set forth at page 146. Conference Report (108-792), at page 706.

NOAA Buy American Shipyards. Section 606 of Public Law 108-477 (118 STAT. 2914), provides that hereafter, "none of the funds made available in this Act may be used for the construction, repair (other than emergency repair), overhaul, conversion, or modernization of vessels for the National Oceanic and Atmospheric Administration in shipyards located outside of the United States."

Cook Inlet, Anchorage Harbor Dredging. Section 118 of Public Law 108-477 (118 STAT 2945), generally provides for dredging the harbor depth to 45 feet at the modified intermodal marine facility. Dredging to be at full Federal expense if DOD vessels of over 35 foot draft use the facility:

Alaska or Hawaii Ferry Boats. Section 165 of Public Law 108-477 (118 STAT. 3227), provides:

SEC. 165. Funds made available for Alaska or Hawaii ferry boats or ferry terminal facilities pursuant to 49 U.S.C. 5309(m)(2)(B) may be used to construct new vessels and facilities, or to improve existing vessels and facilities, including both the passenger and vehicle-related elements of such vessels and facilities, and for repair facilities: Provided, That not more than $3,000,000 of the funds made available pursuant to 49 U.S.C. 5309(m)(2)(B) may be used by the State of Hawaii to initiate and operate a passenger ferryboat services demonstration project to test the viability of different intra-island and inter-island ferry boat routes and technology: Provided further, That notwithstanding 49 U.S.C. 5302(a)(7), funds made available for Alaska or Hawaii ferry boats may be used to acquire passenger ferry boats and to provide passenger ferry transportation services within areas of the State of Hawaii under the control or use of the National Park Service.

The Conference Report (108-792) provides at page 1436: "The conference agreement includes a provision (Section 165) that allows funds made available for Alaska and Hawaii ferry boats or ferry terminal facilities to be used to construct new vessels and facilities or to improve existing vessels and facilities, as proposed by the Senate."

St Lawrence Seaway Development Corporation. Public Law 108-447, provides at (118 STAT. 3230)

"For necessary expenses for operations and maintenance of those portions of the Saint Lawrence Seaway operated and maintained by the Saint Lawrence Seaway Development Corporation, $15,900,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662: Provided, That, of this amount, $1,500,000 shall be for the concrete replacement project and related expenses at the Eisenhower and Snell Locks."

Conference Report (108-792), at page 1437.

Maritime Administration Appropriations, 2005. Public Law 108-477, provides at (118 STAT. 3230)

"Maritime Security Program. For necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States, $98,700,000, to remain available until expended.

"Operations and Training. For necessary expenses of operations and training activities authorized by law, $109,478,000, of which $23,753,000 shall remain available until September 30, 2005, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $13,138,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and of which $8,090,000 shall remain available until expended for the State Maritime Schools Schoolship Maintenance and Repair.

"Ship Disposal. For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $21,616,000, to remain available until expended.

"Maritime Guaranteed Loan (Title XI) Program Account. For administrative expenses to carry out the guaranteed loan program, not to exceed $4,764,000, which shall be transferred to and merged with the appropriation for Operations and Training: Provided, That of the $25,000,000 authorized for the cost of guaranteed loans in Chapter 10 of Public Law 108–11, Making Emergency Wartime Supplemental Appropriations for the Fiscal Year 2003, and for Other Purposes, available until September 30, 2005, and pursuant to the Department of Transportation Inspector General report CR–2004–095 certifying that the recommendations of report CR–2003–031 have been implemented to the Inspector General's satisfaction, up to $2,000,000 shall be used by the Department of Transportation to develop a comprehensive computer based financial monitoring system.

"National Defense Tank Vessel Construction Program For necessary expenses to carry out the program of financial assistance for the construction of new product tank vessels as authorized by section 53101 of title 46, United States Code, as amended, $75,000,000, to remain available until expended.
"Ship Construction (Rescission). Of the unobligated balances available under this heading, $1,979,000 are rescinded.

"General Provisions - Maritime Administration.

* * *

Set forth at page 427.

The Conference Report (108-792), provides in part commencing at page 1438:

"OPERATIONS AND TRAINING

* * *

"The conferees provide $610,000 as a one-time appropriation for relocation and reconfiguration of the CAPE CHALMERS from the National Defense Reserve Fleet to the Federal Law Enforcement Training Center in Charleston, South Carolina to establish a maritime security professional training center. Funds shall not be used for training purposes or for administration purposes associated with the Federal Law Enforcement Training Center.

"The conferees provide $1,000,000 to prepare a conditions and performance report and needs assessment for the inland waterways system. In developing the conditions and performance and needs assessment report, MARAD should consider and evaluate the potential for applying information technology and data management to the inland waterways infrastructure to address increased transportation demands.

* * *

"MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT (INCLUDING TRANSFER OF FUNDS)

"The conference agreement includes $4,764,000 for administration expenses of the maritime guaranteed loan program (Title XI) as proposed by the House and Senate. This level is adequate to fund the three requested full time equivalents to improve the administration and oversight of the Title XI loan process, as recommended by the DOT Inspector General. Further, MARAD is prohibited from detailing any personnel overseeing the Title XI program to any other modal administration, including the Office of the Secretary, without the advance consent of both the House and Senate Committees on Appropriations. In addition, the conferees direct MARAD to implement the additional three recommendations detailed in the Inspector General's follow-up audit of the Title XI program dated September 28, 2004, and make available up to $2,000,000 of the Title XI funds provided under Public Law 108– 11 to be used to develop and acquire a comprehensive computer- based financial monitoring system.

"NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM

"The conference agreement amends a provision included in the Senate

bill and includes $75,000,000 for the National Defense Tank Vessel Construction Program authorized under Public Law 108–136."

Federal Maritime Commission Appropriations, 2005 Public Law 108-447 (118 STAT. 3252, appropriates $19,496,000, provided not to exceed $2,000 shall be available for official reception and representation expenses. Conference Report (108-792), at page 1453.

MARITIME SECURITY MATTERS. Public Law 108-458, approved December 17, 2004 (118 STAT. 3638), the Intelligence Reform and Terrorism Prevention Act of 2004, contains the following provisions of particular interest.

Watch Lists for Passengers Aboard Vessels. Section 4071 of Public Law 108-458 (118 STAT.3729), generally requires the Secretary of Homeland Security to implement a procedure under which the passenger and crew manifests of passenger vessels would be scanned for suspected terrorists. Cruise ship operators are required to cooperate.

Deadlines for Completion of Certain Plans, Reports, and Assessments. Section 4072 of Public Law 108-458 (118 STAT. 3730), makes minor technical amendments to 46 U.S.C. 70103(a)(1) and 70102(b)(1), and makes provision for such reports in subsections (c) and (d) that are set forth at page 627.